

Supreme Court

No. 2013-271-Appeal.
(P12-728M)

Joseph Botelho :
v. :
Joan Botelho. :

ORDER

This case was heard before the Supreme Court at a session in conference pursuant to Article I, Rule 12A(3)(b) of the Supreme Court Rules of Appellate Procedure. The plaintiff, Joseph Botelho, appeals from a Family Court order that denied his request for visitation with his son, granted a motion by the defendant, Joan Botelho, to relocate to the state of Arizona with the child, awarded the defendant sole custody and physical possession, and ordered the parties to investigate the status of their pending divorce and the validity of their marriage, and report to the court. The plaintiff alleges that the lower court overlooked or misconceived evidence and was clearly wrong in denying his request for visitation and granting the defendant’s motion to relocate to Arizona.

This appeal is not properly before the Court. Article I, Rule 4(a) of the Supreme Court Rules of Appellate Procedure provides that a notice of appeal must be filed with the clerk of the trial court “within twenty (20) days of the date of the entry of the judgment, order or decree appealed from together with a filing fee of one hundred fifty dollars (\$150).” “A judgment, order, or decree is entered within the meaning of this subdivision when it is set forth and signed by the clerk of the trial court * * *.” Id. The time specified in this rule is mandatory and once

the time has passed there can be no review by way of appeal. Iozzi v. City of Cranston, 52 A.3d 585, 588 (R.I. 2012) (citing Wachovia Bank v. Hershberger, 911 A.2d 278, 279-80 (R.I. 2006) (mem.)).

The order here was signed by the clerk of the Family Court on June 12, 2013. Twenty days later, on July 2, 2013, the appeal period expired. Between June 12, 2013 and July 2, 2013 the plaintiff failed to file any notification with the court of his intent to appeal. Although there is a notice of appeal in the file apparently signed by the plaintiff on June 18, 2013, it was date-stamped as received by the clerk's office on August 21, 2013. See Abbatematteo v. State, 694 A.2d 738, 740 (R.I. 1997) (date-stamp stamps the time, month, day, and year a document is filed in the clerk's office). Here, because the plaintiff's notice of appeal was filed more than twenty days after the order entered, his appeal is time-barred.

Accordingly, the plaintiff's appeal is denied and dismissed.

Entered as an Order of this Court on this 24th day of September, 2014.

By Order,

/s/
Clerk



RHODE ISLAND SUPREME COURT CLERK'S OFFICE

Clerk's Office Order/Opinion Cover Sheet

TITLE OF CASE: Joseph Botelho v. Joan Botelho.

CASE NO: No. 2013-271-Appeal.
(P12-728M)

COURT: Supreme Court

DATE ORDER FILED: September 24, 2014

JUSTICES: Suttell, C.J., Goldberg, Flaherty, Robinson, and Indeglia, JJ.

WRITTEN BY: N/A – Court Order

SOURCE OF APPEAL: Providence County Family Court

JUDGE FROM LOWER COURT:
Associate Justice John E. McCann, III

ATTORNEYS ON APPEAL:
For Plaintiff: Joseph Botelho, Pro Se
For Defendant: Joseph P. DeStefano, Esq.