

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Brian K. Stack,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Petitioner and Appellant,)	
)	Case No. 20080310-CA
v.)	
)	F I L E D
James Hatch,)	(July 25, 2008)
)	
Respondent and Appellee.)	2008 UT App 290

Third District, Salt Lake Department, 070916605
The Honorable Stephen L. Henriod

Attorneys: Brian K. Stack, Draper, Appellant Pro Se
Mark L. Shurtleff and Brent A. Burnett, Salt Lake
City, for Appellee

Before Judges Bench, Davis, and Orme.

PER CURIAM:

Brian K. Stack appeals from the district court's order dismissing his action to remove James Hatch from office. This case is before the court on its own motion for summary disposition based upon lack of jurisdiction due to the failure to file a timely notice of appeal. See Utah R. App. P. 4(a).

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." 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.

The district court entered its order dismissing Stack's action on February 12, 2008. Therefore, Stack was required to file his notice of appeal by March 13, 2008.¹ Stack did not file

¹Because Stack is an inmate confined in an institution, his notice of appeal would have been deemed timely filed if he deposited the notice of appeal in the prison's internal mail
(continued...)

a notice of appeal until April 3, 2008. Thus, the notice of appeal was untimely.² Further, Stack's motion to amend the judgment under rule 59 of the Utah Rules of Civil Procedure, which he filed on March 28, 2008, did not operate to toll the notice of appeal period because the motion was untimely. See Utah R. Civ. P. 59(e); Utah R. App. P. 4(b)(1). Because Stack did not timely file his notice of appeal, this court lacks jurisdiction to hear the appeal and must dismiss. See Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989) (stating that if the court lacks jurisdiction over an appeal, it has only the authority to dismiss the action).

The appeal is dismissed.

Russell W. Bench, Judge

James Z. Davis, Judge

Gregory K. Orme, Judge

¹(...continued)
system on or before March 13, 2008. See Utah R. App. P. 4(g). However, Stack has failed to file a notarized statement or written declaration demonstrating that he had complied with the rule. See id.

²Stack asserts that his notice of appeal was filed on March 28, 2008. The court's docket indicates that the notice of appeal was not entered until April 3, 2008. However, even if Stack deposited the notice of appeal in the prison mail delivery system on March 28, 2008, the notice of appeal was untimely. See Utah R. App. P. 4(g).