

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-267

NOVEMBER TERM, 2019

Leslye W. Kenney v. Lawrence Kenney*	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Family Division
	}	
	}	DOCKET NO. 802-12-15 Cndm
		Trial Judge: Nancy J. Waples

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

In this divorce proceeding, husband appeals the family court’s order denying his motion to alter or amend a post-judgment order. We agree with the family court that the motion was untimely filed and affirm.

This divorce action has a long procedural history. The family court entered a final divorce order in April 2017 and subsequently denied husband’s post-judgment motion to amend. Husband appealed the final order, arguing that wife’s attorney lied during the proceedings, the trial judge was biased against husband, the property award was in error, and the family court abused its discretion in awarding wife \$10,000 in attorney’s fees. Kenney v. Kenney, No. 2017-233, 2018 WL 2100520, at *2-3 (Vt. May 4, 2018) (unpub. mem.). This Court affirmed.

In the family court, the parties filed various motions to enforce and wife moved for attorney’s fees. The court issued an order on December 5, 2018 resolving those motions.¹ The

¹ This order was entered on the docket on December 3, 2018 but it is date stamped December 5, 2018 and was entered on the docket again on that date. The question of whether wife’s motion was timely filed is not raised directly in this appeal. However, husband contends that the court treated him unfairly and differently from wife because the family court allowed her untimely filed motion to alter or amend but dismissed his as untimely filed.

We conclude that there is no indication from the record that the family court gave the parties differential treatment. A motion to alter or amend must be filed within twenty-eight days of entry of judgment. See V.R.C.P. 59(e) (“A motion to alter or amend the judgment shall be filed not later than 28 days after entry of the judgment.”). If the twenty-eight-day period is calculated from December 3, 2018, wife’s motion is untimely; if it is calculated from December 5, 2018, the motion is timely. We conclude that the family court did not treat husband unfairly because it gave both parties the benefit of the date that the order was stamped in calculating the time period for filing a motion to alter or amend.

court denied wife's motions to enforce and for attorney's fees and granted husband's motion to enforce in part. On January 2, 2019, wife filed a motion to amend the December 5, 2018 order, arguing that wife had provided sufficient evidence at the final divorce hearing to value a vehicle that was awarded to her in the property settlement. The court entered an order granting this motion on February 13, 2019.²

Husband filed a motion to amend this order. Husband's motion was postmarked March 15, 2019. Husband argued, among other things, that the court erred in assigning a value of \$9000 to the vehicle based on husband's financial affidavit because it was outdated, that the property division was unfair, and that the award of attorney's fees was not supported.³

The family court denied husband's motion on two bases. First, the court concluded that husband's motion was untimely filed because any motion to alter or amend had to be filed by March 13, 2019, twenty-eight days after judgment was entered on February 13, 2019. See V.R.C.P. 59(e) (requiring motion to alter or amend to be "filed not later than 28 days after entry of the judgment"). Second, the court concluded that husband was not entitled to relief on the merits. The court declined to alter the \$9000 valuation of the car because this value was based on credible, unchallenged evidence presented at the hearing. The court further concluded that husband could not challenge the attorney's fee award because it had already been appealed and affirmed by this Court.

On appeal, husband reasserts arguments he has raised both in his prior appeal and in his motion to reconsider, alleging that the evidence did not support an award of \$10,000 in attorney's fees to wife and the court erred in valuing the vehicle at \$9000.

We do not address these arguments because we affirm the court's order dismissing husband's motion as untimely. A motion to alter or amend must be "filed not later than 28 days after entry of the judgment." V.R.C.P. 59(e).⁴ This time period cannot be extended. V.R.C.P. 6(b)(2) (stating that court must not extend time under Rule 59(e)). The court's order was entered on February 13, 2019. Therefore, a motion to alter or amend had to be filed by March 13, 2019, twenty-eight days later. Husband's motion was not received until March 25, 2019. Even giving husband the benefit of when the motion was postmarked, March 15, 2019, this date was beyond

² The order indicates it was electronically signed on February 11, 2019 and there is a docket entry reflecting entry of the order on February 11, 2019; however, the order is date-stamped February 13, 2019 and it is docketed again on that date. Like the family court, we give husband the benefit of the date the order was date-stamped in determining whether his motion was timely filed.

³ Husband also asserted that the court did not send him a copy of the February 13, 2019 order. The court found that the order was sent to husband at the address he provided on all of his filings, and that, in any event, husband had not moved to extend the appeal period on this basis or to appeal the February 13, 2019 order.

⁴ Pursuant to Vermont Rule of Family Proceedings Rule 4.0(a)(2), the Vermont Rules of Civil Procedure apply in domestic-relations cases.

the filing period. Even though husband was self-represented, he was still required to comply with the rules of procedure. In re Verizon Wireless Barton Permit, 2010 VT 62, ¶ 22, 188 Vt. 262 (“The court does not abuse its discretion where it enforces the rules of civil procedure equitably, even against a pro se litigant.” (quotation omitted)). Because husband’s motion was filed beyond the twenty-eight-day period, the family court properly dismissed it.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Karen R. Carroll, Associate Justice