

2005

# Mike and Mary Meloni v. Honorable Glenn K. Iwasaki : Brief of Appellee

Utah Court of Appeals

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	)	<b>HON. GLENN K. IWASAKI</b>
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Petitioners,	)	
	)	
vs.	)	
	)	
HONORABLE GLENN K. IWASAKI,	)	Case No. 20050442-SC
	)	
Respondent.	)	

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**UTAH SUPREME COURT**

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MIKE and MARY MELONI,	)	<b>BRIEF OF</b>
	)	<b>HON. GLENN K. IWASAKI</b>
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**BRIEF OF JUDGE GLENN K. IWASAKI**

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## **Jurisdictional Statement**

This court has jurisdiction over a petition for extraordinary relief under Utah Code Ann. § 78-2-2(2) and over this civil action under § 78-2-2(3)(j).

## **Issues for Review**

1. Does the failure to file a small claims notice of appeal within thirty days deprive the appellate court of jurisdiction?
2. May the thirty day time limit be extended and, if so, how is the time appropriately extended?
3. If the appellate time limit is not jurisdictional, did the district court otherwise abuse its discretion in dismissing the appeal?
4. Does the doctrine of equitable estoppel mandate that the small claims appeal be reinstated?

## **Standard of Review**

Under Rule 65B(d)(4), Utah Rules of Civil Procedure, “the court’s review shall not extend further than to determine whether the respondent has regularly pursued its authority.” The lower court’s legal conclusions are not accorded any deference. Salt Lake Child & Family Therapy Clinic, Inc. v. Frederick, 890 P.2d 1017, 1019 (Utah 1995). The trial court’s other actions are at least reviewed for abuse of discretion, and probably



for whether there was a gross and flagrant abuse of discretion. Burke v. Lewis, 2005 UT 44, ¶ 12, 530 Utah Adv. Rep. 3. The first two issues involve legal conclusions while the others involve discretion.

### **Statement of the Case**

The Respondent is satisfied with the Petitioners' statement of the facts and procedural history of this case.

### **Summary of Argument**

This case presents a review of the district court judge's decision dismissing a notice of appeal that was filed more than 30 days after the small claims judgment was entered. The exact reasons for the dismissal are not known from the record. However, it appears to be jurisdictionally based. If the dismissal was based on the trial court's determination that the 30 day time limit is jurisdictional, that conclusion is not entitled to deference. If the dismissal was based on a determination that the Petitioners failed to take a necessary step to prosecute their appeal, then the determination is entitled to deference and should only be reversed if there was an egregious abuse of discretion.

This court should determine that the timely filing of a notice of appeal in a small claims case is jurisdictional. The appellate courts in this state have consistently stated that, in other types of appeals, the timely filing of a notice of appeal is jurisdictional. An

appellate court does not have jurisdiction over an appeal until the notice is filed.

Therefore, jurisdictional significance is attached to this particular pleading. A time line that is fluid would lead to unpredictability and a lack of finality in small claims judgments.

In other circumstances, the time within which an appeal must be filed can be extended by following certain procedures set forth under rule. However, the small claims rules do not provide a mechanism for extending the time for appeal. Therefore, the small claims court could not order an extension.

If the timely filing of a notice of appeal is not jurisdictional, or if the time may otherwise be extended, the district court did not abuse its discretion in dismissing the appeal. The circumstances under which the language on the small claims affidavit was changed from "10" to "30" do not support a conclusion that the small claims court intentionally extended the time within which an appeal could be filed. The Petitioners were represented by counsel at all stages of these proceedings and counsel should have been aware of the statute and rule. Given the specific language of the statute and rule, it was unreasonable for the Petitioners to rely on the handwritten notation to the exclusion of more specific authorities. The trial court therefore did not abuse its discretion.

Finally, equitable estoppel does not require that the appeal be reinstated. The doctrine should not be extended to preclude an appellate judge from ruling differently than a trial court judge. The Petitioners were represented by counsel. It was not reasonable for the Petitioners to rely on the handwritten notation on the small claims form. The time for filing an appeal would have been readily apparent from reviewing the small claims rules.

