Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2020-253

APRIL TERM, 2021

In re Estate of John J. Fanelli (Lillian E. Billewicz*)	}	APPEALED FROM:
	}	
	}	Superior Court, Windham Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 458-12-19 Wmcv
		Trial Judge: Michael R. Kainen

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals the civil division's denial of her Rule 59(e) motion to alter or amend its previous decision denying her an extension of time. We affirm.

This case is the latest in a long-running dispute between plaintiff Lillian Billewicz and defendant, the Estate of John J. Fanelli. In 2013, plaintiff purchased an amusement park in Putney, Vermont known as Santa's Land, while defendant was foreclosing on the park's prior owner. Plaintiff agreed to be bound by a foreclosure judgment stating that she had to redeem by a certain date or ownership would revert to defendant. Plaintiff did not redeem before the deadline, instead filing a motion to stay, which was denied, followed by a series of bankruptcy petitions, which were eventually dismissed by the federal bankruptcy court. In June 2015, the superior court issued a judgment order and certificate of nonredemption. Plaintiff filed a motion for reconsideration, which was denied.

Plaintiff subsequently filed a trademark infringement suit against defendant for using the name Santa's Land. The court dismissed the case, explaining that although plaintiff had previously registered the tradename with the Secretary of State, she no longer owned it as a result of the foreclosure. Plaintiff then sued defendant for breach of the covenant of good faith and fair dealing and unjust enrichment, arguing that defendant had fraudulently misrepresented the fair market value of the property. The trial court granted summary judgment to defendant, and we affirmed, concluding that plaintiff's complaint was essentially an untimely request for relief from the foreclosure judgment. Billewicz v. Est. of Fanelli, No. 2017-028, 2017 WL 945637, at *1 (Vt. Mar. 1, 2017).

In February 2017, the probate court granted a license for defendant to sell Santa's Land. The property sold in April 2017. Shortly afterward, plaintiff filed a claim against defendant in the probate court for infringement of her tradename. The court disallowed the claim as being untimely, stating that defendant had not, in fact, sold the tradename.

In September 2019, plaintiff, through counsel, moved for the probate court to vacate the sale license, annul the sale, and disallow the accounting of the sale. Plaintiff argued that defendant

had in fact sold the tradename and had misrepresented this fact to the probate court. She argued that the sale should have been subject to conditions relating to the dispute over the tradename, which she claimed still belonged to her, and an unresolved issue of a wastewater easement burdening the land. She argued that defendant's failure to disclose these issues to the probate court rendered the license and sale invalid. She also claimed that she had offered to purchase the property from defendant for a better price but was ignored by defendant's administrator and attorney. In November 2019, the probate court denied the motion, concluding that the motion was untimely, and plaintiff lacked standing, and therefore that it lacked jurisdiction to grant the relief requested.

Plaintiff appealed pro se to the civil division. The court directed her to file a memorandum detailing specifically what she was appealing, and the law supporting her position. In her memorandum, plaintiff repeated her claims that defendant had misrepresented critical facts to the probate court and argued that the court should have granted her relief under Rule 60(b)(6).

In a decision entered on March 19, 2020, the civil division ruled that plaintiff was not entitled to have the sale vacated because the court had previously ruled that she did not own the tradename Santa's Land, and therefore there was no fraud or injustice caused by defendant's transfer of the name to the purchaser of the property. It further found that she lacked standing to object to the license to sell because she did not meet the statutory definition of an "interested person" in the probate proceeding and had not sought or obtained permission to intervene from the probate court. The court alternatively concluded that plaintiff's motion to vacate the sale was an attempt to relitigate claims of trademark infringement and valuation, which had already been litigated and decided in earlier cases and were therefore barred by issue and claim preclusion. The court denied the appeal.

