

IN THE UTAH COURT OF APPEALS

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Randy Thomas Naves,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20070177-CA
v.)	
)	
Clint Friel, Warden; and State)	F I L E D
of Utah,)	(April 19, 2007)
)	
Defendants and Appellees.)	2007 UT App 138

Third District, Salt Lake Department, 050906573
The Honorable Tyrone E. Medley

Attorneys: Randy Thomas Naves, Farmington, Appellant Pro Se
Mark L. Shurtleff and Kris C. Leonard, Salt Lake
City, for Appellees

Before Judges Greenwood, Billings, and Orme.

PER CURIAM:

Randy Thomas Naves appeals the trial court's denial of his motion for an extension of time in which to appeal the trial court's previous dismissal of Naves's post-conviction petition. This is before the court on its own motion for summary disposition based on the lack of a substantial question for review.

Pursuant to rule 4 of the Utah Rules of Appellate Procedure, a notice of appeal must be filed within thirty days of the entry of the order appealed. See Utah R. App. P. 4(a). The time to appeal may be extended only by filing a motion for extension under rule 4(e). See Utah R. App. P. 4(e). A motion for an extension must be filed no later than thirty days after the initial time for appeal has run. See id. The time for filing a motion for an extension is fixed and may not be suspended or altered. See Utah R. App. P. 2 (prohibiting the suspension of the requirements of certain rules, including rule 4(e)).

The trial court entered the order dismissing Naves's petition on September 20, 2006. The thirty-day time for appeal expired on October 20, 2006. Pursuant to rule 4(e), Naves was

required to file any motion to extend the time to appeal no later than November 20, 2006. The trial court did not receive Naves's motion to extend until December 6, 2006, beyond the time to file an extension. Naves did not even sign the motion until November 27, 2006, still after the expiration of the time under rule 4(e). Because Naves's motion was clearly filed beyond the time permitted under rule 4(e), the trial court properly denied Naves's motion as untimely.

Naves asserts that his untimeliness should be excused because the State failed to send him a signed copy of the final order as required by Utah Rule of Civil Procedure 58. See Utah R. Civ. P. 58(d). However, by its own terms, rule 58 forecloses Naves's argument. Rule 58 provides that "[a] judgment is complete and shall be deemed entered for all purposes . . . when the same is signed and filed." Utah R. Civ. P. 58(c). Additionally, although rule 58(d) requires service of the signed judgment by the party preparing the order, it also specifically states that "[t]he time for filing a notice of appeal is not affected by" the service requirement. Utah R. Civ. P. 58(d). Rather, the time for filing a notice of appeal begins to run when the judgment is entered, regardless of whether the parties receive notice of the judgment. See Workman v. Nagle Const., Inc., 802 P.2d 749, 751 (Utah Ct. App. 1990). Therefore, the time to file an appeal began to run on September 20, and the State's failure to serve a copy of the final order on Naves did not toll the appeal time.

Accordingly, the trial court's denial of Naves's motion to extend the time for appeal is affirmed.

Pamela T. Greenwood,
Associate Presiding Judge

Judith M. Billings, Judge

Gregory K. Orme, Judge