

**STATE OF MINNESOTA**  
**IN COURT OF APPEALS**

**FILED**

April 19, 2016

**OFFICE OF  
APPELLATE COURTS**

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In re the Estate of:  
Marlyn A. Callanan, Decedent

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**ORDER**  
**A16-0441**

Considered and decided by Cleary, Chief Judge; Peterson, Judge; and Bjorkman, Judge.

**BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND FOR THE FOLLOWING REASONS:**

This appeal was filed on March 16, 2016. Appellant Rhonda J. Callanan seeks review of an order filed on January 8, 2016, that granted a petition by respondents Jennifer Stevens and Richard Callanan to determine the heirs entitled to a residuary devise under the will of Marlyn Callanan. On January 12, 2016, judgment was entered pursuant to the January 8, 2016 order. This court questioned whether the appeal is timely. Appellant and respondent Jennifer Stevens filed informal memoranda.

The January 8, 2016 order and the resulting judgment entered on January 12, 2016, are appealable under Minn. Stat. § 525.71(a)(8) (2014). Unless a different time is provided by statute, an appeal from a judgment may be taken within 60 days after its entry, and from an appealable order within 60 days after any party serves written notice of its filing. Minn. R. Civ. App. P. 104.01, subd. 1.

The probate statute provides a different time to appeal. In a probate matter, the appeal shall be taken under the rules of appellate procedure by any person aggrieved after

service by any party of written notice of filing of the order, judgment, or decree appealed from, or if no written notice is served, within six months after the filing of the order, judgment, or decree. Minn. Stat. § 525.712 (2014).

At a minimum, a party's notice must be a separate writing that calls to the attention of the recipient what it is that has been filed and when. *Rieman v. Joubert*, 376 N.W.2d 681, 684 (Minn. 1985). On January 15, 2016, Stevens electronically filed a document captioned as a "notice of entry of order." The notice states that on January 8, 2016, an order was filed on the petition to construe the will and that a summary judgment was entered on January 12, 2016. The notice specifies the purpose of the notice is to "limit time for appeal and for posttrial motions."

Because Stevens's January 15, 2016 notice was a separate writing that specified the filing of the order on January 8, 2016, and the entry of judgment on January 12, 2016, the notice was effective to commence the 60-day appeal period under Minn. Stat. § 525.712.

Appellant's counsel registered for use of the district court's electronic-service system. A registered user shall maintain a designated e-mail address for receiving electronic service and court notices for the duration of any case in which he or she has electronically transmitted a document for filing as a party or participant and until all applicable appeal periods have expired. Minn. R. Gen. Pract. 14.02(b)(4).

Service is complete upon completion of the electronic transmission of the document to the e-filing system notwithstanding whether the court administrator

subsequently rejects the document for filing. Minn. R. Gen. Pract. 14.03(e). Stevens's service of the notice was complete at 3:53 p.m. on January 15, 2016, when the notice was electronically transmitted to the district court's e-filing system. Service was effective on January 15, 2016, despite appellant's counsel's nonreceipt of the notice due to counsel's failure to maintain a current e-mail address on the system.

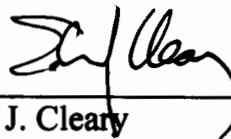
Because Stevens's electronic service of the notice was effective on January 15, 2016, the appeal period expired 60 days thereafter, on March 15, 2016. This appeal was filed electronically on March 16, 2016. We must dismiss this untimely appeal. *See* Minn. R. Civ. App. P. 126.02 (prohibiting appellate court from extending time to file notice of appeal); *Township of Honner v. Redwood County*, 518 N.W.2d 639, 641 (Minn. App. 1994) (holding that court of appeals lacks jurisdiction to consider untimely appeal), *review denied* (Minn. Sept. 16, 1994).

**IT IS HEREBY ORDERED:**

1. This appeal is dismissed.
2. The clerk of the appellate courts shall provide copies of this order to the Honorable Kurt D. Johnson, counsel of record, and the district court administrator.

Dated: April 19, 2016

**BY THE COURT**



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Edward J. Cleary  
Chief Judge