

NOT DESIGNATED FOR PUBLICATION

No. 125,756

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

BOARD OF COUNTY COMMISSIONERS OF RILEY COUNTY, KANSAS,  
*Appellee,*

v.

GARY L. KILNER,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Riley District Court; JOHN F. BOSCH, judge. Oral argument held September 19, 2023. Opinion filed November 9, 2023. Appeal dismissed.

*P. Bernard Irvine*, of Morrison, Frost, Olsen, Irvine & Schartz, LLP, of Manhattan, for appellant.

*Craig D. Cox*, deputy county counselor, for appellee.

Before BRUNS, P.J., PICKERING, J., and TIMOTHY G. LAHEY, S.J.

PER CURIAM: Gary L. Kilner appeals from a decision of the district court finding him in violation of the Riley County Zoning Regulations and the Riley County Property Maintenance Code. On appeal, he raises several issues relating to the district court's decision. However, he failed to file this appeal in the time prescribed by the Kansas Legislature in K.S.A. 2022 Supp. 60-2103(a). Because appellate courts in Kansas have jurisdiction to entertain an appeal in a civil case only if it is taken within the time limitations and in the manner prescribed by the applicable statutes, we have no jurisdiction to consider the issues presented. Thus, we dismiss this appeal.

## FACTS

In April 2004, Kilner bought a 21-acre parcel of land located in rural Riley County which was zoned for agricultural use. Shortly thereafter, Kilner applied for a building permit to build a residential building on a small tract of 1.86 acres at the south tip of his property, naming himself as the builder. After Riley County granted the building permit, Kilner began construction in 2004. However, Kilner never finished construction of the residence, and he has no current plans to complete the construction. Kilner does not reside in the house or elsewhere on the 21-acre tract.

On April 7, 2017, the Board of Riley County Commissioners (Riley County) filed a petition against Kilner alleging a zoning violation and a property maintenance violation. In response to Riley County's petition, Kilner moved to dismiss for lack of jurisdiction based on his claim that the property is exempt from regulations under the agricultural exception in K.S.A. 19-2921.

From December 18, 2017, through April 15, 2021, the district court allowed the parties to enter into a number of agreements and continuances in an attempt to allow Kilner to comply with the county regulations. Although Kilner made some progress, he failed to bring the property into compliance.

On June 23, 2021, the district court filed an order to appear and show cause requesting a sanction be imposed on Kilner for failure to comply with the agreed orders to resolve the case. In July 2021, the district court held a two-day evidentiary hearing on the order to appear and show cause. At the end of the hearing, the district court requested additional briefing from the parties regarding Kilner's claim of an agricultural exception to the zoning and property maintenance regulations.

On September 16, 2021, the district court orally announced its decision to the parties from the bench and filed a memorandum order on that same day. After examining K.S.A. 19-2921 and applying it to the facts of this case, the district court concluded that Kilner "does not fall under the definition of a family farmer that the legislature was trying to protect from government regulation" because he is not a farmer-owner who intends to live and engage in agricultural purposes on the land. Accordingly, the district court ruled in favor of the Riley County, finding that Kilner was in violation of both the zoning ordinance and the property maintenance regulation. As such, the court ordered that Kilner should bring his property into compliance within 90 days—by December 15, 2021—or be held in indirect civil contempt and serve 90 days in jail.

On April 14, 2022, Riley County filed a motion requesting an order to appear and show cause. At a hearing held on May 11, 2022, Kilner claimed he never received the district court's September 16, 2021 memorandum order, and that he was not aware of the order until April 16, 2022. Based on Kilner's claim that he did not receive the district court's written order, the district court extended Kilner's time to appeal, allowing him to file an appeal within 30 days from the date of the hearing. Nevertheless, Kilner failed to do so.

On June 8, 2022, Kilner instead filed a "Motion to Reconsider Order" in response to the district court's extension of time to appeal. In the motion, Kilner asserted the same arguments that he previously asserted below and asked the court to reconsider its September 16, 2021 ruling.

