IN THE UTAH COURT OF APPEALS

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Arthur Samuel Primavera, Petitioner and Appellant, v. Kimberly Meacham Primavera, Respondent and Appellee.	MEMORANDUM DECISION (Not For Official Publication) Case No. 20050342-CA F I L E D (September 1, 2005) 2005 UT App 370

Fourth District, Provo Department, 004400748
The Honorable Derek P. Pullan

Attorneys: Arthur Samuel Primavera, Redmond, Washington,
Appellant Pro Se
David J. Hunter, Orem, for Appellee

Before Judges Davis, Greenwood, and Thorne.

PER CURIAM:

This case is before the court on its own motion for summary dismissal based on an untimely notice of appeal. Both parties responded to the motion. Review of the parties' memoranda and the record establish that the notice of appeal was timely filed.

On March 2, 2005, the district court entered a memorandum decision and order, which is the subject of this appeal. On March 21, 2005, appellant filed a notice of appeal with the district court which the district court stamped and accepted. On March 29, 2005, the district court returned the notice of appeal due to Appellant's failure to include the appropriate fee. On April 4, 2005, Appellant re-filed his notice of appeal with an appropriate payment. Utah courts have repeatedly concluded that "'the timely payment of fees on an appeal from the district court to this Court is no longer jurisdictional.'" Gorostieta v. Parkinson, 2000 UT 19,¶19, 17 P.3d 1110 (quoting State v. Johnson, 700 P.2d 1125, 1129 n.1 (Utah 1985)); see also Harley Davidson of N. Utah v. Workforce Appeals Bd., 2005 UT 38,¶10, 528 Utah Adv. Rept. 24. Accordingly, because Appellant filed his original notice of appeal within thirty days of the appealable order, although without the appropriate fee, and the district court accepted the notice of appeal, Appellant's appeal was

timely. However, there is another issue which prevents the court from reviewing the appeal on the merits.

The record reveals that in its March 2, 2005 "Memorandum Decision and Order" the district court found Appellant to be in contempt of court. Specifically, the district court made the following finding and order:

> Petitioner is found in contempt and sanctioned 20 days in the Utah County Jail. He shall report to the Utah County jail within 180 days of the issuance of this decision to serve his term. He may purge this contempt by commencing alimony and child support payments as ordered in the original decree, beginning March 1, 2005, and by paying $10,000 toward arrearages within 90 days of the issuance of the Court's decision and another $10,000 toward arrearages within 180 days of the Court's decision.

The record does not demonstrate that this contempt has been purged.[1]

We conclude that our holding in D'Aston v. D'Aston, 790 P.2d 590, 594 (Utah Ct. App. 1990) applies to the facts of this case. Under D'Aston, a party may not maintain an appeal while simultaneously defying the district court's orders to enforce its judgment. Id. This approach does not deny an Appellant the right to an appeal, but requires a party in contempt to "satisfy the court's concerns before [he] may exercise that right." Id.

Therefore, proceedings on the appeal from the March 2, 2005 order are stayed for a period of thirty-days from the date of this decision to allow Appellant to demonstrate to the satisfaction of this court that he is no longer in contempt of the district court's order. Within this time period Appellant must present this court with documentation from the district court indicating that the order of contempt has been resolved. If Appellant complies we will consider his appeal on the merits. If Appellant fails to satisfy the order of contempt within the

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[1]We note that the period of 180 days from the March 2, 2005 order expired on or about August 29, 2005.

thirty-day period, the motion to dismiss his appeal will be granted without further notice or argument.

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James Z. Davis, Judge

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Pamela T. Greenwood, Judge

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William A. Thorne Jr., Judge