

APPELLATE

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ALERT

A MOTION BY ANY OTHER NAME

By Bruce P. Merenstein

Courts often note that they should avoid exalting form over substance when interpreting laws. Similarly, in construing legal filings, courts typically eschew reliance on document titles in favor of examining their actual substance. Such was the path the Ninth Circuit took in a recent decision that led to the quick dismissal of an appeal as untimely.

In *United States ex rel. Hoggett v. University of Phoenix*, No. 14-17492, the trial court had dismissed a *qui tam* action brought against a for-profit university. Rule 4 of the Federal Rules of Appellate Procedure provides that, in most circumstances, including those in *Hoggett*, a party seeking to challenge a final judgment must file a notice of appeal within 30 days of that judgment. Certain specified events, however, can delay the running of the 30 days. One such event is the timely filing of a motion under Rule 59(e) of the Federal Rules of Civil Procedure to alter or amend a judgment. Under Rule 59(e), such a motion is timely if filed within 28 days of a final judgment.

In *Hoggett*, 28 days after the trial court entered final judgment, the relators (essentially the plaintiffs in a *qui tam* action) filed a motion nominally pursuant to Rule 59(e) to stay the trial court's dismissal order pending the Ninth Circuit's decision in a separate pending case. The trial court denied that motion three months later and within 30 days of the denial of the motion, the relators filed their notice of appeal.

Too late, the Ninth Circuit concluded. Simply because the relators had styled their post-judgment motion as one under Rule 59(e) and had filed it within the 28-day limit did not make it so. Rather, the court of appeals looked to the substance of the motion and concluded that the relators did not actually seek to have the trial court's final judgment altered or amended. They simply wanted it stayed. And a motion to stay a final judgment is *not* one of the events that delays the running of the 30-day appeal period. Thus, the appeal was untimely.

The specific lesson of the *Hoggett* decision is to ensure that any motion filed after entry of a final, appealable judgment is substantively (and not just titularly) within the scope of the events listed in Rule 4 that delay the 30-day appeal period. The broader point is, when in doubt, file a notice of appeal within 30 days of entry of a final judgment. It almost always is better to file an appeal too soon than too late. ♦

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