

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-258

DECEMBER TERM, 2002

	}	APPEALED FROM:
	}	
Town of Goshen	}	Environmental Court
	}	
v.	}	
	}	DOCKET NO. 43-3-98 Vtec
Albert and Bernadette Gionet	}	
	}	Trial Judge: Merideth Wright
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Defendants Albert and Bernadette Gionet appeal from an order denying their motion to amend a judgment entered by the Environmental Court in this zoning enforcement action. We affirm.

On January 5, 1999, the Environmental Court granted the Town of Goshen relief on a complaint against the Gionets for, among other things, storing numerous motor vehicles not in running condition on their property in violation of the Town's zoning ordinance. The Gionets did not appeal the January decision, but moved to amend it on June 14, 2000. The court did not decide the motion immediately, and in March 2001, the Gionets filed another motion to amend, along with a motion for "Relief from Unfair Prosecution." On March 4, 2002, the court issued an order denying the Gionets' motions to amend and their complaint for unfair prosecution.

A little over one month later, on April 8, 2002, the Gionets filed another motion to amend. In their motion, the Gionets sought an extension of a compliance deadline the court set in its March 4, 2002 order. They also asked the court to amend a condition set in the January 1999 order and to allow them to pursue their unfair prosecution claim against the Town. On May 7, 2002, the court denied the motion as untimely, but also briefly addressed the merits of each issue they raised in their motion. The present appeal followed.

After the Gionets filed their brief with this Court, the Town moved to dismiss the appeal. We deferred ruling on the motion until we heard the merits of the Gionets' appeal. The Town's motion alleges that the issues the Gionets raise in this Court relate to matters conclusively determined in the Environmental Court's orders of January 5, 1999 and March 4, 2002, which the Gionets failed to appeal. The Gionets respond that they do not purport to appeal those prior decisions, but, rather, appeal only the May 7, 2002 order resolving their April 8, 2002 motion to amend. We decline to dismiss the appeal because the Gionets' notice of appeal from the May 7, 2002 order was timely. See V.R.A.P. 4 (notice of appeal must be filed within thirty days of order from which appeal is taken). Our refusal to dismiss does not mean, however, that we will decide the merits of the issues the Gionets raise here. None of the actions the Gionets took to modify the conditions in the January 1999 or the March 2002 orders was timely.

Once a judgment is final, a party may seek relief from it by taking an appeal under V.R.A.P. 4 within thirty days of the judgment appealed from, filing a timely motion to alter or amend under V.R.C.P. 59(e), or moving for relief under V.R.C.P. 60(b). V.R.A.P. 4; V.R.C.P. 59(e), 60(b). Motions to amend under V.R.C.P. 59(e) must be filed with the trial court within ten days of entry of the judgment. V.R.C.P. 59(e); State v. Champlain Cable Corp., 147 Vt. 436, 438

(1986).

In this case, the Gionets did not appeal the Environmental Court's final decision entered on January 5, 1999. Instead, they moved to amend the order over a year later on June 14, 2000. Although that motion was out of time under Rule 59(e), the Environmental Court nevertheless entertained it and issued an order on March 4, 2002. If the Gionets disagreed with the substance of the March 4 order, they should have either appealed it within thirty days, or moved to amend it within ten days. They did neither. The Gionets waited until April 8, 2002 to file their motion to amend. The filing was therefore well outside the ten-day time limit under Rule 59(e), and the Environmental Court correctly denied the motion on that basis in its May 7, 2002 decision.*

We note that the court's decision to explain why the Gionets were not entitled to relief on the merits of their April 8, 2002 motion was simply a courtesy and had no effect on the deadlines set forth in our civil and appellate rules. Because the Gionets' April 8 motion to amend was untimely, the Environmental Court had no obligation to address the merits of their claims, and we express no opinion on them.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice