

IN THE UTAH COURT OF APPEALS

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| Jake Johnson, |) | MEMORANDUM DECISION |
| |) | (Not For Official Publication) |
| Plaintiff and Appellant, |) | Case No. 20100657-CA |
| |) | |
| v. |) | |
| |) | F I L E D |
| <u>Tim Dahle Imports, Inc.</u> and |) | (December 2, 2010) |
| John Does I through XX, |) | |
| |) | 2010 UT App 341 |
| Defendant and Appellee. |) | |

Third District, Salt Lake Department, 090900662
The Honorable Tyrone E. Medley

Attorneys: Jake Johnson, West Bountiful, Appellant Pro Se
Robert O. Rice and David B. Dibble, Salt Lake City,
for Appellee

Before Judges McHugh, Thorne, and Voros.

PER CURIAM:

Jake Johnson appeals the trial court's order dismissing his complaint. This is before the court on its own motion for summary disposition based on the lack of jurisdiction due to an untimely filed notice of appeal.

A notice of appeal must be filed within thirty days after the entry of judgment. See Utah R. App. P. 4(a). If a notice of appeal is not timely filed, this court lacks jurisdiction over the appeal. See Serrato v. Utah Transit Auth., 2000 UT App 299, ¶ 7, 13 P.3d 616. Where an appeal is not properly taken, this court must dismiss it. See Bradbury v. Valencia, 2000 UT 50, ¶ 8, 5 P.3d 649.

Here, the trial court entered its final order on July 1, 2010. Johnson's notice of appeal was filed on August 3, 2010, one day after the time had run to file a notice of appeal. Accordingly, the appeal was untimely filed and this court lacks

jurisdiction.¹ See Serrato, 2000 UT App 299, ¶ 7. Based on the lack of jurisdiction, this court must dismiss the appeal. See Bradbury, 2000 UT 50, ¶ 8.

Dismissed.

Carolyn B. McHugh,
Associate Presiding Judge

William A. Thorne Jr., Judge

J. Frederic Voros Jr., Judge

¹Johnson filed a motion pursuant to rule 59 of the Utah Rules of Civil Procedure on July 19, 2010. Although rule 59 motions may toll the time to appeal, the motion must be timely filed to do so. See Utah R. App. P. 4(b)(1). Johnson's motion was not timely filed below and, therefore, did not toll the time to appeal. See Blauer v. Department of Workforce Servs., 2007 UT App 280, ¶ 10, 167 P.3d 1102 (stating that an untimely motion under rule 59 has no effect on the running of the time for filing a notice of appeal).