

IN THE UTAH COURT OF APPEALS

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<u>Dean Wall</u> , Shirley A. Secrist,)	MEMORANDUM DECISION	
Michele Wall, and Jason Wall,)	(Not For Official Publication)	
)		
Plaintiffs and Appellant,)	Case No. 20060484-CA	
)		
v.)		
)	F I L E D	
Wells Fargo Bank,)	(August 17, 2006)	
)		
Defendant and Appellee.)	<table border="1"><tr><td>2006 UT App 346</td></tr></table>	2006 UT App 346
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Second District, Farmington Department, 040700059
The Honorable Rodney S. Page

Attorneys: Dean Wall, Kaysville, Appellant Pro Se
Gregory S. Roberts, Salt Lake City, for Appellee

Before Judges Greenwood, McHugh, and Orme.

PER CURIAM:

For the third time, Appellant Dean Wall seeks to challenge, in an appeal to this court, the district court's May 2004 ruling setting aside a default certificate. This case is before the court on a sua sponte motion for summary disposition.

The order setting aside the default certificate was entered on May 5, 2004, and became a final, appealable order when the district court entered summary judgment and an award of attorney fees in December 2004. Even construing Wall's "motion to reverse judgment" as the equivalent of a timely motion for a new trial under rule 59 of the Utah Rules of Appellate Procedure, the February 8, 2005 order denying that motion resulted in a final, appealable judgment. Nevertheless, Wall did not file the first notice of appeal in this case until May 10, 2005. This court dismissed that appeal for lack of jurisdiction due to an untimely notice of appeal. See Wall v. Wells Fargo Bank, 2005 UT App 335 (per curiam). On October 26, 2005, Wall filed a second notice of appeal, which resulted in a second dismissal and an award of sanctions for a frivolous, untimely appeal. See Wall v. Wells Fargo Bank, 2005 UT App 556 (per curiam).

On May 23, 2006, the district court heard Wall's motion to stay execution of the underlying judgment and orally denied that motion. On the same day, Wall filed the notice of appeal in the

present appeal.¹ In this appeal, he again challenges the underlying judgment and the order setting aside a default certificate. Even assuming that this appeal is properly taken from the denial of the motion seeking to stay execution, Wall raises no issues regarding that ruling and repeats the same claims made in the earlier appeals. The denial of the motion to stay execution cannot revive a right to appeal from the earlier judgment, particularly where two prior appeals have been dismissed as untimely.

Based upon a review of the record and for the reasons correctly stated in Wells Fargo's response, we dismiss this third appeal for lack of jurisdiction. Rather than raising any issues related to the order denying a stay of execution, Wall makes a successive appeal challenging the original judgment and interlocutory rulings preceding it. The same appeal has been twice dismissed. Wells Fargo Bank also seeks an award of sanctions in the form of attorney fees against Wall under rule 33 of the Utah Rules of Appellate Procedure. We dismissed two prior appeals challenging the summary judgment and the order setting aside the default certificate for lack of jurisdiction because they were untimely. It follows that this subsequent, successive appeal is also untimely, and we lack jurisdiction to consider it.

We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed within thirty days after entry of the judgment and order being appealed. Pursuant to rule 33 of the Utah Rules of Appellate Procedure, we conclude that Appellee Wells Fargo Bank is entitled to recover its costs and attorney fees incurred in defending this appeal. We remand the case to the district court for determination of the costs and attorney fees reasonably incurred by Wells Fargo Bank in defending this third appeal and for entry of an appropriate award.

Pamela T. Greenwood,
Associate Presiding Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge

¹The district court entered a formal order denying the motion to stay execution on June 2, 2006.