

IN THE UTAH COURT OF APPEALS

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Nicholas Lear,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20080235-CA
v.)	
)	F I L E D
Steven Turley, Warden,)	(June 5, 2008)
)	
Respondent and Appellee.)	2008 UT App 215

Third District, Salt Lake Department, 070912052
The Honorable Vernice Trease

Attorneys: Nicholas Lear, Draper, Appellant Pro Se
Mark L. Shurtleff and Brent A. Burnett, Salt Lake
City, for Appellee

Before Judges Billings, Davis, and McHugh.

PER CURIAM:

Nicholas Lear appeals a summary judgment on his petition for post-conviction relief. This case is before the court on a sua sponte motion for summary disposition. We dismiss the appeal for lack of jurisdiction.

On January 28, 2008, the district court entered an Order Granting Summary Judgment. Lear filed a notice of appeal from the January 28 order, but the notice was not filed in the district court until March 13, 2008, more than thirty days after the entry of the order he seeks to appeal. See Utah R. App. P. 4(a) (requiring a notice of appeal to be filed within thirty days after entry of the judgment or order being appealed). Lear claims that his notice of appeal was timely under rule 4(g) of the Utah Rules of Appellate Procedure. See id. R. 4(g) ("If an inmate confined in an institution files a notice of appeal . . . the notice of appeal is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing."). Lear acknowledges that his notice of appeal was mailed on February 28, 2008, which is thirty-one days after entry of the January 28, 2008 order denying his post-conviction petition. Therefore, even if rule 4(g) is applied, the notice of appeal was untimely. "If an appeal is not timely filed, this

court lacks jurisdiction to hear the appeal." Serrato v. Utah Transit Auth., 2000 UT App 299, ¶ 7, 13 P.3d 616.

Appellee Steven Turley asserts that the January 28, 2008 order prepared by the district court was not a final, appealable judgment under Code v. Utah Department of Health, 2007 UT 43, 162 P.3d 1097. We disagree. Code requires a trial court to include an explicit direction regarding finality "whenever it intends a document--a memorandum decision, minute entry, or other document--to constitute its final action. Otherwise, rule 7(f)(2) [of the Utah Rules of Civil Procedure] requires the preparation and filing of an order to trigger finality for purposes of appeal." Id. ¶ 6 (emphasis added). However, the district court in this case prepared and entered an Order Granting Summary Judgment, which triggered finality and was immediately appealable. Under these circumstances, Code is inapplicable.

We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed under rule 4 of the Utah Rules of Appellate Procedure.

Judith M. Billings, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge