

ORIGINAL

FILED

03/09/2021

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 21-0094

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 21-0094

FILED

MAR 09 2021

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN RE THE MARRIAGE OF:

CHAD STONE,

Petitioner and Appellant,

v.

LINDSEY STONE,

Respondent and Appellee.

ORDER

Chad Stone has filed a verified Petition for an Out-of-Time Appeal, indicating that he improperly filed a timely Notice of Appeal with the Park County District Court.

This Court is familiar with the underlying contentious dissolution proceeding. *See Marriage of Stone*, No. DA 17-0394, Order dismissing appeal because of mediated settlement (Mont. Oct. 2, 2017); *Marriage of Stone*, No. DA 17-0728, 2018 MT 178N, 2018 Mont. LEXIS 238 (Jul. 17, 2018), and *Marriage of Stone*, No. DA 18-0692, 2019 MT 232N, 2019 Mont. LEXIS 540 (Oct. 1, 2019).

M. R. App. P. 4(6) allows this Court to grant an out-of-time appeal “[i]n the infrequent harsh case and under extraordinary circumstances amounting to a gross miscarriage of justice[.]”

Chad provides that he is appealing the District Court’s decision denying his petition for a temporary restraining order against his biological parents, Deverett and Linda Butrick (collectively, the Butricks), concerning their access to his child. Chad explains that he broke ties with his parents because of his abusive childhood experiences and that he does not want his son to have any further relationship with them. He states that the hearing occurred on January 19, 2021, yet he does not provide a copy of the court’s written decision.

A party may appeal a final decision of denying a petition for a restraining order in a civil case, pursuant to M. R. App. P. 6(3)(e). *See* § 40-15-302(1), MCA. We decline to do so here because the parties are not properly before this Court.

Some context is important here. As Chad provides, he did file his documents with the District Court initially. Attached to Chad's Petition for an Out-of-Time Appeal are the documents filed in District Court and then received on January 25, 2021, with this Court. The title of this filing lists: "Notice of appeal; Request for new judge; Emergency Motion for Temporary Restraining Order against [the Butricks] pending hearing; Motion for Removal of Judge from this case and any other case [he has] in Park County; Motion for immediate change to child's residential schedule; Motion for new trial/independent case review; Motion for a new parenting evaluator; and Motion for accountability of Brenda Gilbert, Linda Cantin, and Karl Knuchel." Upon review of his attachments, on February 2, 2021, the District Court stayed the underlying proceeding because the District Court, based on its interpretation of substitution of judge from Chad's pleading, sent the matter to this Court for review of disqualification of judge. This Court dismissed his request as evidenced by Chad's copy of the Order. *Marriage of Stone*, No. PR 21-0001, Order (Mont. Feb. 5, 2021).

Lack of service prohibits this case to proceed on appeal. We observe that Chad handwrote the Butricks' names on his filed pleadings and crossed-out his former wife's name, Lindsey Stone. Chad's Petition for an Out-of-Time Appeal was not served upon the parties, the Butricks. The Butricks were not included in the Certificate of Service. M. R. App. P. 10(2). This lack of service was highlighted in a January 26, 2021 letter from the Clerk of the Supreme Court when we handled the request for disqualification of judge. We further observe that the District Court included all names on its Orders; however, it is not clear whether the Butricks received any legal notice to be a party in the underlying case. Chad may seek a temporary restraining order against other individuals, possibly in a separate proceeding, but he needs to perfect service to all parties.

We secured a copy of the court's register of actions. The District Court has scheduled a hearing on all pending motions for March 11, 2021. Instead of perpetuating this incorrect attempt at an appeal, we choose to end it. We conclude that Chad is not entitled to pursue this appeal. Therefore,

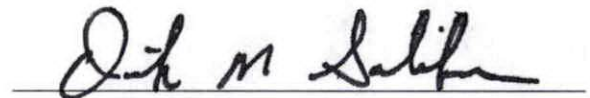
IT IS ORDERED that Chad's Petition for an Out-of-Time Appeal is DENIED and DISMISSED.

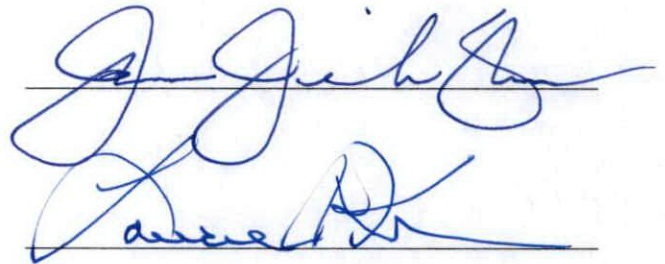
The Clerk of the Supreme Court is directed to close this case as of the date of this Order.

The Clerk is also directed to provide a copy of this Order to counsel of record and to Chad Stone personally.

DATED this 9th day of March, 2021.


Chief Justice






Justices