FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-227 / 88-1291

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CRESCI BODY AND EQUIPMENT, INC.,

Appellee,

vs.

IOWA DEPARTMENT OF TRANSPORTATION,

Appellant.

Appeal from the Iowa District Court for Story County, Timothy J. Finn, Judge.

Defendant appeals the district court decision awarding plaintiff damages. **APPEAL DISMISSED.**

Thomas J. Miller, Attorney General of Iowa; David A. Ferree and Mark Hunzcek, Assistant Attorneys General; for appellant.

Robert W. Goodwin, Ames, for appellee.

Heard by Donielson, P.J., and Schlegel and Habhab, JJ.

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SCHLEGEL, J.

Appellant appeals a district court judgment awarding damages to the plaintiff. The plaintiff filed a motion to dismiss the appeal on the ground it was not filed within thirty days of the final order ruling on the Iowa Department of Transportation's (DOT) rule 179(b) motion. The DOT responded that the appeal was timely because it was taken within thirty days of a subsequent court order ruling on a second motion, namely the plaintiff's "application for clarification of judgment." The question whether appellate jurisdiction exists has been ordered submitted with the appeal. We dismiss the appeal.

The parties had a contract calling for the plaintiff to provide equipment to the defendant. The contract allowed the defendant to withhold liquidated damages from its contract payment if the plaintiff's deliveries were late. The defendant did withhold liquidated damages from its contractual payment to the plaintiff due to lateness of deliveries. The plaintiff later filed this suit, alleging that the liquidated damages had been wrongfully withheld and that the defendant had therefore failed to pay the full contract price. The district court agreed with the plaintiff and awarded damages in the amount of $35,551.10 plus statutory interest.

Appeals must be taken within thirty days from the entry of final judgment unless a posttrial motion is filed, in

which event the appeal must be taken within thirty days from the ruling of the posttrial ruling. Iowa R. App. P. 5. Posttrial motions must be filed within ten days after a decision is filed. Iowa R. Civ. P. 247.

There was a final judgment on June 10, 1988. The test of finality is whether the determination is dispositive of the case. Hayes v. Kerns, 387 N.W.2d 302, 306 (Iowa 1986). The order of June 10 disposed of the case. The winning and losing parties were named; the defendant's counterclaims were dismissed; and the costs of the proceeding were assigned to the defendant. There was nothing left to be done except to compute the 10% interest and require the DOT to pay the full amount of the judgment.

Appellant did not file its appeal until after the August 22 ruling clarifying the June 10 judgment. This makes the DOT's appeal untimely. The requirement of filing an appeal within thirty days is mandatory and jurisdictional. Failure to comply with rule 5(a) requires dismissal. Hayes v. Kerns, 387 N.W.2d 302, 306 (Iowa 1986); Kunau v. Miller, 328 N.W.2d 529, 530-31 (Iowa 1983).

Appellant argues that it should be able to appeal from the August 22 clarification order because it was the real final judgment. The only reason the earlier judgment needed clarifying was because the DOT refused to pay what it owed. The amount of interest owed was not in contention because the plaintiff and the court agreed on the amount.

A party cannot simply refuse to perform a court order and then appeal when the other party tries to take some action, claiming that the issue is in contention. If the DOT disagreed with the trial court's ruling, it had thirty days to bring it to our attention. Even if we assume that a motion for clarification is a posttrial motion that can be appealed, it was filed to late anyway. Under Iowa Rule of Civil Procedure 247, the most time allowed to file such a motion is thirty days and that application was filed on the thirty-third day.

The appellant argues that case law supports allowing the appeal of interest on the judgment. Those cases do not apply here. In the Hayes case the appellant timely appealed from a final judgment that adjudicated the interest controversy. There was no timely appeal in this case. In In Re Marriage of Baculis, 430 N.W.2d 399, 400-01 (Iowa 1988), the interest was awarded but the court did not decide when it should begin to accrue. There was still something left to be done and both parties agreed there was something left to be done. In addition, Baculis was a dissolution decree and the trial court retains jurisdiction to modify such decrees. Opperman v. Sullivan, 330 N.W.2d 796, 797 (Iowa 1983). This appeal is dismissed for failure to timely file an appeal under Iowa Rule of Appellate Procedure 5.

APPEAL DISMISSED.