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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of MICHAEL
SHOWALTER and YONG FENG HE.

MICHAEL SHOWALTER,

Respondent,

v.

YONG FENG HE,

Appellant.

A140354

(Solano County
Super. Ct. No. FFL123936)

In November 2013, appellant Yong Feng He filed a notice of appeal from an order entered in June 2013 and the denial of her motion for reconsideration of that order in August 2013. Because we conclude the notice of appeal was not timely filed, we dismiss the appeal.

BACKGROUND

Respondent Michael Showalter petitioned to dissolve his marriage to appellant. A default judgment of dissolution was entered in February 2013, which held the date of separation to be March 10, 2001.

In March 2013, appellant filed a motion to set aside the judgment based on mistake of fact, asserting the true date of separation “was around March 5, 2012,” the date “we both moved out of the house.” Respondent stipulated to set aside the judgment, and a court trial was held on May 16, 2013, limited to the issue of the date of separation. Both parties appeared pro se. In a written order entered June 7, 2013, the family court

entered an order reviewing the evidence, affirming the date of separation as March 10, 2001, and allocating respondent's pension between the parties on the basis of that date. A revised judgment of dissolution was apparently filed, although it is not included in the appellate record.

On July 12, 2013, appellant filed a motion for "Reconsideration or set aside" of the family court's order and judgment. The motion was set for hearing on August 12, 2013. There is no direct record of the disposition of that motion in the record, but appellant's notice of appeal states that her appeal is taken from the June 2013 judgment and "8/12/13 Reconsideration Hearing." We therefore assume the motion for reconsideration was heard and denied on that day. The notice of appeal was filed on November 20, 2013.

DISCUSSION

"Only a timely filed notice of appeal can invoke the jurisdiction of the appellate court." (*In re Marriage of Adams* (1987) 188 Cal.App.3d 683, 689.) "Compliance with the time for filing a notice of appeal is mandatory and jurisdictional. [Citation.] If a notice of appeal is not timely, the appellate court must dismiss the appeal." (*Laraway v. Pasadena Unified School Dist.* (2002) 98 Cal.App.4th 579, 582.) "[B]ecause the timeliness of an appeal poses a jurisdictional issue, we must raise the point sua sponte." (*Drum v. Superior Court* (2006) 139 Cal.App.4th 845, 849.)¹

Appellant's notice of appeal states that her appeal is taken from both the June order and judgment and the later denial of her motion for reconsideration. An order denying a motion for reconsideration is not a separately appealable order, but "if the order that was the subject of a motion for reconsideration is appealable, the denial of the motion for reconsideration is reviewable as part of an appeal from that order." (Code Civ. Proc., § 1008, subd. (g); *Powell v. County of Orange* (2011) 197 Cal.App.4th 1573, 1576.)

¹ Because the issue of timeliness was not addressed by appellant in her opening brief, we requested further briefing on the issue in an order entered July 17, 2014. Appellant's submission failed to demonstrate the timeliness of the appeal.

California Rules of Court, rule 8.108(e), provides that where, as here, “any party serves and files a valid motion to reconsider an appealable order under Code of Civil Procedure section 1008, subdivision (a), the time to appeal from that order is extended for all parties until the *earliest* of: [¶] (1) 30 days after the superior court clerk, or a party serves an order denying the motion or a notice of entry of that order; [¶] (2) 90 days after the first motion to reconsider is filed; or [¶] (3) 180 days after entry of the appealable order.” (Italics added; see *Lister v. Bowen* (2013) 215 Cal.App.4th 319, 329 & fn. 3.) Because there is no indication in the record that the family court entered a written order denying appellant’s motion for reconsideration, rule 8.108(e)(1) is inapplicable. Ninety days from the filing of appellant’s motion for reconsideration was October 10, 2013. (Cal. Rules of Court, rule 8.108(e)(2).) Finally, 180 days after the entry of the June order was December 4, 2013. (Cal. Rules of Court, rule 8.108(e)(3).) Accordingly, the deadline for filing appellant’s notice of appeal was October 10, 2013, the earliest of the applicable dates under rule 8.104(e). Because appellant did not file her notice of appeal on or prior to that date, we lack jurisdiction over the appeal, and it must be dismissed. (Cal. Rules of Court, rule 8.104(b); *Dakota Payphone, LLC v. Alcaraz* (2011) 192 Cal.App.4th 493, 504.)

DISPOSITION

The appeal is dismissed.

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.