

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Gloria Sonntag, Joanne	)	MEMORANDUM DECISION
Tinsley, Bernadine Hiser, and	)	(Not For Official Publication)
Karen Bacon,	)	
	)	Case No. 20050566-CA
Plaintiffs and Appellees,	)	
	)	
v.	)	F I L E D
	)	(August 25, 2005)
	)	
William A. Ward,	)	2005 UT App 365
	)	
Defendant and Appellant.	)	

-----

Second District, Ogden Department, 030907005  
The Honorable W. Brent West

Attorneys: William A. Ward, Ogden, Appellant Pro Se  
Douglas A. Taggart and E. Troy Blanchard, Ogden, for  
Appellees

-----

Before Judges Davis, Greenwood, and Thorne.

PER CURIAM:

William A. Ward appeals the trial court's entry of summary judgment against him. This is before this court on its own motion for summary disposition based on the lack of a substantial question for review because it is clear that the trial court had jurisdiction over Ward and the subject matter of the case. However, after reviewing the record, it appears that Ward's notice of appeal was untimely filed, thereby depriving this court of jurisdiction over this appeal.

Summary judgment was entered against Ward in May 2004. Ward filed a motion for reconsideration which was, in effect, a motion pursuant to Utah Rule of Civil Procedure 59. The trial court entered its order denying Ward's motion to reconsider on April 6, 2005. Ward filed his notice of appeal on June 14, 2005.

Pursuant to Utah Rule of Appellate Procedure 4, a notice of appeal must be filed "within 30 days after the date of entry of the judgment or order appealed from." Utah R. App. P. 4(a). However, certain post-judgment motions toll the time for appeal. See Utah R. App. P. 4(b). Ward's motion for reconsideration was

construed as a motion for new trial, one of the post-judgment motions that toll the time for appeal under rule 4(b). Thus, the time for appeal ran from the date of the entry of the order denying Ward's motion for reconsideration, and expired thirty days after the entry of the order. See id.

Ward filed his notice of appeal more than two months after the entry of the order denying his motion to reconsider, well beyond the thirty-day limit. If an appeal is not timely filed, this court lacks jurisdiction to consider the appeal. See Serrato v. Utah Transit Auth., 2000 UT App 299, ¶7, 13 P.3d 616. Once this court determines it lacks jurisdiction, it retains only the authority to dismiss the appeal. See Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989). Accordingly, we must dismiss this appeal as untimely.

It is important to clarify our jurisdictional holding. The determination that this court lacks jurisdiction over this appeal does not mean that the trial court lacked jurisdiction over the matter below. In fact, it is clear from the record that both personal and subject matter jurisdiction of the trial court was established pursuant to Utah Code sections 75-7-201 and 75-7-202. See Utah Code Ann. § 75-7-201; §75-7-202 (1993). Ward's failure to timely file his notice of appeal means only that this court does not have the jurisdiction to review the trial court's ruling, and Ward has forfeited that right to review. The trial court's rulings and orders remain in effect in all respects.

Because this court lacks jurisdiction over this appeal, the appeal is dismissed.

---

James Z. Davis, Judge

---

Pamela T. Greenwood, Judge

---

William A. Thorne Jr., Judge