On July 20, 2022, the district court filed an order of contempt. The court ruled that Kilner had not complied with the district court's September 16, 2021 memorandum order because he had failed to bring his property into compliance with the zoning regulations and maintenance code by the deadline. Rather than impose jail time, the district court ordered a \$100 per day fine at the statutory interest rate of 4.25% per K.S.A. 16-204(e)(1)

until Kilner brings his property into compliance with the court's order. The court ordered the fine to begin on August 1, 2022.

On August 17, 2022, the district court denied Kilner's motion to reconsider. In denying the motion to reconsider, the district court noted that Kilner asked the court to revisit the issues, but he "has not produced any new evidence nor given the court any new authority that the court has not already considered." On September 15, 2022, Kilner filed his first and only notice of appeal, indicating that he was appealing from "the Court's Judgments entered on July 20, 2022 and August 17, 2022; and all other rulings, and orders on all issues relating and decided therein . . . ."

#### ANALYSIS

At the outset, we must determine whether our court has appellate jurisdiction over this appeal. The issues raised by Kilner in this appeal arise directly from the district court's September 16, 2021 order. Although Kilner refers to the district court's July 2022 and August 2022 rulings in his notice of appeal, he does not raise issues from these subsequent posttrial rulings in his appeal. The issues raised by Kilner stem directly from the district court's September 16, 2021 order. Consequently, we must examine whether this court has jurisdiction over issues decided by the district court in its decision filed on September 16, 2021.

"The question of whether this court has jurisdiction is a question of law over which we exercise unlimited review. *City of Wichita v. Trotter*, 316 Kan. 310, 312, 514 P.3d 1050 (2022). The right to appeal is strictly statutory in nature and is not contained in either the Constitution of the United States or the Constitution of Kansas. See *In re A.A.-F.*, 310 Kan. 125, 135, 444 P.3d 938 (2019).

In fact, Article 3, section 3 of the Kansas Constitution provides that the Kansas Supreme Court shall have "such appellate jurisdiction as may be provided by law." Thus, our Supreme Court has held that appellate courts "may exercise jurisdiction only under circumstances allowed by statute" and do not "have discretionary power to entertain appeals from all district court orders." *Kansas Medical Mut. Ins. Co. v. Svaty*, 291 Kan. 597, 609-10, 244 P.3d 642 (2010); see also *Wiechman v. Huddleston*, 304 Kan. 80, 86-87, 370 P.3d 1194 (2016); *State v. McGaugh*, 56 Kan. App. 2d 286, Syl. ¶ 1, 427 P.3d 978 (2018). In addition, "[a]n appellate court . . . has a duty to question jurisdiction on its own initiative." *Wiechman*, 304 Kan. at 84. When the record discloses a lack of appellate jurisdiction, we are required to dismiss the appeal. 304 Kan. at 85.

On September 16, 2021, the district court announced its decision from the bench and—later that day—filed a memorandum order with the Clerk of the Riley County District Court. Based on our review of the record, we find that the order met the requirements set forth in K.S.A. 2022 Supp. 60-258, and it served as the final judgment of the district court on the claims asserted by Riley County in its petition. Furthermore, the order resolved the issues Kilner brought in his counterclaim.

K.S.A. 2022 Supp. 60-2103(a) provides that "the time within which an appeal may be taken shall be 30 days from the entry of the judgment . . . ." In addition, if Kilner desired to file a motion to alter and amend the judgment—which would have tolled the deadline for appeal—he had 28 days from the date the district court entered its written order of the final judgment. K.S.A. 2022 Supp. 60-259(f). In other words, his deadline to file a motion to alter or amend was October 14, 2021, and his deadline to file a notice of appeal was October 16, 2021. Unfortunately, he filed neither a motion to alter or amend nor a notice of appeal prior to the expiration of these deadlines.

Although Kilner was present at the hearing on September 16, 2021, and heard the district court's announcement of its final judgment from the bench, he alleges that he was

not aware of the written decision until April 16, 2022. Even if this is accurate, Kilner took no action to bring this to the attention of the district court until the following month. It was only after Riley County filed a motion to appear and show cause seeking enforcement of judgment that Kilner first raised the issue to the district court at a hearing held on May 11, 2022.

