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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of KYONGHEE KIM and
JOSEPH S. KIM.

KYONGHEE KIM,

Appellant,

v.

JOSEPH S. KIM,

Respondent.

B251471

(Los Angeles County
Super. Ct. No. PD051334)

APPEAL from a judgment of the Superior Court of Los Angeles County,

Patricia M. Ito, Temporary Judge.* Dismissed.

Kyonghee Kim, in pro. per., for Appellant.

Joseph S. Kim, in pro. per., for Respondent.

* (Pursuant to Cal. Const., art. VI, § 21.)

This appeal arises from the dissolution of the marriage of Kyonghee Kim (wife) and Joseph Kim (husband). Both parties represent themselves in this appeal.

Wife attempts to appeal the judgment of dissolution entered and served by the clerk of the court on April 12, 2013. However, wife did not file her notice of appeal until August 14, 2013, a date beyond the 60-day jurisdictional time limit under the California Rules of Court, rule 8.104, subdivision (a)(1)(A).¹ Although wife filed a motion to vacate the judgment, she failed to file that motion within the jurisdictional 15-day time period provided by Code of Civil Procedure, section 663a,² which rendered her motion invalid. Because an invalid motion to vacate does not extend the time to appeal under California Rules of Court, rule 8.108, subdivision (c), this appeal is untimely. Accordingly, we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND³

Wife is the petitioner in the marital dissolution action. It appears a contested proceeding took place on February 19, 2013, in which both parties represented themselves. On March 29, 2013, the court ordered husband to pay child and spousal support arrears to wife in the sum of \$4,419.20, plus interest. On April 12, 2013, the court entered a judgment of marital dissolution, confirming marital status terminated on that date. The court awarded sole legal and physical custody of the couple's two children to wife. The judgment also included awards of child support and spousal support payable to wife. The clerk of the court served notice of entry of the judgment on April 12, 2013.

On May 17, 2013, wife filed a motion to vacate the judgment, which motion the court heard and denied on July 16, 2013.⁴ Wife filed her notice of appeal on August 14,

¹ All rule references are to the California Rules of Court.

² All code section references are to the Code of Civil Procedure.

³ The record provided by the appellant tells us little about the proceedings below. We therefore summarize only the pertinent facts necessary to determine whether we have jurisdiction to hear the appeal.

2013. We subsequently issued a letter pursuant to Government Code, section 68081, asking the parties to address the validity of wife’s motion to vacate the judgment and the timeliness of the appeal.

DISCUSSION

1. *Wife Filed Her Notice of Appeal More Than 60 Days After Service of Notice of Entry of Judgment*

It is well established that compliance with the time for filing a notice of appeal is mandatory and jurisdictional. (*Conservatorship of Townsend* (2014) 231 Cal.App.4th 691, 700 (*Townsend*).) A notice of appeal must be filed within 60 days after service of a notice of entry of judgment or a file-stamped copy of the judgment by either the superior court clerk or by a party. (Rule 8.104, subd. (a)(1)(A).) When a notice of appeal “has not in fact been filed within the relevant jurisdictional period—and when applicable rules of construction and interpretation fail to require that it be deemed in law to have been so filed—the appellate court, absent statutory authorization to extend the jurisdictional period, lacks all power to consider the appeal on its merits and must dismiss, on its own motion if necessary, without regard to considerations of estoppel or excuse.” (*Hollister Convalescent Hosp., Inc. v. Rico* (1975) 15 Cal.3d 660, 674.) An untimely appeal is an “absolute bar” to appellate jurisdiction. (*Delmonico v. Laidlaw Waste Systems, Inc.* (1992) 5 Cal.App.4th 81, 83; *Townsend, supra*, 231 Cal.App.4th at p. 701.)

Here, the record includes the notice of entry of the judgment, signed by the clerk of the court, indicating the court served the notice of entry to both parties on April 12, 2013. Wife’s contention that notice of entry was not mailed to her until May 4, 2013, is unsupported by the record. The clerk’s certificate of mailing, dated April 12, 2013, conclusively establishes the date that the 60-day time to appeal begins to run. (Advisory Com. com., subd. (a), Cal. Rules of Court, rule 8.104.) Moreover, Mr. Kim

⁴ We have augmented the record on our own motion to include wife’s motion to vacate and the July 16, 2013 minute order. (Cal. Rules of Court, rule 8.155, subd. (a)(1)(A).)

confirmed at oral argument that he received the notice of entry of judgment by mail within a few days after service. Accordingly, under rule 8.104, subdivision (a)(1)(A), the time to appeal expired on June 11, 2013. Wife filed her notice of appeal on August 14, 2013, outside the 60-day period. Thus, the appeal is untimely unless the time to appeal is extended.

2. *Wife's Invalid Motion to Vacate Did Not Extend the Time to File an Appeal*

The 60-day period to file a notice of appeal is extended if, within that time period, any party serves and files a “valid notice of intention to move—or a valid motion—to vacate the judgment.” (Rule 8.108, subd. (c); see *Payne v. Rader* (2008) 167 Cal.App.4th 1569, 1573–1574.) As we recently observed, “ ‘the word “valid” means only that the motion, election, request, or notice complies with all procedural requirements; it does not mean that the motion, election, request, or notice must also be substantively meritorious.’ ” (*Townsend, supra*, 231 Cal.App.4th at p. 701.)

The procedural requirements for a valid motion to vacate are set forth in sections 663 and 663a. A party intending to make such a motion must file and serve a notice of intention to move to vacate, designating the grounds, within the statutory time limits. (§ 663a, subd. (a).) The time period to file a motion to vacate is jurisdictional and cannot be extended due to mistake, inadvertence, surprise, or excusable neglect. (*Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392-1395; *Townsend, supra*, 231 Cal.App.4th at p. 702.)

Here, as previously noted, the clerk of the court served notice of entry of the judgment on April 12, 2013. Therefore, under section 663a, subd. (a)(2), wife was required to file a notice of intent to move to vacate, or the motion itself, within 15 days of the clerk’s mailing, or no later than April 29, 2013. (§§ 12a [extending deadlines falling on a holiday or weekend to the following weekday], 663a, subd. (a)(2) [15-day time limit].) Wife filed her notice of intent together with her motion to vacate the judgment on May 17, 2013, after the jurisdictional time, rendering her motion invalid. Because the motion to vacate was invalid, neither the motion, nor the trial court’s

subsequent ruling on the motion, triggered the provisions of rule 8.108(c), which operate to extend the time to appeal. (See, e.g., *Payne v. Rader* (2008) 167 Cal.App.4th 1569, 1573–1574 [trial court’s denial of an invalid motion to vacate had no effect on appellate court jurisdiction].) Accordingly, wife’s notice of appeal was untimely.

DISPOSITION

The appeal is dismissed. Each side to bear their own costs.

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JONES, J.*

WE CONCUR:

EDMON, P. J.

LAVIN, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.