



FOCUS - 4 of 5 DOCUMENTS

Cindy Hatanaka, Petitioner and Appellee, v. Robert Hatanaka, Respondent and Appellant.

Case No. 20030370-CA

COURT OF APPEALS OF UTAH

2003 UT App 198; 2003 Utah App. LEXIS 175

June 12, 2003, Filed

NOTICE: [*1] NOT FOR OFFICIAL PUBLICATION

PRIOR HISTORY: Third District, Salt Lake Department. The Honorable Michael K. Burton

DISPOSITION: Appeal dismissed for lack of jurisdiction.

CORE TERMS: decree, notice of appeal, new trial, clerk, date of entry, untimely, toll

COUNSEL: Steve S. Christensen, Salt Lake City, for Appellant

Diana Huntsman, Salt Lake City, for Appellee

JUDGES: Norman H. Jackson, Presiding Judge, Judith M. Billings, Associate residing Judge, Pamela T. Greenwood, Judge

OPINION

MEMORANDUM DECISION

Before Judges Jackson, Billings, and Greenwood.

PER CURIAM:

This matter is before the court on Appellee's motion to dismiss for lack of jurisdiction. *See Glezos v. Frontier Invs.*, 896 P.2d 1230, 1233 (Utah Ct. App. 1995) (noting lack of "jurisdiction can be raised at any time").

A notice of appeal "shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from." *Utah R. App. P. 4(a)*. Appellant argues that his notice of appeal was timely because it was filed within 30 days of the date of entry in the registry of judgments on March 28, 2003. However, a judgment is entered when signed by the trial judge and filed with the clerk. *See Utah R. Civ. P. 58A(b)-(c)*. In the present case, the trial judge signed the decree and it was filed with [*2] the clerk, as indicated by the "filed" stamp on the decree, on March 24, 2003. Therefore entry of the decree occurred on March 24, 2003. *See id.* Appellant filed a notice of appeal with the trial court on April 24, 2003, 31 days after the decree was entered. Because Appellant's notice of appeal was not filed within 30 days after the entry of the decree, it was untimely. *See Utah R. App. P. 4(a)*. "Failure to file a timely notice of appeal deprives this court of jurisdiction over the appeal." *See Reisbeck v. HCA Health Servs. of Utah, Inc.*, 2000 UT 48, P5, 2 P.3d 447.

Furthermore, an untimely motion for a new trial does not "toll the time for taking an appeal." *Burgers v. Maiben*, 652 P.2d 1320, 1322 (Utah 1982). The record indicates that Appellant's motion for a new trial was served on April 18, 2003. Because Appellant's motion for a new trial was served "later than 10 days after the entry" of the decree on March 24, 2003, it was not timely. *Utah R. Civ. P. 59(b)*; *see Burgers*, 652 P.2d at 1321-22. Therefore, Appellant's motion for a new trial did not toll the time for appeal.

Accordingly, the appeal is dismissed [*3] for lack of

jurisdiction.

Norman H. Jackson, Presiding Judge

Judith M. Billings, Associate Presiding Judge

Pamela T. Greenwood, Judge