

IN THE UTAH COURT OF APPEALS

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Kenneth E. Schmeider and)	MEMORANDUM DECISION
Connie Schmeider,)	(Not For Official Publication)
)	
Plaintiffs and Appellants,)	Case No. 20080505-CA
)	
v.)	F I L E D
)	(November 28, 2008)
Zane Pentz and Charles Pentz)	
Estate,)	2008 UT App 429
)	
Defendants and Appellees.)	

Second District, Morgan Department, 060500012
The Honorable Michael G. Allphin

Attorneys: William R. Rawlings and Travis B. Alkire, Draper, for
Appellants
John M. Webster and Matthew A. Bartlett, Riverdale,
for Appellees

Before Judges Bench, Davis, and McHugh.

PER CURIAM:

By an order dated August 15, 2008, we deferred a ruling on a sua sponte motion for summary dismissal and temporarily remanded to the district court for a ruling on a motion to extend the time for appeal. On October 6, 2008, the district court issued a Ruling on Plaintiffs' Motion to Extend the Time for Filing Notice of Appeal, in which it denied the extension. Defendants Zane Pentz and the Charles Pentz Estate also filed a motion for summary disposition.

Rule 4(e) of the Utah Rules of Appellate Procedure places responsibility for determining motions to extend on the trial courts. See Utah R. App. P. 4(e). Rule 4(e) allows a motion to extend to be filed within thirty days after the expiration of the original period for filing a notice of appeal. See id. The time for filing a notice of appeal expired on May 23, 2008. See Utah R. App. P. 4(a) (requiring a notice of appeal to be filed within thirty days after entry of final judgment). Accordingly, the motion to extend filed on May 27, 2008, was timely.

"The discretion of the trial court to grant or deny a Rule 4(e) motion is very broad, highly fact dependent, and fundamentally equitable in nature." Serrato v. Utah Transit Auth., 2000 UT App 299, ¶ 6, 13 P.3d 616. "Excusable neglect 'is an admittedly neglectful delay that is nevertheless excused by special circumstances,' whereas good cause 'pertains to special circumstances that are essentially beyond a party's control.'" Id. ¶ 7 (quoting Reisbeck v. HCA Health Servs. of Utah, Inc., 2000 UT 48, ¶ 13, 2 P.3d 447). We stated that "it is unfair to allow an extension for what amounts to no excuse" because "[t]o do so would so lower the requirement for what is excusable neglect" that it would make rule 4(e) "meaningless." Id. ¶ 12.

Plaintiffs' rule 4(e) motion contended that their counsel "made multiple inquiries in the months following the verdict regarding the entry of a judgment," but the motion did not state the dates of such inquiries. The motion acknowledged that defense counsel generated a copy of a proposed judgment, "which was provided to and signed by Plaintiffs' counsel." However, Plaintiffs contended that because Defendants did not provide a copy of the judgment after the court signed it, they should be granted an extension in the interest of justice. Defendants opposed the motion to extend, arguing that Plaintiffs did not demonstrate good cause or excusable neglect. In reply, Plaintiffs essentially alleged that failure of either defense counsel or the trial court to provide a copy of the signed judgment justified the extension. Rule 58A(d) of the Utah Rules of Civil Procedure requires that "[a] copy of the signed judgment shall be promptly served by the party preparing it" but further states that "[t]he time for filing a notice of appeal is not affected by the requirement." Utah R. Civ. P. 58A(d). The district court noted that Plaintiffs' counsel did not allege that any of the calls to the court were made after April 23 or that counsel was misinformed about the status of the judgment. The district court also stated that counsel could have determined whether a judgment had been entered by viewing the court's docket. Plaintiffs cited a pattern of delay in this case and asserted that they "acted reasonably in awaiting notice" prior to filing a motion for new trial or a notice of appeal. They allege that these circumstances satisfy the excusable neglect or good cause standards and claim that their delay was inadvertent. However, the essential assertion remains that Plaintiffs were not responsible, and the court or opposing counsel were responsible, for the delay in filing the notice of appeal. Based upon rule 58A(d), the district court properly rejected this assertion.

The district court acted within its discretion in denying an extension. The notice of appeal was therefore untimely, and the appeal must be dismissed for lack of jurisdiction.

Russell W. Bench, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge