

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-478

NOVEMBER TERM, 2004

	}	APPEALED FROM:
	}	
Nicolette Gomez	}	Windsor Superior Court
	}	
v.	}	
	}	DOCKET NO. 601-12-01 Wrcv
Okemo Mountain, Inc. and Kevin	}	
Farley	}	
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Defendant Okemo Mountain Inc. has moved to dismiss the appeal filed by plaintiff Nicolette Gomez on the grounds that it was untimely. Plaintiff's complaint alleged that she sustained personal injuries when defendant Kevin Farley accidentally pushed her from a ski lift at the Okemo Mountain ski facility. Farley was a part-time employee of Okemo at the time, assisting customers in the boot shop. His compensation included a free ski pass, which he was using at the time of the incident.

Defendant Okemo moved for summary judgment on the ground that Farley was not acting within the scope of his employment at the time of incident. On May 16, 2003, the court issued a written decision, granting the motion with respect to two of the three counts against Okemo, and on September 3, 2003, the court issued a second decision granting summary judgment on the third count. On September 12, 2003, Okemo moved for entry of final judgment under V.R.C.P. 54(b). (court may "direct entry of a final judgment" as to one or more but fewer than all claims or parties upon express determination that there is no just reason for delay). On September 15, 2003, the court entered a "partial judgment order," finding that there was no just reason to delay entry of judgment in favor of Okemo. Accordingly, the court dismissed the action against Okemo, and entered judgment in its favor. On September 22, 2003, plaintiff filed an objection to the partial judgment order, objecting to the award of costs. On October 16, 2003, thirty-one days after entry of the partial judgment order, plaintiff filed a "notice of intent to appeal."¹

Okemo asserts that the appeal was untimely under V.R.A.P. 4, which provides that an appeal must be filed within thirty days of the entry of judgment. A judgment entered under V.R.C.P. 54(b) is a final judgment for purposes of appeal, and starts the time running for the filing of an appeal under V.R.A.P. 4. Hospitality Inns. v. South Burlington R.I., 149 Vt. 653, 654 (1988). Although the order here was labeled a "partial" judgment order, there is no question that it disposed of all claims against Okemo, and was entered as a final judgment under Rule 54(b) in favor of Okemo and against plaintiff. Plaintiff's filing of the subsequent objection to the award of costs did not toll the appeal period. See id. (listing motions that terminate running of the time for filing an appeal). Accordingly, we are compelled to conclude that the appeal was untimely, and must be dismissed. See Turner v. Turner, 160 Vt. 646, 647 (1993) (mem.) (this Court lacks jurisdiction of an appeal where notice is untimely filed).

Appeal dismissed.

FOR THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Paul L. Reiber, Associate Justice

Footnote

1. The docketing of the appeal in the trial court was apparently delayed for nearly one year.