

IN THE UTAH COURT OF APPEALS

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N.A.R., Inc.,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	Case No. 20050934-CA
	)	
v.	)	F I L E D
	)	(December 22, 2005)
Robert Charles Webb,	)	
	)	2005 UT App 554
Defendant and Appellant.	)	

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Third District, Salt Lake Department, 000204699  
The Honorable Stephen L. Henriod

Attorneys: Robert Charles Webb, Ogden, Appellant Pro Se  
Mark T. Olson and Chip Shaner, Salt Lake City, for  
Appellee

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Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Appellant Robert Charles Webb appeals from (1) an order entered on March 3, 2004, denying a motion to strike a June 27, 2000 judgment, and (2) a ruling denying a motion for an enlargement of time to file a motion for new trial. This case is before the court on a sua sponte motion for summary disposition.

The district court entered a default judgment on June 27, 2000. On July 18, 2001, Webb filed a motion to set aside the judgment. However, on July 27, 2001, plaintiff's counsel executed a satisfaction of judgment based upon Webb's payment of his account. The district court docketed the satisfaction of judgment on August 2, 2001, and modified the disposition to "Satisfied." On October 28, 2003, Webb filed a motion to strike the judgment, which motion was denied in a signed minute entry dated December 9, 2003. The district court denied a second motion to strike in a March 3, 2004 order. Webb filed a motion to enlarge the time to file a motion for new trial on May 3, 2005. The court denied the motion in an unsigned minute entry dated August 15, 2005. On October 3, 2005, Webb filed a notice of appeal seeking to appeal both the March 3, 2004 order and the August 18, 2005 ruling.

We lack jurisdiction to consider the merits of the appeal because the notice of appeal was not timely filed after the March 3, 2004 order, and the August 15, 2005 minute entry was not reduced to a signed order and is, therefore, not final and appealable. Webb contends that he is entitled to an extension of the time for filing a notice of appeal under rule 6(b)(2) of the Utah Rules of Civil Procedure. See Utah R. Civ. P. 6(b)(2) (allowing enlargement of time based upon excusable neglect). This position is without merit. The only means to extend the time for appeal is through a timely motion filed in the district court under rule 4(e) of the Utah Rules of Appellate Procedure. Although an appellate court may review the trial court's determination of a timely rule 4(e) motion, it cannot consider a claim of good cause or excusable neglect in the first instance as a basis to exercise jurisdiction over an untimely appeal. See Utah R. App. P. 2 (precluding appellate courts from suspending or modifying rule 4(e)); see generally Reisbeck v. HCA Health Servs., 2000 UT 48, 2 P.3d 447 (reviewing decision on rule 4(e) motion). We also note that the time for making a motion under rule 4(e) in district court has long since expired. See Utah R. App. P. 4(e) (requiring a motion to extend the time for appeal to be filed within thirty days after expiration of the original time period for appeal). Once a court determines that it lacks jurisdiction, it "retains only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989).

Accordingly, we dismiss the appeal for lack of jurisdiction.

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge