

FILED

JAN 25 1979

IN THE COURT OF APPEALS OF IOWA

CLERK SUPREME COURT

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CITY OF CLARION, IOWA,
a Municipality,

Appellee,

vs.

MICHAEL J. HINTON,

Appellant.

Filed January 25, 1979

762
2-61409

Appeal from the Wright County District Court - Russell Hill, Judge.

Defendant appeals district court order dismissing appeal of judgment of judicial magistrate. Appeal dismissed.

Randy Johansen, of Coonley & Coonley, of Hampton, for appellant.

Lester C. Johnson, Clarion City Attorney, and Lee Poppen, of Clarion, for appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant appeals from district court's dismissal of his appeal from the judgment of a judicial magistrate. The proceeding arises from a plea of guilty to an ordinance violation. Defendant's appeal to the district court sought correction of the amount of court costs taxed by the magistrate, which defendant asserted were excessive.

The district court dismissed the appeal for failure of the defendant to give proper notice as required by § 762.43, The Code, 1977. The defendant urges that the trial court erred in failing to find that sufficient oral notice of intention to appeal was given to the magistrate. We do not decide the merits of this issue because we conclude that we are without jurisdiction as a result of defendant's untimely notice of appeal.

The final judgment dismissing the appeal from the magistrate's order was entered in the district court on August 29, 1977, and defendant's notice of appeal from the district court ruling was not filed until December 22, 1977. The fact that the record contains an intervening motion for rehearing and ruling thereon does not serve to toll the 60-day period for appealing under § 793.2, The Code, 1977. And, no appeal lies from the ruling on the motion for rehearing. See State v. Hellickson, 162 N.W.2d 390, 393 (Iowa 1968). We must raise this jurisdictional defect even though the appellee has failed to complain thereof. State v. Birchall, 260 Iowa 756, 150 N.W.2d 715 (1967); State v. Spillane, 260 Iowa 779, 150 N.W.2d 595 (1967). The appeal must be dismissed.

APPEAL DISMISSED.