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Gorringe v. State Respondent's Brief Dckt. 43565

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IN THE SUPREME COURT OF THE STATE OF IDAHO

MAX J. GORRINGE,)
) No. 43565
 Petitioner-Appellant,)
) Canyon Co. Case No.
 v.) CV-2014-3455
)
 STATE OF IDAHO,)
)
 Defendant-Respondent.)
)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CANYON**

HONORABLE MOLLY J. HUSKEY
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Max J. Gorringer appeals from the denial of his motion for reconsideration of the summary dismissal of his petition for post-conviction relief.

Statement Of The Facts And Course Of The Proceedings

Gorringer filed a petition for post-conviction relief challenging his 2012 conviction for attempted strangulation. (R., pp. 6-12, 189-94.) The state filed an answer and a motion for summary dismissal. (R., pp. 211-42.) The court granted the motion for summary dismissal and entered judgment on May 19, 2015. (R., pp. 245-57, 261.)

Gorringer filed a *pro se* motion to reconsider on June 5, 2015. (R., pp. 265-353.) The district court, by order entered July 14, 2015, denied the motion as untimely and without merit. (R., pp. 381-83.) Gorringer filed his notice of appeal on September 21, 2015. (R., pp. 390-92.)

ISSUES

Gorringer states the issue on appeal as:

Did the district court err in considering Mr. Gorringer's motion filed under both IRCP 59(e) and 60(b) as only a Rule 59(e) motion and thus failing to decide Rule 60(b) matters?

(Appellant's brief, p. 3.)

The state rephrases the issues as:

1. Should this Court dismiss this appeal for lack of jurisdiction because the district court entered its order denying the motion for reconsideration on July 14, 2015, and Gorringer filed his notice of appeal 69 days later?
2. Is Gorringer's claim that the district court's alleged failure to rule on "aspects" or "elements" of his motion for reconsideration is the equivalent of no ruling on his motion meritless?

ARGUMENT

I.

This Appeal Should Be Dismissed For Lack Of Jurisdiction

A. Introduction

Gorringe filed his notice of appeal 69 days after the court entered its order denying his motion for reconsideration of the final judgment. (R., pp. 381, 390.) Because the notice of appeal was not timely filed, this Court lacks jurisdiction to consider Gorringe's challenge to that order.

B. Standard Of Review

"A question of jurisdiction is fundamental; it cannot be ignored when brought to [the appellate court's] attention and should be addressed prior to considering the merits of an appeal." State v. Kavajecz, 139 Idaho 482, 483, 80 P.3d 1083, 1084 (2003) (quoting H & V Engineering, Inc. v. Idaho State Bd. of Professional Engineers and Land Surveyors, 113 Idaho 646, 648, 747 P.2d 55, 57 (1987)). Whether a court has jurisdiction is a question of law, given free review. Kavajecz, 139 Idaho at 483, 80 P.3d at 1084.

C. Gorringe's Untimely Notice Of Appeal Did Not Confer Appellate Jurisdiction To Review The Order Denying His Motion For Reconsideration

The time for filing a notice of appeal from an order denying a motion for reconsideration of a civil judgment "commences to run upon the date of the clerk's filing stamp on the order deciding such motion." I.A.R. 14(a); Dunlap v. Cassia Memorial Hosp. Medical Center, 134 Idaho 233, 236, 999 P.2d 888, 891 (2000) (party seeking to appeal has "forty-two days following the entry of the

order denying the motion for reconsideration”). The requirement of perfecting an appeal within the 42-day time period is jurisdictional. State v. Thomas, 146 Idaho 592, 594, 199 P.3d 769, 771 (2008); State v. Tucker, 103 Idaho 885, 655 P.2d 92 (Ct. App. 1982).

The district court’s order denying Gorringer’s motion for reconsideration was an appealable order. I.A.R. 11(a)(7); see also I.A.R. 14(a) (a timely motion to reconsider will extend the time to file from the judgment). Because Gorringer did not file a notice of appeal within 42 days of the filing of the order denying the motion for reconsideration, this Court lacks appellate jurisdiction to entertain Gorringer’s challenges to that order.

