



HARVEST CREDIT MANAGEMENT VII, L.L.C., Plaintiff-Appellee, vs. DAVID RUSSELL LUCAS, Defendant-Appellant

2009 | Cited 0 times | Court of Appeals of Iowa | June 17, 2009

IN THE COURT OF APPEALS OF IOWA

No. 8-976 / 08-0014 Filed June 17, 2009

HARVEST CREDIT MANAGEMENT VII, L.L.C., Plaintiff-Appellee,

vs.

DAVID RUSSELL LUCAS, Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, James S.

Heckerman, Judge.

plaintiff on its action to collect a credit card debt. APPEAL DISMISSED.

David Lucas, Council Bluffs, appellant pro se.

Charles Litow of Litow Law Office, P.C., Cedar Rapids, for appellee.

Considered by Vogel, P.J., and Mahan and Miller, JJ. MILLER, J.

On July 17, 2006, Harvest Credit Management VII, L.L.C. filed an action

against David past-due credit card debt. Lucas was served notice of the suit. He filed a pro se

answer on May 17, 2007, and raised affirmative defenses concerning the merits

Harvest Credit filed a motion for summary judgment. Lucas did not resist

the motion for summary judgment or appear for the hearing. The district court

granted the motion for summary judgment on September 10, 2007, the same day



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as the hearing, and stated that a later formal order would be filed. An order for entry of summary judgment was filed on September 13, 2007.

On September 24, Lucas filed a motion for reconsideration, which was served on September 23, 2007. The motion for reconsideration raised for the first time the issue of abusive delay of service. Harvest Credit resisted the motion to reconsider, asserting that Lucas untimely raised the issue of abusive delay of service. The district court denied the motion on October 30, 2007, in an order which

On November 9, 2007, Lucas filed a second motion, requesting the court to make specific rulings on his motion for reconsideration. On December 3, notice of appeal on January 2, 2008.

untimely under the thirty-day time period found in Iowa Rule of Appellate Procedure 6.5(1), unless his motions for reconsideration tolled the time for filing

notice of appeal. The time for filing an appeal may be extended by: (1) a motion for new trial; (2) a motion for judgment notwithstanding the verdict; and (3) a motion pursuant to Iowa Rule of Civil Procedure 1.904(2). Iowa R. App. P. 6.5(1); 657 N.W.2d 481, 483 (Iowa

2003). The filing of any other type of motion does not toll the time for filing an appeal. Id.

motion for judgment notwithstanding the verdict, and we consider whether it is a motion pursuant to rule 1.904(2). An improper or untimely rule 1.904(2) motion



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does not extend the time for filing an appeal. In *re* Marriage of Okland, 699 N.W.2d 260, 265-66 (Iowa 2003). The applicable portion of the rule provides, 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 R. Civ. P. 1.904(2) (emphasis added). The purpose of the rule is to permit the court to reconsider a previous ruling, and authorizes the court to change its ruling. *Meier v. Senecaut*, 641 N.W.2d 532, 538 (Iowa 2002). The motion may address an issue that the court may have overlooked

Okland, 699 N.W.2d at 266. A motion pursuant to rule 1.904(2) is not properly used as a method to introduce a new issue, not previously raised before the court. See *In re Marriage of Bolick*, 539 N.W.2d 357, 361 (Iowa 1995) (finding a rule 1.904(2) motion permitted the court to enlarge or modify its findings based on the evidence in the record, the motion was not a vehicle for parties to retry issues based on new facts). In this case, Lucas had not previously raised the issue of abusive delay in service prior to his first motion to reconsider. We conclude he did not file a proper rule 1.904(2) motion, and consequently, did not file one of the types of motions that would extend the time for filing an appeal. Because the period for

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Doland v. Boone County, 376 N.W.2d 870, 876 (Iowa 1985).

Where an appeal is untimely we do not have jurisdiction, and the appeal must be dismissed. *Dico, Inc. v. Employers Ins. of Wausau*, 581 N.W.2d 607, 611 (Iowa



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1998).

APPEAL DISMISSED.

1 reconsider was improper because the district court had not changed its ruling, and the

second motion raised the same issues as the first motion to reconsider. See Boughton v. McAllister, 576 N.W.2d 94, 96 (Iowa 1998). Successive and repetitive rule 1.904(2) motions do not toll the time for filing notice of appeal. Okland, 699 N.W.2d at 267. reconsider, and thus was untimely, even if that had been a proper rule 1.904(2) motion.

