

# SUPREME COURT OF UTAH

## A. S. v. R. S.

A. S., 2017 UT 77 (Utah 2017) · No. 20151023 · Decided November 14, 2017

### SUMMARY

The Utah Supreme Court held that it lacked jurisdiction to reach the merits of an appeal concerning an attorney-fee award because the appellant’s Utah Rule of Civil Procedure 59 motion was filed after the applicable deadline. The court held that a timely supporting memorandum could not substitute for an untimely motion and remanded for determination of the appellee’s reasonable attorney fees and costs on appeal.

### CASE DETAILS

|                       |                                                                                                                                                                                                      |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Utah                                                                                                                                                                                |
| WRITING FOR THE COURT | Justice Durham; Chief Justice Durrant; Associate Chief Justice Lee; Justice Himonas; Justice Pearce                                                                                                  |
| JURISDICTION          | Utah                                                                                                                                                                                                 |
| DECIDED               | November 14, 2017                                                                                                                                                                                    |
| DOCKET                | 20151023                                                                                                                                                                                             |
| DISPOSITION           | vacated                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Father appealed a district court judgment awarding Mother attorney fees and costs arising from juvenile court proceedings. The Utah Supreme Court addressed jurisdiction before reaching the merits. |
| STANDARD OF REVIEW    | Questions concerning the timeliness of a Rule 59 motion and appellate jurisdiction are reviewed for correctness.                                                                                     |
| PRECEDENTIAL VALUE    | published and precedential                                                                                                                                                                           |
| PARTIES               | A. S., Father v. R. S., Mother                                                                                                                                                                       |

### TOPICS

- family law procedure
- appellate jurisdiction
- final judgment rule
- parental rights
- attorney fees

### PRACTICE AREAS

- family law
- appellate procedure
- civil procedure

## QUESTIONS PRESENTED

1. Whether a memorandum supporting a Rule 59 motion, filed timely but without the motion itself, can substitute for an untimely filed Rule 59 motion.
2. Whether Utah Rule of Civil Procedure 6(b)(2) permits a district court to accept or consider an untimely Rule 59 motion based on excusable neglect, harmless error, inherent authority, or the absence of prejudice.
3. Whether an untimely Rule 59 motion tolls the time for filing a notice of appeal and establishes appellate jurisdiction.
4. Whether Mother was entitled to attorney fees and costs incurred on appeal.

## HOLDINGS

1. A timely filed memorandum supporting an unfiled or untimely Rule 59 motion is not a substitute for the motion required by Rule 59 and does not preserve appellate jurisdiction.
2. Utah Rule of Civil Procedure 6(b)(2) prohibits a district court from extending the time to file a Rule 59 motion; excusable neglect, harmless error, inherent authority, and lack of objection cannot overcome that prohibition.
3. An untimely Rule 59 motion does not toll the time for filing a notice of appeal; because Father's notice of appeal was filed after the applicable deadline, the Supreme Court lacked jurisdiction to reach the merits.
4. Mother was entitled to reasonable attorney fees and costs on appeal because she prevailed in the domestic proceedings below and on appeal, and the lower courts had awarded her fees.

## KEY QUOTATIONS

*“Therefore, a timely memorandum in support of an unfiled motion will not act as a substitute for an untimely filed rule 59 motion.”* (¶ 17)

*“Consequently, when a rule 59 motion is served later than ten days after entry of judgment, “the trial court’s only alternative is to deny the motion.””* (¶ 30)

*“Thus, Father’s notice of appeal filed November 25, 2015, is also untimely, and this court lacks jurisdiction to rule on the merits of this case.”* (¶ 41)

## FACTUAL BACKGROUND

The parties petitioned for divorce in 2008. In 2012, Father petitioned to terminate Mother's parental rights based on allegations of sexual abuse, and the juvenile court ultimately denied that petition, awarded Mother custody, and ordered Father and Stepmother to pay Mother's legal fees and costs. After the juvenile court's jurisdiction ended, the district court entered a judgment for \$180,780.47 in attorney fees and costs; Father's Rule 59 motion was electronically filed shortly after the applicable deadline.

## PROCEDURAL HISTORY

The juvenile court denied Father's petition to terminate Mother's parental rights, awarded Mother custody, and ordered Father and Stepmother to pay Mother's legal fees and costs. After jurisdiction returned to the district court, the district court entered a \$180,780.47 judgment for attorney fees and costs. Father filed a Rule 59 motion after the deadline and later appealed. The Supreme Court held that the untimely Rule 59 motion did not toll the appeal period, vacated the district court's order ruling on that motion, dismissed the appeal for lack of jurisdiction, and remanded for determination of Mother's appellate fees and costs.

## DISPOSITION

vacated

## REMAND INSTRUCTIONS

The October 27, 2015 district court order ruling on Father's untimely Rule 59 motion is vacated. The case is remanded to the district court to determine Mother's reasonable attorney fees and costs incurred on appeal.

## CASES CITED

- DFI Props. LLC v. GR 2 Enters. LLC, 2010 UT 61, 242 P.3d 781
- American West Bank Members, L.C. v. State, 2014 UT 49, 342 P.3d 224
- Loffredo v. Holt, 2001 UT 97, 37 P.3d 1070
- Jordan Construction, Inc. v. Federal National Mortgage Association, 2017 UT 28
- Sanpete Am., LLC v. Willardsen, 2011 UT 48, 269 P.3d 118
- Pledger v. Gillespie, 1999 UT 54, 982 P.2d 572
- Workers Comp. Fund v. Argonaut Ins. Co., 2011 UT 61, 266 P.3d 792
- State v. Sun Sur. Ins. Co., 2004 UT 74, 99 P.3d 818
- Gillett v. Price, 2006 UT 24, 135 P.3d 861
- ASC Utah, Inc. v. Wolf Mountain Resorts, L.C., 2013 UT 24, 309 P.3d 201
- 2010-1 RADC/CADC Venture, LLC v. Dos Lagos, LLC, 2017 UT 29
- Bloesch v. Natixis Real Estate Capital, Inc., 2013 UT App 214, 311 P.3d 1042
- Watkiss & Campbell v. Foa & Son, 808 P.2d 1061 (Utah 1991)
- Bair v. Axiom Design, LLC, 2001 UT 20, 20 P.3d 388
- Gallardo v. Bolinder, 800 P.2d 816 (Utah 1990)
- Menzies v. Galetka, 2006 UT 81, 150 P.3d 480
- Arches Condominium Association v. Robinson, 131 A.3d 122 (Pa. Commw. Ct. 2015)
- Burdick v. Horner, Townsend & Kent, Inc., 2015 UT 8, 345 P.3d 531
- Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380 (1993)
- Burgers v. Maiben, 652 P.2d 1320 (Utah 1982)
- Garcia-Velazquez v. Frito Lay Snacks Caribbean, 358 F.3d 611 (1st Cir. 2004)
- Smith v. Smith, 1999 UT App 370, 995 P.2d 14

- Gray v. Gray, 2001 UT App 274 (Utah Ct. App. 2001)
- Rosendahl v. Rosendahl, 876 P.2d 870 (Utah Ct. App. 1994)
- Moore v. Moore, 872 P.2d 1054 (Utah Ct. App. 1994)

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