

IN THE UTAH COURT OF APPEALS

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In the Matter of the Dwane Sykes and Patricia Sykes Children's Trust and/or the Dwane and Patricia Sykes Trust.

----- Dwane Sykes and Patricia Sykes Children's Trust and/or the Dwane and Patricia Sykes Trust,

Appellant,

v.

Johnny Iverson,

Appellee.

) MEMORANDUM DECISION (Not For Official Publication) Case No. 20060463-CA

) F I L E D (August 10, 2006)

) 2006 UT App 338

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Fourth District, Provo Department, 943400122 The Honorable Fred D. Howard

Attorneys: Justin D. Heideman and Jerry D. Reynolds, Provo, for Appellant Gordon Duval and Gregory G. Hansen, Salt Lake City, for Appellee

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Before Judges Greenwood, Davis, and Orme.

PER CURIAM:

Dwane Sykes and Patricia Sykes Children's Trust and/or the Dwane and Patricia Sykes Trust (the Trust) purports to appeal from an order granting its objection to the entry of an abstract of judgment and purports to appeal the underlying order. This case is before the court on its sua sponte motion for summary dismissal for 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 final order on September 26, 2005. The Trust did not file its notice of appeal until May 11, 2006. The Trust argues that it timely filed its appeal because it appealed from the district court's order granting its objection to Johnny Iverson's abstract of judgment. However, an abstract of judgment is merely a document filed in the collection process to obtain a lien on real property. See Beehive Bail Bonds v. Fifth Dist. Court, 933 P.2d 1011, 1014-15 (Utah Ct. App. 1997). Accordingly, because the filing of an abstract of judgment is related to the enforcement of a judgment instead of the judgment itself, it is considered a separate proceeding for purposes of appeal. See Harris v. IES Assocs., Inc., 2003 UT App 112, ¶56, 69 P.3d 297 ("The initial action resulting in a final judgment and the subsequent action seeking enforcement of that judgment are separate proceedings, each resulting in separate judgments that are then individually subject to the rules of appellate procedure." (quotations and citations omitted)). Thus, the Trust's appeal from the district court's grant of its objection to the abstract of judgment was not a timely appeal of the September 26, 2005 order.

The Trust also argues that the September 26, 2005 order was not final because it did not expressly state whether Iverson was entitled to prejudgment and postjudgment interest. The court need not decide this particular issue, however, because contrary to the Trust's arguments, the judgment contained a liquidated amount for prejudgment interest if scheduled payments were not made to Iverson. Cf. ProMax Dev. Corp. v. Raile, 2004 UT 4, ¶12, 998 P.2d 254 (stating when "no attorney fees are involved but only court costs, which are usually small statutory amounts or liquidated amounts, such costs can be added later to a judgment without affecting its finality"). The judgment then contemplated post-judgment interest once the order became final. While Iverson may have attempted to collect an amount not contemplated by the order, this fact does not affect the finality of the underlying order. Accordingly, under these circumstances, the Trust's argument that the September 26, 2005, order was not final due to its failure to include references to prejudgment and postjudgment interest is without merit.

Therefore, because the September 26, 2005 order was final, the trust's appeal attacking the validity of that order was not timely filed, thereby depriving this court of jurisdiction. When

this court lacks jurisdiction, it has no choice but to dismiss the appeal. See Loffredo v. Holt, 2001 UT 97, ¶11, 37 P.3d 1070.

The appeal is dismissed.

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Pamela T. Greenwood,  
Associate Presiding Judge

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James Z. Davis, Judge

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Gregory K. Orme, Judge