FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ROBERTSON BUILDERS, INC.,	)	
Plaintiff-Appellant,	)	Filed November 26, 1986
vs.	)	
STEVE AND DEBBIE WELK, INC.,	)	6-395 86-116
Defendant-Appellee.	)	

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Appeal from the Iowa District Court for Scott County (69064) - Linda K. Neuman, Judge.

Plaintiff appeals from the judgment in an action for breach of a construction contract. **APPEAL DISMISSED.**

Michael J. McCarthy of McCarthy & Lammers, Davenport, Iowa, for plaintiff-appellant.

Eric M. Knoernschild of Hintermeister & Knoernschild, Muscatine, Iowa, for defendant-appellee.

Considered by Donielson, P.J., Hayden, and Sackett, JJ.

PER CURIAM 221

On October 4, 1983, the parties entered into an agreement in which defendant employed plaintiff to construct a restaurant. Plaintiff commenced construction the next day and was substantially completed by November 19, 1983., when the restaurant opened for business. On May 31, 1984, plaintiff commenced a breach of contract action seeking the unpaid balance due under the contract. The trial court filed its findings of fact on October 30, 1985, awarding judgment to the plaintiff but denying certain amounts requested, which the court considered duplicative. Also, the court allowed interest on the judgment from the date of the commencement of the trial rather than from the date plaintiff submitted the bill.

On November 12, 1985, plaintiff filed a motion to amend the court's findings pursuant to Iowa Rule of Civil Procedure 179(b). This motion was filed thirteen days after the court's findings of fact. The trial court filed its ruling on said motion on December 16. Plaintiff filed its notice of appeal on January 15, 1986, within the thirty-day period.

Due to the plaintiff's failure to file a timely 179(b) application, we are obligated to dismiss plaintiff's appeal. We have no jurisdiction to entertain the appeal and thereby dismiss.

In its response, the defendant did not raise the issue of plaintiff's untimely filing of the rule 179(b) motion. This was not presented as an issue on appeal. Rather, we raised this issue of subject matter jurisdiction on our own volition. Jurisdiction cannot be established by consent, waiver, or estoppel; it is a matter of statute. Cunningham v. Iowa Department of Job Service, 319 N.W.2d 202, 204 (Iowa 1982); Simpson v. Iowa Department of Job Service, 327 N.W.2d 775, 777 (Iowa Ct. App. 1982).

> Every court has inherent power to determine whether it has jurisdiction over the subject matter of the proceedings before it. It makes no difference how the question comes to its attention. Once raised, the question must be disposed of, no matter in what manner of form or stage presented. The court on its own motion will examine grounds of its jurisdiction before proceeding further.

Qualley v. Chrysler Credit Corp., 261 N.W.2d 466, 468 (Iowa 1978) (citing Walles v. International Brotherhood of Electrical Workers, 252 N.W.2d 701, 710 (Iowa 1977), U.S. cert. denied, 434 U.S. 856, 54 L. Ed. 2d 127, 98 S. Ct. 175 (1977)). The issue of subject matter jurisdiction will be addressed even though not raised in either parties' appellate briefs. Select Motor Sales, Inc. v. Pruisner, 236 N.W.2d 299, 302 (Iowa 1975). An untimely appeal presents a question of subject matter jurisdiction. Uchtorff v. Dahlin, 363 N.W.2d 264, 267 (Iowa 1985). If we determine this court does not have jurisdiction, plaintiff's appeal must be dismissed even though defendant has not moved to dismiss. Qualley, 261 N.W.2d at 468.

Iowa Rule of Civil Procedure 179(b) provides in pertinent part:

> 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. (Emphasis supplied.)

Rule 247 provides that a motion for new trial must be filed within ten days after "the verdict report or decision is filed." Iowa R. Civ. P. 247. When considering the ten-day period, regarding a motion to enlarge, the time begins to run once the finding of fact, conclusions of law, and ruling thereon is filed. Qualley, 261 N.W.2d at 469. Here the court filed its finding of facts on October 30, 1985, and plaintiff filed its motion to amend thirteen days later.

Appeals to the supreme court 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 filing of the posttrial ruling.

Iowa R. App. P. 5. Posttrial motions must be filed within ten days after a decision is filed, "unless the court for good cause shown and not ex parte, grants an additional time not to exceed thirty days." Iowa R. Civ. P. 247.

An improperly filed motion for new trial cannot enlarge or extend the statutory period for taking an appeal. Union Trust & Savings Bank v. Stanwood Feed and Grain, Inc., 158 N.W.2d 1, 3 (Iowa 1968). "An untimely posttrial motion is defective and does not toll the running of the thirty-day period within which an appeal must be taken." Lutz v. Iowa Swine Exports Corp., 300 N.W.2d 109, 110 (Iowa 1981) (citing Qualley, 261 N.W.2d at 471).

Plaintiff did not file its posttrial motion within ten days from the decision and there is no evidence the court granted additional time. The facts here are similar to those in Qualley v. Chrysler Credit Corp., 261 N.W.2d 466 (Iowa 1978), in which the court filed its findings of fact on February 23, 1976; on March 29, 1976, plaintiff filed a rule 179(b) motion; on April 20, 1976, the court overruled said motion; and on May 19, 1976, plaintiff filed its notice of appeal. The supreme court held the motion to enlarge was untimely, did not toll the running of the thirty-day period, and the appeal was dismissed. Here we find since plaintiff's motion to enlarge was untimely it failed to toll the statute of limitation and therefore the appeal is dismissed.

APPEAL DISMISSED.