



IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

GORDON F. GOLDSBY,	)	
	)	
Appellant,	)	
	)	
vs.	)	WD79982
	)	
GEORGE LOMBARDI,	)	Opinion filed: June 20, 2017
	)	
Respondent.	)	

APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY, MISSOURI THE HONORABLE DANIEL R. GREEN, JUDGE

Before Division Three: Anthony Rex Gabbert, Presiding Judge,
Victor C. Howard, Judge and Cynthia L. Martin, Judge

Gordon Goldsby appeals the dismissal of his petition for declaratory judgment.¹ His petition claimed the Missouri Department of Corrections is not calculating his sentence in accordance with the law. This court will not address Goldsby's two points on appeal because his notice of appeal was filed out of time.

"The timely filing of a notice of appeal is a jurisdictional requirement." *Relaxation, Inc. v. RIS, Inc.*, 452 S.W.3d 743, 751 (Mo. App. W.D. 2015) (internal quotation omitted). If the notice of appeal is untimely, this court is without jurisdiction and must dismiss the appeal. *Id.*

¹ Goldsby filed a Motion to Proceed In Forma Pauperis in his declaratory judgment action. That motion was denied. He was permitted to break that filing fee for the declaratory judgment petition into payments. Goldsby did not file a Motion to Proceed In Forma Pauperis in this appeal. He paid the full docket fee to file this case.

The trial court's judgment was entered on June 27, 2016. Goldsby filed a motion to modify on July 19, 2016. The trial court denied the motion to modify on July 22, 2016.

Because Goldsby filed a timely after-trial motion that was ruled on by the trial court, the judgment became final on "the date of ruling of the last motion to be ruled or thirty days after entry of judgment, whichever is later." Rule 81.05(a)(2)(B). Thirty days after the entry of judgment was July 27, 2016, which is later than the date the after-trial motion was denied (July 22, 2016). Thus, the judgment became final on July 27, 2016.

The notice of appeal "shall be filed not later than ten days after the judgment or order appealed from becomes final." Rule 81.04(a). August 6, 2016 (ten days after July 27, 2016) was a Saturday, so the notice of appeal was due by August 8, 2016. Goldsby's notice of appeal was filed on August 17, 2016.

In his brief, Goldsby states his notice of appeal was filed on July 28, 2016. A review of the notice shows that it is stamped filed on August 17, 2016. Handwritten beneath the stamp are the words "mailed July 28, 2016." This court does not know who wrote those words or when. It does not matter, however, because the circuit court received the docket fee on August 17, 2016. "A notice of appeal received by the trial court clerk with a docket fee or with a statement demonstrating no docket fee is required is deemed filed on the date the clerk receives it." Rule 81.04(f). That date was August 17, 2016.

In his reply brief, Goldsby states his notice of appeal was filed on August 17, 2016. He still maintains it was not out of time. He says the judgment became final thirty days from the July 22, 2016 denial of his after-trial motion. He then concludes he had until August 30, 2016 to file his notice of appeal. Goldsby's assertions are not supported by the rules.

Goldsby's appeal is dismissed.


VICTOR C. HOWARD, JUDGE

All concur.