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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT

MARK L. SYLVIA,

Plaintiff and Appellant,

v.

STALLION SPRINGS COMMUNITY  
SERVICES DISTRICT,

Defendant and Respondent.

F036980

(Super. Ct. No. 228664)

**OPINION**

THE COURT\*

APPEAL from a judgement of the Superior Court of Kern County. Arthur Wallace, Judge.

Eric J. Parkinson, for Plaintiff and Appellant.

Duncan, Ball, Evans & Ubaldi, Mathew D. Evans and Georgann Johnston, for Defendant.

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At issue is whether the notice of appeal in this case was untimely, thereby depriving our court of jurisdiction. In this regard, the time to appeal a judgment is

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\* Before Ardaiz, P.J., Dibiaso, J. and Levy, J.

jurisdictional; once the deadline expires, the appellate court has no power to entertain the appeal. (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56.) Upon review, we conclude the notice of appeal herein was untimely under California Rules of Court, rule 2 (a), so that we lack jurisdiction to consider the merits.

#### PROCEDURAL HISTORY

In 1999, plaintiff filed a fifth amended complaint containing two causes of action for wrongful termination. Defendant responded by demurring to the second cause of action and moving for summary adjudication as to the first. In July 1999, the superior court sustained the demurrer without leave to amend. The following month, after hearing argument on the matter, the court adopted its tentative ruling granting the motion for summary adjudication.

Defendant in turn prepared an “ORDER AFTER HEARING ON DEFENDANT’S MOTION FOR SUMMARY ADJUDICATION AND SUMMARY JUDGMENT DISMISSING COMPLAINT.” The order which was executed and filed September 17, 1999, stated the court would enter summary judgment in favor of defendant, recounting the history of the fifth amended complaint. The order then provided:

“Accordingly, it is hereby ordered, decreed and adjudged that summary judgment dismissing the action is entered in favor of defendant. Defendant is the prevailing party and shall be entitled to receive its costs . . . .”

Plaintiff did not file his notice of appeal until November 7, 2000. Within the immediately preceding 60 days, he had prepared and the court signed and submitted for filing a pleading entitled “JUDGMENT FOR DEFENDANT.”

#### DISCUSSION

We conclude the September 17, 1999, order constituted a judgment. Admittedly, there is no prescribed form for a judgment. The test of a judgment’s sufficiency is its substance rather than its form. (*Hentig v. Johnson* (1908) 8 Cal.App. 221, 225.) The

actual language of the order, as quoted above, constitutes a judgment in that it amounts to be a final determination of the parties' rights in the action. (Code Civ. Proc., § 577.) It dismisses the action in favor of defendant as well as awards costs to defendant as the prevailing party.

Arguably, the title of the document, i.e. "ORDER AFTER HEARING ON DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION AND SUMMARY JUDGMENT DISMISSING COMPLAINT" as well as the remaining text of the pleading somewhat obscure the issue. However, a simple reading of the order leaves no doubt that it amounted to a final determination of the parties' rights in the action. (Code Civ. Proc., § 577.)

Having determined that the September 17, 1999, order constituted a judgment, we further conclude the time for appealing it had elapsed by the time appellant filed his notice of appeal. California Rules of Court, rule 2 sets forth the normal time for appeal, to wit:

"(a) Except as otherwise provided by Code of Civil Procedure section 870 or other statute or rule 3, a notice of appeal from a judgment shall be filed on or before the earliest of the following dates: (1) 60 days after the date of mailing by the clerk of the court of a document entitled "notice of entry" of judgment; (2) 60 days after the date of service of a document entitled "notice of entry" of judgment by any party upon the party filing the notice of appeal, or by the party filing the notice of appeal; or (3) 180 days after the date of entry of the judgment. For the purposes of this subdivision, a file-stamped copy of the judgment may be used in place of the document entitled 'notice of entry'.

"(b) For the purposes of this rule: (1) The date of entry of a judgment shall be the date of its entry in the judgment book or, in a county following the procedure specified in Code of Civil Procedure section 668.5 in lieu of maintaining a judgment book, the date of filing the judgment with the clerk pursuant to that section."

Neither Code of Civil Procedure section 780, nor another statute, nor rule 3 of the California Rules of Court is applicable to this case.

Unless a document notifying appellant of entry of the judgment or order is served either by the court or counsel and is titled “notice of entry,” California Rules of Court, rule 2(a) provides 180 days within which to notice an appeal. (*Cuenllas v. VRL International, Ltd.* (2001) 92 Cal.App.4th 1050, 1054.) The parties here dispute whether a notice of entry of the September 1999 judgment was properly served on appellant. However, we need not resolve that issue because in the absence of formal service of the order or notice of its entry, the 180-day period applies. (*Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1389, fn. 7.) Because the 180-day period elapsed well before appellant filed his notice of appeal, this court lacks jurisdiction to decide this appeal. (See *Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.*, *supra*, 15 Cal.4th at p. 56.)

#### DISPOSITION

The appeal herein is dismissed for want of jurisdiction.