## **Argument**

### **1. This court's review is limited on a Petition for Extraordinary Relief.**

As noted under the standard of review, a petition for extraordinary relief presents a unique set of circumstances for review. Litigants typically may not appeal small claims cases to the Supreme Court. However, there may be circumstances in which this court should accept a petition for extraordinary relief on a small claims case, if a litigant has not had an adequate opportunity to address an action taken by a lower court. This case might present such a situation. However, in order to avoid repeated circumvention of the small claims appellate limitations, extraordinary relief review should be very limited.

If the issue presented to this court is a legal conclusion, Salt Lake Child & Family Therapy Clinic, Inc. v. Frederick, 890 P.2d 1017, 1019 (Utah 1995) mandates that this court grant no deference to the district court's legal conclusions. If the issue does not

involve a legal conclusion, then the district court's action is reviewed for abuse of discretion. Respondent asserts that the appropriate abuse of discretion standard should be that adopted by State v. Stirba, 972 P.2d 918, 922 (Utah App. 1998), which stated that a lower court's action would not be disturbed unless the court committed "gross and flagrant" abuse of discretion. The gross and flagrant standard is most appropriate when reviewing issues such as that which might be presented by this case.

As will be discussed below, the timely filing of a notice of appeal in a small claims case should be declared jurisdictional. If the court determines that timely filing is not jurisdictional, then dismissal is left to the discretion of the district court under Rule 12 of the Utah Rules of Small Claims Procedure. The gross and flagrant standard would aid in preventing repeated circumvention of the appellate restrictions in small claims cases. This court therefore will initially determine whether the small claims statute attaches jurisdictional significance to the timely filing of a notice of appeal and, absent that, should only overturn the dismissal if there was a gross and flagrant abuse of discretion.

**2. The failure to file a notice of appeal within thirty days is jurisdictional.**

Rule 12(a) of the Utah Rules of Small Claims Procedures states that "[a]ny party may appeal a final order or judgment within 30 calendar days after judgment or order or after denial of a motion to set aside the judgment or order, whichever is later."

Subparagraph (b) states: “[t]o appeal, the appealing party must file a notice of appeal in the court issuing the judgment. Unless waived upon filing an affidavit of impecuniosity, the appropriate fee must accompany the notice of appeal.” One of the initial issues in a case such as this is whether the language in the rule attaches jurisdictional significance to the filing requirements.

In Panos v. Third Judicial District Court of Tooele County, 2004 UT 87, ¶ 13, 103 P.3d 695, this court cited paragraph (b) and stated that “the plain language of Rule 12 fail[s] to attach jurisdictional significance to either filing the notice of appeal or paying the required filing fees.” The issue in Panos was whether the failure to pay a \$10.00 fee mandated under Utah Code Ann. § 78-6-14(4) was jurisdictional. The court held that it was not. The jurisdictional significance of the notice of appeal itself was not before the court. The court’s language on this aspect might therefore be dicta. The court’s statement raises the question of precisely what language would attach jurisdictional significance to the timely filing of the notice of appeal.

In Prowswood, Inc. v. Mountain Fuel Supply Company, 676 P.2d 952, 955 (Utah 1984), this court stated that “it is axiomatic in this jurisdiction that the failure to timely perfect an appeal is a jurisdictional failure requiring dismissal of the appeal.” The court referenced three cases in making this conclusion: Tracy v. University of Utah Hospital,

619 P.2d 340 (Utah 1980), Watson v. Anderson, 504 P.2d 1003, (Utah 1973), and Anderson v. Anderson, 282 P.2d 845 ( Utah 1955). Prowswood involved an interpretation of Rule 73 of the Utah Rules of Civil Procedure, the provisions of which were subsequently moved into Rule 3 of the Utah Rules of Appellate Procedure. These cases and rules help answer the jurisdictional question.

In Anderson v. Anderson, the court reviewed the separate provisions of Rule 73.

The rule at the time stated:

[w]hen an appeal is permitted from a district court to the Supreme Court, the time within which an appeal may be taken shall be one month from the entry of the judgment appealed from unless a shorter time is provided by law, except that upon a showing of excusable neglect based on a failure of a party to learn of the entry of judgment the district court in any action may extend the time for appeal not exceeding one month from the expiration of the original time herein prescribed.

Anderson, 282 P.2d at 847. The rule also stated:

[f]ailure of the appellant to take any of the further steps to secure the review of the judgment appealed from does not affect the validity of the appeal, but is ground only for such remedies as are specified in this rule or, when no remedy is specified, for such action as the supreme court deems appropriate, which may include dismissal of the appeal.

