

IN THE UTAH COURT OF APPEALS

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Helen W. Snell,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20060068-CA
v.)	
)	F I L E D
Carl A. Mattson, M.D.,)	(April 13, 2006)
)	
Defendant and Appellee.)	<u>2006 UT App 152</u>

Second District, Ogden Department, 040904983
The Honorable John R. Morris

Attorneys: Helen W. Snell, Roy, Appellant Pro Se
Stephen W. Owens and Kevin S. Gardner, Salt Lake
City, for Appellee

Before Judges Bench, Greenwood, and Billings.

PER CURIAM:

Helen W. Snell appeals from a final judgment entered by the trial court. This case is before the court on Carl A. Mattson, M.D.'s (Mattson) motion for summary disposition. Mattson's central argument is that this appeal should be dismissed for lack of jurisdiction due to Snell's failure to file a timely notice of appeal.

The trial court heard oral arguments on the parties' cross-motions for summary judgment on October 24, 2005. On November 10, the trial court entered an order granting Mattson's motion for summary judgment and denying Snell's motion for summary judgment (the "summary judgment order"). In the interim, on October 31, Snell filed a Motion to Set Aside Default Judgment pursuant to Utah Rule of Civil Procedure 60(b)(1). See Utah R. Civ. P. 60(b)(1). Snell filed a notice to submit the rule 60(b) motion on November 23, and the motion was denied pursuant to a minute entry decision on December 30. Snell filed her notice of appeal on January 20, 2006.

A notice of appeal must be filed "with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from." Utah R. App. P. 4(a). The trial court entered the summary judgment order on November 10, 2005. "A judgment is complete and shall be deemed entered for all purposes . . . when the same is signed and filed as herein above provided." Utah R. Civ. P. 58A(c). Snell did not file a timely appeal from the summary judgment order. See Utah R. App. P. 4(a).

Although the time for filing an appeal is tolled by the timely filing of certain postjudgment motions, see Utah R. App. P. 4(b), no such motion was filed by Snell. Instead, Snell filed a motion pursuant to Utah Rule of Civil Procedure 60(b)(1). A motion filed pursuant to rule 60(b) is not one of the motions that tolls the time for filing an appeal. See id.

If an appeal is not timely filed, this court lacks jurisdiction to hear the appeal and must dismiss. See Serrato v. Utah Transit Auth., 2000 UT App 299, ¶7, 13 P.3d 616. Thus, to the extent Snell appeals from the summary judgment order, this court lacks jurisdiction over the untimely appeal of that order. See id. To the extent Snell appeals only the order on the rule 60(b) motion, this court has jurisdiction, because the appeal was filed within thirty days of that order.

However, based upon the limited scope of Snell's appeal, it is clear that no substantial question is presented for our review. See Utah R. App. 10(e). Snell moved to set aside a "default judgment" that did not exist. In her Affidavit in Support of Motion to Set Aside Default Judgment, Snell averred that a default judgment was entered against her on March 8, 2005. The only order entered on that date was an Order Regarding [Mattson's] Motion for Summary Judgment, which specifically allowed Snell an additional sixty days to conduct required discovery. This was not a default judgment. See Utah R. Civ. P. 54, 55. Thus, there was nothing for the trial court to "set aside." Furthermore, rule 60(b) specifically states that a motion pursuant to subsection (b)(1) must be made within "3 months after the judgment, order[,] or proceeding was entered or taken." Utah R. Civ. P. 60(b). The order to which Snell was entered seven months prior to the filing of her rule 60(b)(1) motion. Snell's motion was correctly denied by the trial court.

Accordingly, Snell's appeal of the summary judgment order is dismissed for lack of jurisdiction. We summarily affirm the

trial court's order denying Snell's Motion to Set Aside Default Judgment.

Russell W. Bench,
Presiding Judge

Pamela T. Greenwood,
Associate Presiding Judge

Judith M. Billings, Judge