

FREDERICK Y. TRASK

v.

LOIS G. TRASK

Submitted on Briefs July 8, 2009

Decided July 21, 2009

Panel: SAUFLEY, C.J., and ALEXANDER, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

Frederick Y. Trask appeals from a judgment entered in the District Court (Houlton, *O'Mara, J.*) denying his motion to modify property distribution, made pursuant to M.R. Civ. P. 60(b)(6).¹

The appeal period with respect to the decision denying Frederick's M.R. Civ. P. 60(b)(6) motion for relief from judgment, styled as a motion to modify property distribution, ran on July 1, 2008. M.R. App. P. 2(b)(1), (3). Although an appeal period is tolled by the timely filing of a motion to reconsider, *see id.*, the motion to reconsider was not timely, *see id.*; M.R. Civ. P. 59(e); *Arsenault v. Arsenault*, 2008 ME 75, ¶¶ 5-6, 946 A.2d 412, 413-14. Thus, the appeal period with respect to the motion to modify property distribution was not suspended and the notice of appeal, filed December 1, 2008, was filed well outside the usual twenty-one day appeal period. We dismiss the appeal as untimely. *See Bourke v. City of S. Portland*, 2002 ME 155, ¶ 4, 806 A.2d 1255, 1256 (dismissing untimely appeal, stating "[s]trict compliance with the time limits of M.R. App. P. 2(b) . . . is a prerequisite to the Law Court entertaining an appeal.").

¹ To the extent Frederick also appeals from the court's denial of his motion to reconsider, that argument was undeveloped and is considered waived. *See Mehlhorn v. Derby*, 2006 ME 110, ¶ 11, 905 A.2d 290, 293. Regardless, Frederick's appeal was also filed late with respect to his motion to reconsider.

Furthermore, the record amply demonstrates that the appeal is frivolous and was filed with an intent to delay, *see* M.R. App. P. 13(f); *Town of Porter v. Blevens*, 2009 ME 48, ¶ 4, 970 A.2d 286, 287; *Toffling v. Toffling*, 2008 ME 90, ¶¶ 7-11, 953 A.2d 375, 377-78, and we grant Lois Trask's request for an award of costs and attorney fees.

The entry is:

Appeal dismissed. Frederick Trask shall pay Lois Trask's appellate attorney fees and costs, to be calculated on remand after Lois Trask submits an affidavit of attorney fees and costs to the trial court.

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