Id. The Anderson court stated that “the purpose of this rule to make jurisdictional a failure to file the notice of appeal on time is clearly evident by the special provision therein” concerning the effects of the “further steps.” Id. The question that has perhaps not been directly answered by these cases is whether jurisdictional significance is attached through the language that describes the time within which an appeal must be filed or the subsequent “special provision” that discusses the “failure . . . to take any of the further steps to secure review.”<sup>1</sup> Respondent asserts that the jurisdictional significance for the notice of appeal should be gleaned through the first sentence or clause. The second, “special provision,” may clarify or bolster the significance established by the first clause, but does not independently establish jurisdictional significance for the notice of appeal itself. As has been repeatedly stated by the appellate courts, it is axiomatic in this jurisdiction that the timely filing of a notice of appeal is jurisdictional.

There are solid reasons for finding jurisdictional significance with the timely filing of the appeal document itself. The filing of certain pleadings establishes jurisdiction in a court. Without the filing of those documents, a court does not have jurisdiction. A

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<sup>1</sup>These cases usually address whether a notice was, in fact, timely or whether a fee was also required to establish jurisdiction.

district court does not have jurisdiction over a civil matter until a complaint is filed. A criminal information establishes jurisdiction over a criminal matter. An appellate court does not have jurisdiction until a notice of appeal is filed. There is thus already jurisdictional significance attached to the filing of a notice of appeal. It can be argued about whether additional requirements are also necessary to establish jurisdiction, but it can never be seriously argued that jurisdiction can be established without the filing of certain pleadings. It is therefore the first phrase or clause governing the filing of the document, which attaches jurisdictional significance. The jurisdictional significance of “further steps” may be clarified or limited by subsequent qualifications, but it is the first sentence that is important when dealing with the significance of the notice of appeal.

The time within which a notice of appeal must be filed should not be fluid. The law favors finality of judgments. See Holbrook v. Hodson, 466 P.2d 843, 845 (Utah 1970) (“The overriding principle of all the aforementioned rules [on timely motions and appeals] is to assure the finality of judgments”). Because jurisdiction is not established until the notice is filed, the time should not be subject to the vagueness that can occur from a discretionary time line. If notices of appeal are permitted beyond thirty days, then late filings may increase and will not be automatically rejected. Motions to dismiss might



also increase and judges would then be called upon to decide whether an appeal should be accepted. Time and circumstance would become relevant arguments. It might be an abuse of discretion to refuse to accept an appeal that is one day late in some circumstances, but not an abuse to dismiss an appeal that is fifteen days late under other circumstances. Or, it might be an abuse of discretion to dismiss an appeal that is fifteen days late if certain circumstances are present, but not an abuse of discretion to dismiss an appeal that is one day late if different circumstances are present. Litigants will be faced with unpredictability and appellate courts might be faced with an endless stream of cases to determine jurisdiction.

An adverse ruling in this case could certainly result in a rule change declaring a failure to file within thirty days to be jurisdictional. However, this would be a unique rule change as there aren't any apparent rules which specifically declare that timely filing is jurisdictional. This simply leads back to the argument that the rule is sufficiently clear to establish jurisdictional significance. A notice of appeal must be filed to confer jurisdiction upon the appellate court and the notice must be filed within thirty days. Beyond that time, a court does not have jurisdiction.

In Harley Davidson v. Workforce Appeals Board of the Utah Dep't of Workforce Services, 2005 UT 38, ¶ 9, 116 P.3d 349, this court was again faced with the issue of

whether filing fees created a jurisdictional bar. This court again stated that “[i]n order to bring a measure of finality to the orders entered in trial courts and administrative agencies, we have authorized appellate courts to assert jurisdiction over appeals only when the notice of appeal is timely filed.” Id. The court noted that the Utah Court of Appeals had previously treated appeals under Rule 14 of the Utah Rules of Appellate Procedure (administrative actions) differently from appeals under Rule 3. Id. at ¶ 14. Rule 14 did not and does not contain the qualifying language concerning “defects other than untimeliness.” Id. at ¶ 11. The court of appeals had thus apparently found jurisdictional significance in the timeliness of an appeal, even absent the “special provision” on other defects found in Rule 3. See Hausknect v. Industrial Comm’n, 882 P.2d 683, 685 (Utah App. 1994). Implicit in the court of appeals determination is that jurisdictional significance attaches from a requirement that an appeal be filed within a certain period, even if specific language on jurisdictional significance is not found in the rule. This court noted that after Gorostieta v. Parkinson, 2000 UT 99, 17 P.3d 1110, the court of appeals had revised its position. The court quoted the court of appeals in stating that “there is no reason to treat agency petitions differently than other appeals. Therefore, this court, consistent with Gorostieta, determines that timely payment of filing fees is not

