

IN THE COURT OF APPEALS OF IOWA

No. 8-976 / 08-0014
Filed June 17, 2009

HARVEST CREDIT MANAGEMENT VII, L.L.C.,
Plaintiff-Appellee,

vs.

DAVID RUSSELL LUCAS,
Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, James S. Heckerman, Judge.

Defendant appeals the district court's grant of summary judgment to plaintiff on its action to collect a credit card debt. **APPEAL DISMISSED.**

David Lucas, Council Bluffs, appellant pro se.

Charles Litow of Litow Law Office, P.C., Cedar Rapids, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ.

MILLER, J.

On July 17, 2006, Harvest Credit Management VII, L.L.C. filed an action against David Lucas, stating it had been assigned the right to collect on Lucas's past-due credit card debt. Lucas was served notice of the suit. He filed a pro se answer on May 17, 2007, and raised affirmative defenses concerning the merits of plaintiff's claims.

Harvest Credit filed a motion for summary judgment. Lucas did not resist the motion for summary judgment or appear for the hearing. The district court granted the motion for summary judgment on September 10, 2007, the same day as the hearing, and stated that a later formal order would be filed. An order for entry of summary judgment was filed on September 13, 2007.

On September 24, Lucas filed a motion for reconsideration, which was served on September 23, 2007. The motion for reconsideration raised for the first time the issue of abusive delay of service. Harvest Credit resisted the motion to reconsider, asserting that Lucas untimely raised the issue of abusive delay of service. The district court denied the motion on October 30, 2007, in an order which stated simply, "Defendant's motion for reconsideration is overruled."

On November 9, 2007, Lucas filed a second motion, requesting the court to make specific rulings on his motion for reconsideration. On December 3, 2007, the court ruled, "The Defendant's request for ruling is denied." Lucas filed notice of appeal on January 2, 2008.

The court's ruling on the motion for summary judgment was on September 13, 2007, while Lucas did not appeal until January 2, 2008. Lucas's appeal is

untimely under the thirty-day time period found in Iowa Rule of Appellate Procedure 6.5(1), unless his motions for reconsideration tolled the time for filing notice of appeal. The time for filing an appeal may be extended by: (1) a motion for new trial; (2) a motion for judgment notwithstanding the verdict; and (3) a motion to enlarge the district court's findings of fact and conclusions of law pursuant to Iowa Rule of Civil Procedure 1.904(2). Iowa R. App. P. 6.5(1); *Federal Am. Int'l, Inc. v. Om Namah Shiva, Inc.*, 657 N.W.2d 481, 483 (Iowa 2003). The filing of any other type of motion does not toll the time for filing an appeal. *Id.*

It is clear Lucas's motion to reconsider was not a motion for new trial or a motion for judgment notwithstanding the verdict, and we consider whether it is a motion pursuant to rule 1.904(2). An improper or untimely rule 1.904(2) motion does not extend the time for filing an appeal. *In re Marriage of Okland*, 699 N.W.2d 260, 265-66 (Iowa 2003). The applicable portion of the rule provides, "On motion joined with or filed within the time allowed for a motion for new trial, the findings and conclusions may be *enlarged or amended* and the judgment or decree modified accordingly or a different judgment or decree substituted." Iowa R. Civ. P. 1.904(2) (emphasis added). The purpose of the rule is to permit the court to reconsider a previous ruling, and authorizes the court to change its ruling. *Meier v. Senecaut*, 641 N.W.2d 532, 538 (Iowa 2002). The motion may also be used "to obtain a ruling on an issue that the court may have overlooked in making its judgment or decree." *Okland*, 699 N.W.2d at 266.

A motion pursuant to rule 1.904(2) is not properly used as a method to introduce a new issue, not previously raised before the court. See *In re Marriage of Bolick*, 539 N.W.2d 357, 361 (Iowa 1995) (finding a rule 1.904(2) motion permitted the court to enlarge or modify its findings based on the evidence in the record, the motion was not a vehicle for parties to retry issues based on new facts). In this case, Lucas had not previously raised the issue of abusive delay in service prior to his first motion to reconsider. We conclude he did not file a proper rule 1.904(2) motion, and consequently, did not file one of the types of motions that would extend the time for filing an appeal. Because the period for filing an appeal was not tolled, Lucas's appeal was untimely.¹

"It is our duty to refuse, on our own motion, to entertain an appeal not authorized by rule." *Doland v. Boone County*, 376 N.W.2d 870, 876 (Iowa 1985). Where an appeal is untimely we do not have jurisdiction, and the appeal must be dismissed. *Dico, Inc. v. Employers Ins. of Wausau*, 581 N.W.2d 607, 611 (Iowa 1998). We conclude Lucas's appeal must be dismissed.

APPEAL DISMISSED.

¹ Even if Lucas's motion filed on September 24, 2007, had been a proper rule 1.904(2) motion, we would still find the appeal was untimely. Lucas's second motion to reconsider was improper because the district court had not changed its ruling, and the second motion raised the same issues as the first motion to reconsider. See *Boughton v. McAllister*, 576 N.W.2d 94, 96 (Iowa 1998). Successive and repetitive rule 1.904(2) motions do not toll the time for filing notice of appeal. *Okland*, 699 N.W.2d at 267. Lucas's notice of appeal was not filed within thirty days of the ruling on his first motion to reconsider, and thus was untimely, even if that had been a proper rule 1.904(2) motion.