

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

704

CA 18-00682

PRESENT: CENTRA, J.P., LINDLEY, NEMOYER, TROUTMAN, AND WINSLOW, JJ.

THOMAS H. O'NEILL, JR., PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

ROSE R. O'NEILL, DEFENDANT-APPELLANT.
(APPEAL NO. 5.)

SCHOEMAN UPDIKE KAUFMAN & GERBER LLP, NEW YORK CITY (BETH L. KAUFMAN OF COUNSEL), AND KENNEY SHELTON LIPTAK & NOWAK LLP, BUFFALO, FOR DEFENDANT-APPELLANT.

LAW OFFICE OF RALPH C. LORIGO, WEST SENECA, JAMES P. RENDA, BUFFALO, FOR PLAINTIFF-RESPONDENT.

Appeal from an order of the Supreme Court, Erie County (Donna M. Siwek, J.) entered January 12, 2011. The order, among other things, denied defendant's application seeking maintenance arrears.

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: On appeal from an order that, inter alia, denied her application for maintenance arrears, among other things, we reject defendant's contention that her appeal is timely. Plaintiff served defendant's attorney with a copy of the order with notice of entry by mail on March 10, 2011. Defendant filed a notice of appeal on September 7, 2017, outside the time period prescribed by CPLR 5513. We recognize that a slightly different version of the order also existed, and a copy of that version was not served with notice of entry until much later. Although that version contained an additional ordering paragraph, the language in that paragraph "merely clarified" the original order, and therefore "the time to appeal must be measured from the original [order]" (*Matter of Kolasz v Levitt*, 63 AD2d 777, 779 [3d Dept 1978]). Inasmuch as the appeal from the original order was untimely, we dismiss the appeal (*see id.*).

Entered: July 31, 2019

Mark W. Bennett
Clerk of the Court