IN THE COURT OF APPEALS OF IOWA

No. 1999-17 (9-127) / 98-1022
Filed July 23, 1999

MOSS DISTRIBUTING INC.,

Plaintiff-Appellee,

vs.

GEORGE WARREN,

Defendant-Appellant.

FILED
JUL 23 1999
CLERK SUPREME COURT

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge.

George Warren appeals from the district court's grant of summary judgment in favor of Moss Distributing, Inc. **APPEAL DISMISSED.**

William S. Smith, Waterloo, for appellant.

Kevin R. Rogers of Swisher & Cohrt, P.L.C., Waterloo, for appellee.

Considered by Sackett, C.J., and Vogel and Zimmer, JJ.

SACKETT, C.J.

Defendant-appellant George S. Warren filed a notice of appeal, appealing from (1) an April 1, 1998 order granting plaintiff-appellee Moss Distributing, Inc.'s motion for summary judgment; (2) a May 6, 1998 ruling denying defendant's 179(b) motion; (3) a May 6, 1998 ruling denying defendant's application to file a certificate of deposit instead of a supersedeas bond; and (4) a May 29, 1998 ruling denying defendant's 179(b) motion to post the certificate of deposit. Defendant's notice of appeal was filed and served on June 2, 1998. Defendant raises two issues in his brief addressing errors he contends the district court made in granting summary judgment. He does not challenge the rulings on the supersedeas bond. The appeal is dismissed.

Before addressing the grounds for reversal urged by defendant, we must determine we have jurisdiction to do so. Iowa Rule of Appellate Procedure 5(a) provides appeals to the Supreme Court "must be taken within, and not after, thirty days from the entry of the order, judgment, or decree, unless a motion for new trial or judgment notwithstanding the verdict . . . , or a motion as provided in R.C.P. 179(b), is filed, and then within thirty days after the entry of the ruling on such motion." Iowa R. App. P. 5(a). This provision is mandatory and jurisdictional. *Kunau v. Miller*, 328 N.W.2d 529, 530 (Iowa 1983).

Want of jurisdiction of the subject matter may be taken advantage of at any stage of the proceedings. *Qualley v. Chrysler Credit Corp.*, 261 N.W.2d 466, 468 (Iowa 1978). It cannot be conferred by waiver, estoppel, or consent. *Id.*

This court has inherent power to determine whether it has jurisdiction over the subject matter of the proceedings before it. *Walles v. International Bhd. of Elec. Workers, AF of L-CIO*, 252 N.W.2d 701, 710 (Iowa 1977). It makes no difference how the question comes to our attention. *Id.* Once raised, the question must be disposed of, no matter in what manner of form or stage presented. *Id.*

If it is determined we do not have jurisdiction, defendant's appeal must be dismissed, even though plaintiff has not moved to dismiss the appeal. *See Harden v. Illinois Cent. R.R. Co.*, 254 Iowa 426, 429, 118 N.W.2d 76, 78 (1962).

Defendant's appeal came within thirty days of the district court's May 6, 1998 ruling on the 179(b) motion, but not within thirty days of the filing of the summary judgment.

The district court found the 179(b) motion was not timely filed as it was not filed within ten days of the filing of the summary judgment. We agree. A 179(b) motion must be filed "within ten days after the verdict, report or decision." *Qualley*, 261 N.W.2d at 469.

A defective post-trial motion does not toll the running of the 30-day period after final judgment within which an appeal must be taken. *Id.* at 471. A party's untimely motion to enlarge or amend will not toll the running of the 30-day period within which an appeal must be taken. *Id.* Defendant's motion was not timely and did not toll the running of the 30-day period. *Id.* The appeal is dismissed.

APPEAL DISMISSED.