jurisdictional.” Harley Davidson, at ¶ 12. The court thus found consistency even when the rules had different provisions.

These cases help support the proposition that there is, and always has been, jurisdictional significance attached to the filing of a notice of appeal. Jurisdiction is tied to filing and jurisdiction is tied to timely filing. There are questions about whether other defects raise jurisdictional problems, but all appeals should otherwise be treated consistently and the timely filing of a notice of appeal should be jurisdictional.

**3. The small claims judge did not order an extension of time.**

The Utah Court of Appeals has stated that unless “appropriately extended,” the time limit for filing a notice of appeal is jurisdictional. Serrato v. Utah Transit Authority, 2000 UT App 299, ¶ 7, 13 P.3d 616. In the Utah Rules of Appellate Procedure there are specific provisions for appropriately extending the time within which an appeal must be filed. Rule 4(e) explains the process. There is no similar provision in the Utah Rules of Small Claims Procedure. Therefore, a litigant must file an appeal within thirty days.

The Petitioners argue that the small claims court extended the time within which their appeal could be filed. The Petitioners cite Rule 6 of the Utah Rules of Civil Procedure as authority for the extension. However, Rule 81(c), Utah Rules of Civil Procedure states that the rules of civil procedure “shall not apply to small proceedings

(sic) except as expressly incorporated in the Small Claims Rules.” There is thus no provision for extending the time for appeal in small claims cases.

Even assuming that the time could be extended, a court would be required to follow “appropriate” procedures before extending the time. In this case, there is no indication that the Petitioners requested an extension or that the court ordered an extension of time. The only thing that occurred in this case is that the court was notified by the Petitioners’ attorney that the Legislature had changed the time for appeal. The court then changed “10” to “30” on the small claims form. There is nothing to indicate that the small claims court considered, or was asked to consider, extending the time from thirty calendar days to thirty business days. Therefore, the time was not “appropriately extended.”

**4. If the timely filing of a notice is not jurisdictional, the court did not otherwise abuse its discretion in dismissing the appeal.**

Rule 12 states that “the district court may dismiss the appeal and remand the case to the justice court if the appellant: . . . fails to take any step necessary to prosecute the appeal.”<sup>2</sup> A trial court has discretion to dismiss an appeal if the appellant does not take the appropriate steps to prosecute the appeal. If the court determines that timely filing is

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<sup>2</sup>This case did not originate in a justice court. Presumably, the rule would still apply to cases originating in the small claims division of a district court.

not jurisdictional, filing within 30 days should still be considered a necessary step to prosecute an appeal. The failure to file within 30 days will therefore support dismissal. A trial court should have broad discretion in these matters and, as discussed above, an appellate court should only overturn a decision if there was an egregious abuse of discretion. There is no evidence that the court abused its discretion, or that the court abused its discretion in an egregious manner.

Utah Code Ann. § 78-6-10(1) states that a party may appeal a small claims judgment “by filing a notice of appeal in the original trial court within thirty days of entry of the judgment.” There is nothing in the statute stating whether the time is counted by business days or calendar days. However, there is nothing in statute to even suggest that an individual would consider the time to be business days. Rule 12 is even more specific. The rule specifically states that a notice of appeal must be filed within thirty calendar days. The only piece of information that was contrary to these authorities was a handwritten notation on a form.

According to the facts provided by the Petitioners, the circumstances under which the notation appeared on the form could not have lead to a clear-cut determination by the Petitioners that the Petitioners were requesting an extension of time. There is also nothing to indicate that the small claims court intended to supercede the statute and rule

and provide a different time frame. At the very least, the actions would have created an obligation on the part of the Petitioners to review the relevant statute and rule and determine when a appeal should be filed. The Petitioners were represented by counsel at all stages of the proceedings and counsel should have been aware of the statute and rule. If there was any confusion over the time frame it would have been incumbent on the Petitioners to rely on the shorter time frame, rather than risk reliance on a longer time frame.