Gorringer asserts in his brief that he “filed a timely notice of appeal as to the denial of the motion for reconsideration” (Appellant’s brief, p. 3¹), but cites only his notice of appeal for that proposition. As noted above, that notice was filed 69 days after entry of the order, so it is not timely. This appeal must be dismissed for lack of jurisdiction.

¹ Gorringer may be referring to the second “Final Judgment” entered by the district court after denying the motion for reconsideration. (Appellant’s brief, p. 3 (citing to R., pp. 388-89).) Gorringer did file his notice of appeal within 42 days of the second “Final Judgment.” As stated above, however, the appeal must be filed within 42 days of the filing of the order denying reconsideration.

II.

Gorrings Claim That The District Court's Alleged Failure To Rule On "Aspects" Or "Elements" Of His Motion For Reconsideration Is The Equivalent Of No Ruling On His Motion Is Meritless

A. Introduction

Even if this Court has appellate jurisdiction, Gorrings has failed to show error in the denial of his motion to reconsider. The district court denied the motion as untimely and improperly attempting to assert new claims not initially raised in the petition. (R., pp. 381-83.) In challenging the denial of his motion for reconsideration Gorrings cites law that failure to rule on a motion can be considered error. (Appellant's brief, pp. 4-6.) He then asserts that the district court failed to rule on his motion because it allegedly failed to rule on "aspects" or "elements" of his motion to reconsider. (Appellant's brief, pp. 3, 6.) Because the law he cites regarding not ruling on a motion has no relevance to the facts of this case because the district court in fact denied his motion and entered an order stating its reasons for doing so, he has failed to make even a *prima facie* claim of error.

B. Standard Of Review

The decision to deny a post-judgment motion, whether brought under I.R.C.P. 59(e) or 60(b), is reviewed for an abuse of discretion. Straub v. Smith, 145 Idaho 65, 71, 175 P.3d 754, 760 (2007); Lowe v. Lym, 103 Idaho 259, 263, 646 P.2d 1030, 1034 (1982); Schultz v. State, 155 Idaho 877, 883, 318 P.3d 646, 652 (Ct. App. 2013).

C. The Record Belies The Claim That The District Court Did Not Rule On Gorrings Motion For Reconsideration

In Dawson v. Cheyovich Family Trust, 149 Idaho 375, 378-79, 234 P.3d 699, 702-03 (2010), Dawson “filed a Motion for Reconsideration” and also “a separate I.R.C.P. 60(b)(6) motion.” The district court “denied [Dawson’s] motion for reconsideration” but “did not issue a ruling on Dawson’s Rule 60(b)(6) motion.” Id. at 379, 234 P.3d at 703. Dawson appealed, raising as one of his issues “whether the district court erred by failing to issue a ruling on Dawson’s 60(b) motion.” Id. The Court did find error, citing both a rule that ““failure to issue a [ruling] when there has been a timely request therefore is per se reversible error,”” Id. at 380, 234 P.3d at 704 (brackets original) (quoting Miramar Hotel Corp. v. Frank B. Hall & Co. of California, 163 Cal.App.3d 1126, 210 Cal.Rptr. 114, 115 (1985)), and that if the court’s silence were considered a “tacit denial” of the motion, the “failure to rule on the motion leaves this Court without an adequate basis upon which to understand the premise behind the district court’s determination.” Id.

In this case Gorrings filed a single motion to reconsider. (R., pp. 265-353.) The district court entered a written order denying the motion to reconsider. (R., pp. 381-83.) In the order the district court stated its premises for denying the motion. (Id.) Gorrings does not challenge the district court’s stated grounds for denying the motion, but instead pretends he did not get a ruling on his motion. Because the record clearly shows that he did get a ruling on his motion, and he does not contend that the ruling actually made was error, his argument on appeal fails.

CONCLUSION

The state respectfully requests this Court to dismiss this appeal. In the alternative, the state requests that this Court affirm the denial of the motion for reconsideration.

DATED this 25th day of April, 2016.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of April, 2016, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

DEBORAH WHIPPLE
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/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/dd