The district court candidly admitted at the hearing that it did not know whether it had the legal authority to extend the deadline for filing an appeal after it had already expired. Regardless, the district court graciously ordered that Kilner could file an appeal within 30 days from the date of the hearing. Yet, he did not do so. Instead, he filed a motion to reconsider—which he argues was actually a motion to alter or amend judgment—the following month even though the district court had not extended the deadline to file motions. Even if we assume that the motion to reconsider was in substance a motion to alter or amend judgment, it was not filed until more than seven months after this deadline had expired under K.S.A. 2022 Supp. 60-259(f).

On September 15, 2022, Kilner finally filed a notice of appeal. This was nearly a year after the final judgment was entered by the district court. Moreover, it was nearly five months after Kilner claims that he became aware of the written order entered on September 16, 2021. It was also over four months after the district court ostensibly gave Kilner 30 days to appeal after the hearing on May 11, 2022.

As our Supreme Court has held, "[t]he Kansas Legislature . . . removed all discretion from the district court to extend the time in which to file a K.S.A. 60-259(f) motion. See K.S.A. 60-206(b)." *Board of Sedgwick County Comm'rs v. City of Park City*, 293 Kan. 107, 118, 260 P.3d 387 (2011). As such, even if we treat Kilner's motion to reconsider as a motion to alter and amend, the district court would not have had the legal authority to extend the deadline for the filing of the motion that had expired many months before it was filed. Furthermore, because the district court lacked jurisdiction to entertain

an untimely motion to alter or amend judgment, this court does not have appellate jurisdiction over this appeal. See *State v. Robertson*, 309 Kan. 602, 604, 439 P.3d 898 (2019).

Likewise, the timely filing of a notice of appeal—within 30 days from the entry of a final judgment under K.S.A. 2022 Supp. 60-2103(a)—is jurisdictional. As a result, an appellant's failure to file a notice of appeal within the time requirements of K.S.A. 2022 Supp. 60-2103(a) deprives an appellate court of jurisdiction. *In re Care and Treatment of Emerson*, 306 Kan. 30, 34, 392 P.3d 82 (2017); see also *Board of Sedgwick County Comm'rs*, 293 Kan. at 119. As discussed above, the record confirms that Kilner was present at the hearing when the district court's judgment was announced. Moreover, Riley County argues that in a subsequent letter to the district court Kilner confirmed he was also aware of the written order on the same day as the hearing. But even if he was unaware of the written decision, K.S.A. 2022 Supp. 60-258 states that "[f]ailure of service of a copy of the judgment form does not affect the judgment's validity."

K.S.A. 2022 Supp. 60-2103(a) provides that a district court "may extend the time for appeal not exceeding 30 days from the expiration of the *original time* herein prescribed." (Emphasis added.) Based on the plain language of the statute, the district court had the discretion to extend the deadline to file an appeal only until—at the latest—November 17, 2021. Kilner has provided us with no legal authority in his brief or at oral argument to support his position that a district court has the discretion to extend the deadline for the filing of a notice of appeal beyond the time set forth in the statute. Similarly, he has provided us with no authority that allows for the extension of the time to file an appeal after the deadline has already expired.

Our Supreme Court has made it clear that Kansas courts have no authority to create equitable remedies to extend statutory limitations on jurisdiction in civil cases. *Wiechman*, 304 Kan. at 81; *Board of Sedgwick County Comm'rs*, 293 Kan. at 111. Here,

even if such judicially created equitable remedies were allowed to create an exception to statutory jurisdictional requirements, we do not find that they would be appropriate under the circumstances presented in this case. As discussed above, Kilner waited several months to file a notice of appeal after the date on which he claims to have found out about the written order entered on September 16, 2021. He also failed to file a notice of appeal within the 30 days the district court purportedly gave him to do so at the hearing on May 11, 2022.

We, therefore, conclude that this court does not have appellate jurisdiction over the issues presented, and we dismiss this appeal.

Appeal dismissed.