

IN THE UTAH COURT OF APPEALS

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Sandy City,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20080305-CA
v.)	
)	F I L E D
Darlene D. Schmidt,)	(May 22, 2008)
)	
Defendant and Appellant.)	2008 UT App 182

Third District, West Jordan Department, 071401863
The Honorable Terry L. Christiansen

Attorneys: Darlene D. Schmidt, Sandy, Appellant Pro Se
 Douglas A. Johnson, Sandy, for Appellee

Before Judges Billings, Davis, and McHugh.

PER CURIAM:

Darlene Schmidt appeals the Third District Court's March 3, 2008 order of the Third District Court dismissing her appeal from the Sandy City Justice Court and remanding the case to that court because Schmidt failed to appear for the trial de novo in district court. This case is before the court on a sua sponte motion for summary dismissal on the grounds that (1) the notice of appeal filed on April 3, 2008, was not timely filed after entry of the order of dismissal on March 3, 2008, and (2) this court lacks jurisdiction over the appeal under Utah Code section 78-5-120(7) because the district court did not rule on the constitutionality of a statute or ordinance.

Schmidt filed her notice of appeal on April 3, 2008, which is thirty-one days after the entry of the district court's dismissal order on March 3, 2008. Accordingly, the notice of appeal was untimely under rule 4 of the Utah Rules of Appellate Procedure, see Utah R. App. P. 4(a), and we lack jurisdiction to consider the appeal. See Serrato v. Utah Transit Auth., 2000 UT App 299, ¶ 7, 13 P.3d 616 ("If an appeal is not timely filed, this court lacks jurisdiction to hear the appeal.").

Even if the notice of appeal had been timely filed in the district court, we would still lack jurisdiction over this appeal

because the district court did not rule on the constitutionality of a statute or ordinance in its order dismissing the appeal from the justice court and remanding the case to that court for further proceedings. Utah Code section 78-5-120(7) provides that the decision of a district court in a case originating in a justice court "is final and may not be appealed unless the district court rules on the constitutionality of a statute or ordinance." Utah Code Ann. § 78-5-120(7) (2002). Because the district court did not rule on the constitutionality of a statute or ordinance in this case, we also lack jurisdiction to consider the appeal under section 78-5-120(7).

We dismiss the appeal for lack of jurisdiction. Because we lack jurisdiction, we cannot consider Schmidt's motion for summary judgment or her motion for a stay or injunction precluding further proceedings in the justice court.

Judith M. Billings, Judge

James Z. Davis, Judge

Carolyn B. McHugh, Judge