

FILED

APR 21 1981

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IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

RUTH J. RAUSCH,

)

Plaintiff-Appellant,

)

Filed April 21, 1981

vs.

)

MARK C. RAUSCH,

)

0-426

63253

Defendant-Appellee.

)

Appeal from Story District Court - M. D. Seiser, Judge.

Plaintiff appeals from modification of the parties' dissolution decree. APPEAL
DISMISSED.

Jerry L. Jones, Ames, for plaintiff-appellant.

James D. McCarragher of Meardon, Sueppel, Downer & Hayes, Iowa City, for
defendant-appellee.

Heard by Oxberger, C.J., and Danielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

Plaintiff Ruth Rausch appeals from modification of the parties' dissolution decree. We dismiss the appeal for lack of subject matter jurisdiction.

When the marriage of the parties was dissolved in 1970, both the plaintiff and defendant were residents of Iowa. Plaintiff was awarded custody of the couple's only child, a daughter who was then two years old. The defendant was awarded certain visitation rights. The original decree was modified in 1974 by stipulation of the parties to provide, among other things, that the defendant was entitled to visit his daughter for one weekend per month and on alternate holidays. In 1978, the defendant moved to Alaska, where he found employment as an attorney. He then applied for modification of the decree, requesting that the visitation provisions be changed because significant distance and travel time rendered the 1974 provisions impractical. The trial court modified the visitation provisions to entitle the defendant to have his daughter in Alaska for five weeks each summer and for a period of up to seven days during the Christmas vacation in even-numbered years. Additionally, although the paternal grandparents did not petition for visitation rights pursuant to section 598.35, The Code 1977, the trial court awarded them visitation privileges at their home in Iowa City.

The trial court ruling modifying the decree was filed on December 22, 1978. On January 5, 1979, the plaintiff filed a motion to enlarge the findings, contending that the court erred in awarding visitation rights to the defendant's parents, who had not been parties to the action. The trial court overruled the plaintiff's motion on February 12, 1979, on the ground that the motion was untimely. This holding was reiterated by the trial court on February 22 in response to plaintiff's application to reconsider, in which she contended, on the basis of a time extension principle contained in Iowa R. Civ. P. 83(b), that her motion to enlarge the findings had in fact been timely made. Plaintiff then filed her appeal on March 14, 1979.

II.

Plaintiff contends on appeal that the trial court lacked authority to modify the decree so as to provide that the non-custodial non-resident parent may exercise his visitation rights with his child at his home in Alaska. She also appeals from the grant of visitation rights to the paternal grandparents. Because we dismiss this appeal for lack of subject matter jurisdiction, we discuss neither contention.

In order to be timely, an appeal must be taken within thirty days from the entry of the lower court's judgment. Iowa R. App. P. 5(a). If a timely motion to enlarge the findings is made pursuant to Iowa R. Civ. P. 179(b), however, the time for appeal expires within thirty days after entry of the ruling on such motion. Iowa R. App. P. 5(a). A motion to enlarge the findings is timely if made within ten days of the verdict, report, or filing of the lower court's decision. Iowa R. Civ. P. 179(b), 244, 247. An untimely and hence defective motion to enlarge the findings will not extend the thirty-day period after final judgment within which an appeal normally must be taken as provided by Iowa R. App. P. 5(a). Qualley v. Chrysler Credit Corp., 281 N.W.2d 466, 471 (Iowa 1978).

Plaintiff's motion to enlarge the findings, and consequently her appeal, were not timely filed. Because the trial court ruling modifying the decree was filed on December 22, 1978, plaintiff had ten days, or until January 1, 1979, to file her motion to enlarge the findings. By operation of Iowa R. Civ. P. 366 and section 4.1(22), The Code, this deadline was extended to January 2, 1979. Plaintiff did not file her motion until January 5, 1979, but she contends that the motion was timely by application of Iowa R. Civ. P. 83(b). However, Rule 83(b) does not apply to extend the date by which plaintiff was to have filed her motion to enlarge the findings, since it operates to extend filing deadlines by three days only in situations where the deadline has been triggered by a previous document served by mail. Therefore, because plaintiff's motion to enlarge the findings was not timely made, it did not serve to toll the thirty-day period for appeal provided by Iowa R. App. P. 5(a), and the appeal itself, which plaintiff filed on March 14, 1979, was untimely.

On December 6, 1980, Justice McGivern of the supreme court filed an order allowing plaintiff fourteen days from that date to file a statement of reasons as to why the appeal should not be dismissed for lack of subject matter jurisdiction. Plaintiff's statement, filed on December 19, 1980, contains no argument and no citation of legal authority. We therefore conclude that the plaintiff has failed to adequately explain why her appeal was untimely and we dismiss for lack of subject matter jurisdiction.

APPEAL DISMISSED.