On April 20, 2020, plaintiff moved for an extension of time to file a motion to alter or amend, arguing that she was unable to timely file her motion due to the coronavirus pandemic. She simultaneously filed a notice of appeal to this Court. At plaintiff's request, this Court placed the appeal on waiting status and remanded the matter to the civil division for it to decide plaintiff's motion for additional time. On July 6, 2020, the civil division denied the motion, stating that it could not conceive of an argument that would persuade it to reconsider its decision and that plaintiff should pursue her appeal. On July 8, this Court removed the appeal from waiting status and directed plaintiff to file transcripts or a statement indicating that no transcripts were necessary for the appeal by July 22, 2020. Plaintiff failed to comply, and this Court dismissed the appeal on July 30, 2020.

On August 3, 2020, plaintiff moved for the civil division to reconsider its July 6, 2020 order, arguing that she should have been granted additional time to file her motion to alter or amend the March 2020 decision. The court denied the motion. Plaintiff filed a second notice of appeal on September 28, 2020.

We begin by noting that the merits of the civil division's March 2020 decision—and, by extension, plaintiff's argument that the court erred in issuing that decision without holding an evidentiary hearing—are not before us in this appeal. Plaintiff timely appealed the March 2020 decision, but the appeal was dismissed at the end of July after she failed to comply with this Court's orders. Plaintiff's second appeal was taken more than thirty days after the March 2020 decision. See V.R.A.P. 4(a) (requiring notice of appeal to be filed within thirty days after entry of judgment being appealed from). Her April 2020 motion for an extension of time did not toll the appeal period from the March decision. V.R.A.P. 4(b) (listing types of motions that toll appeal period). Even if it had, her second notice of appeal was filed more than thirty days after the court denied

the extension motion. We therefore lack jurisdiction to review the March 2020 decision. Casella Constr., Inc. v. Dep't of Taxes, 2005 VT 18, ¶ 3, 178 Vt. 61 ("The timely filing of a notice of appeal is a jurisdictional requirement.").

Accordingly, the sole issue before this Court is whether the civil division erred in denying plaintiff's August 2020 motion to alter or amend the July 2020 order, which denied her an extension of time to file a motion to alter or amend the March 2020 decision. A Rule 59 motion "is addressed to the sound discretion of the trial court, and that court's ruling is not reversible unless it constitutes a manifest abuse of discretion." Coons v. Coons, 2016 VT 88, ¶ 6, 202 Vt. 583 (quotation omitted). The trial court did not abuse its discretion here. A motion to alter or amend a judgment must be "filed not later than 28 days after entry of the judgment." V.R.C.P. 59(e). This time period cannot be extended. V.R.C.P. 6(b)(2) (stating that court must not extend time to act under Rule 59(e)). The judgment that plaintiff sought to alter was entered on March 19, 2020. Plaintiff was therefore required to file any motion to alter or amend by April 16, 2020, twenty-eight days later. Pursuant to Rule 6(b), the trial court could not extend that deadline, and it properly denied plaintiff's request to do so in its July 2020 order. The court therefore did not abuse its discretion in denying her subsequent motion for reconsideration. We recognize that plaintiff was self-represented, but this did not excuse her from complying with the Rules of Civil Procedure. See In re Verizon Wireless Barton Permit, 2010 VT 62, ¶ 22, 188 Vt. 262 ("The court does not abuse its discretion where it enforces the rules of civil procedure equitably, even against a pro se litigant." (quotation omitted)).

Plaintiff incorrectly asserts in her brief that her first appeal was dismissed on July 8, 2020, only two days after the civil division denied the extension of time, giving her no opportunity to challenge the March order or the denial of an extension of time on their merits. In fact, this Court reopened her appeal on July 8. It was plaintiff's own failure to comply with this Court's procedure and orders that resulted in that appeal subsequently being dismissed on July 30, thus forfeiting those claims.

Because we affirm the civil division's decision on its merits, we deny defendant's motion to dismiss the appeal on res judicata grounds as moot.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Karen R. Carroll, Associate Justice