Under these circumstances, the district court would not have abused its discretion in dismissing the appeal under Rule 12. The rule contained clear authority on when the appeal should have been filed. The district court could have determined that the Petitioners unreasonably relied on the edited handwritten form and therefore the court did not abuse its discretion.

**5. Equitable estoppel does not provide relief.**

The Petitioners state that equitable estoppel requires the court to hold a trial de novo. The Petitioners rely on Celebrity Club, Inc. v. Utah Liquor Control Comm'n., 602 P.2d 689, 694 (Utah 1979) in support of their argument. Celebrity Club required that three elements be met in order for equitable estoppel to apply. In footnote 10 to Celebrity Club, Inc., the court stated that “estoppel arises when a party by his acts, representations,

or admissions, or by his silence when he ought to speak, intentionally or through culpable negligence, induces another to believe certain facts to exist and that such other, with reasonable prudence and diligence, relies and acts thereon so that he will suffer an injustice if the former is permitted to deny the existence of such facts.”

The Petitioners dismiss this footnote as not being part of the elements of equitable estoppel. However, the footnote cited another case, Morgan v. Board of State Lands, 549 P.2d 695, 697 (Utah 1976) in which this language was cited to explain equitable estoppel. The footnote explains what is necessary under the three elements. The elements of equitable estoppel are: (1) an admission, statement, or act inconsistent with the claim afterwards asserted, (2) action by the other party on the faith of such admission, statement, or act, and (3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement, or act. Id. at 694.

There are several reasons why equitable estoppel should not apply. First, by its terms, the elements include a party making a statement or acting in a particular way, and the party subsequently contradicts or repudiates the action or statement. The Petitioners have not provided any authority that applies this principle to actions by a trial court judge that are arguably repudiated or contradicted by an appellate court judge. In Celebrity Club, the court recognized that this principle applies against government officials and

boards. However, the principle should not apply to bind an appellate judge (the district court judge in this case) to the actions of a lower court judge. Litigants know that a trial judge's actions can be reversed on appeal. The actions of the appellate judge should not be considered a repudiation or contradiction of the trial judge for purposes of estoppel.

There are also various "statements" that might be at issue in this case. There are three areas in which the time frame for filing a notice of appeal has been stated: the statute, the rule, and the small claims form. The Petitioners simply have not drawn an appropriate connection between certain statements and subsequent actions.

Also, as the footnote in Celebrity Club, Inc. clarifies, a party who relies on statements must act reasonably and with diligence in order to solidify such reliance. As has been noted, the facts leading to the changing of the small claims form do not support a determination of reasonable reliance. At best, these actions created confusion as to what was the appropriate time frame for filing a notice of appeal. With brief, reasonable inquiry, the Petitioners would have found the provision in Rule 12, which clearly states that the appeal must be filed within 30 calendar days. If this were a case in which the Petitioners were not represented by counsel, perhaps their argument would be stronger as to the purposes of the small claims forum in ensuring that unwitting litigants are not unfairly punished. However, this is a case in which represented parties unreasonably



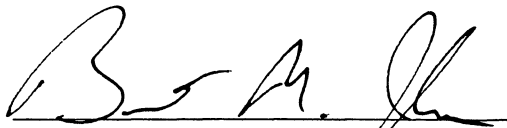
risked filing a notice of appeal 42 days after a small claims judgment was entered.

Equitable estoppel is not available to the Petitioners in this case.

### **Conclusion**

Consistent with rulings in other cases, this court should determine that the timely filing of a notice of appeal in a small claims action is jurisdictional. There are significant legal and policy reasons supporting such a determination. If the time is not jurisdictional, then the court did not otherwise abuse its discretion, because the Petitioners unreasonably relied upon a handwritten notation to the exclusion of other, more specific directives.

DATED this 19<sup>th</sup> day of September, 2005.


  
Brent M. Johnson, Attorney for  
Honorable Glenn K. Iwasaki

## MAILING CERTIFICATE

This is to certify that a true and correct copy of the foregoing Brief of Judge Glenn K. Iwasaki was mailed first class, postage prepaid and addressed as follows on this 19<sup>th</sup> day of September, 2005.

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