

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

**ENTRY ORDER**

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2008-310

MAR 5 2009

MARCH TERM, 2009

Robin M. Menzel	}	APPEALED FROM:
	}	
	}	
v.	}	Essex Family Court
	}	
	}	
Donald C. Schmidt	}	DOCKET NO. 16-3-03 Exdm

Trial Judge: Barb Zander

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

Father appeals a child support order. We agree with the Office of Child Support (OCS) that father's appeal was untimely filed and dismiss the appeal.

On May 19, 2005, OCS, assisting mother, filed a petition to modify child support for the parties' son who lives with mother. A contested hearing was held before a magistrate where the parties disputed the cost of day care. The magistrate issued an order on August 8, 2005. Following mother's appeal, the family court remanded the matter to the magistrate to clarify how child care expenses were calculated. The magistrate issued new findings on April 6, 2006. The family court reversed and remanded that order. Another hearing was held before the magistrate on December 12, 2006 and a new child support order was issued on February 27, 2007. Father appealed that order and the family court again remanded the matter to the magistrate to issue findings on how day care expenses were calculated. On December 14, 2007, the magistrate issued a final decision concerning the cost of day care expenses. On April 18, 2008, in a written order, the family court concluded that the magistrate's calculation of daycare expenses was supported by the record and issued a child support order according to the support guidelines. Father filed a motion to alter or amend the judgment on May 7, 2008.\* On July 21, 2008, the court denied the motion as untimely filed. Father then filed this appeal on July 31, 2008.

On appeal, father claims that the family court erred in (1) accepting the magistrate's calculation of day care costs because the figure was not supported by the evidence, and (2) failing to remand the matter to the magistrate. We do not reach father's substantive arguments because we conclude that his appeal of the April 18 order was untimely filed.

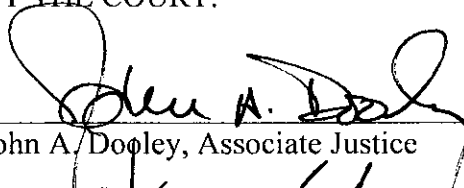
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\* Father argues that his motion was filed on May 5, 2008—the day that he mailed the motion. Because father's motion was untimely whether it was filed on May 5 or May 7, we do not address this argument.

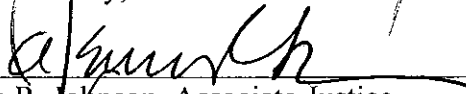
A notice of appeal must be filed within thirty days “of the date of the entry of the judgment or order appealed from.” V.R.A.P. 4(a). Father’s notice of appeal, filed on July 31, 2008, was well beyond the thirty-day deadline of May 19, 2008. There is no merit to father’s argument that his motion to alter and amend extended the appeal period. While a motion to alter and amend may terminate the filing period, father’s motion was untimely filed and therefore ineffective in extending the appeal period. “The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion . . . under Civil Rule 59 to alter or amend the judgment . . . .” V.R.A.P. 4(b)(5) (emphasis added). Motions to alter and amend must be filed within ten days after entry of judgment. V.R.C.P. 59(e). In this case, any motion to alter or amend would have been due on May 2, 2008. See V.R.C.P. 6(a) (explaining that computation of filing periods for periods less than eleven days excludes intermediate Saturdays, Sundays and legal holidays). We reject father’s argument that May 1 is a legal holiday and therefore excluded from the computation. May 1 is not a “State or federal legal holiday” as required by Rule 6(a). Therefore, father’s motion and his appeal were untimely filed.

Appeal dismissed.

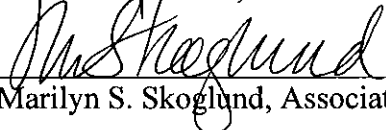
BY THE COURT:



John A. Dooley, Associate Justice



Denise R. Johnson, Associate Justice



Marilyn S. Skoglund, Associate Justice