

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

JIMMY R. TURNER,)
Plaintiff/Appellee) No. 01S01-9610-CV-00203
)
)
v.) SEQUATCHIE COUNTY CIRCUIT
)
TRAVELERS INSURANCE,) HON. BUDDY J. FERRY, JUDGE
Defendant/Appellant)
_____)

FILED
November 7, 1997
Cecil W. Crowson
Appellate Court Clerk

FOR THE APPELLANT:

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MEMORANDUM OPINION

MEMBERS OF PANEL

LYLE REID, ASSOCIATE JUSTICE, SUPREME COURT
W. MICHAEL MALOAN, CHANCELLOR, SPECIAL JUDGE
WILLIAM S. RUSSELL, RETIRED JUDGE

APPEAL DISMISSED

RUSSELL, SP. J.

This appeal in a workers' compensation case has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated Section 50-6-225 (e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

This case was tried on March 25, 1996. By a judgment dated June 26, 1996 and filed two days later the judge found that the compensation rate was \$382.79 a week, that all temporary total disability benefits had been paid, and that the plaintiff sustained permanent partial disability to the body as a whole of 48% (which entitled him to \$73,495.68); and certain other benefits.

The defendant FAXed its Notice of Appeal to the Circuit Court Clerk on July 26, 1996. An appeal bond was filed on August 10, 1996.

On September 14, 1996, counsel for the defendant/appellant filed this motion:

Motion to Vacate and Re-enter Judgment

Defendant, Travelers Insurance Company, by and through its legal counsel, files this motion pursuant to Rule 60 of the Tennessee Rule of Civil Procedures and requests that

the court vacate the judgment filed on June 28, 1996, and re-enter that judgment. A memorandum of law in support of the motion is submitted contemporaneously herewith.

In its memorandum of law the appellant argued that its filing by FAX of the Notice of Appeal was sufficient to perfect its appeal under the holding of Cruse v. City of Columbia, 922 S.W. 2d 492 (Tenn. 1996), but "out of an abundance of caution and to further preserve defendant's appeal" the appellant cites to the trial court Rule 60.02 of the Tennessee Rules of Civil Procedure as an available vehicle for obtaining the re-entry of the judgment "so as to start anew the time for appeal". Appellant relied upon Jenkins v. McKinney, 533 S.W. 2d 275 (Tenn. 1976), as authority for this procedure, and asserted that Rule 60.02 permitted it. The memorandum conceded that on August 5, 1995, this court issued its opinion in the case of Love v. College Assessment Services, Inc., 928 S.W. 2d 36 (Tenn. 1996), wherein it was held that a FAX transmission was insufficient to perfect an appeal from General Sessions Court to Circuit Court.

Another Notice of Appeal was filed on October 28, 1996; and an appeal bond was filed on October 28, 1996. On that same date the record reflects the entry of an order vacating and reentering the court's judgment pursuant to the defendant/appellant's motion.

We thus confront the dispositive issues arising from this appeal. First, we consider whether the timely FAXed Notice of Appeal was effective; and if not, whether this procedural defect was one that could be avoided by a Rule 60 process.

Addressing the first issue we hold that this court made it abundantly clear in Cruse that counsel should not rely on facsimile transmissions for the filing of documents in the future. Cruse was filed on May 6, 1996, more than two months before the Notice of Appeal was FAXed in this case. The Love, case, although not filed until ten days after the Notice of Appeal was FAXed in this case, is important for the footnote:

Our recent decision in Cruse v. City of Columbia, 922 S.W. 2d 492 (Tenn. 1996), does not conflict with this opinion because that decision was based on "the unique circumstances presented". Furthermore, we specifically stated that "counsel should not rely on facsimile transmissions for the filing of documents in the future." Cruse, 922 S.W. 2d at 493.

We now consider whether or not Rule 60.02 allows the trial judge the discretion to relieve an attorney from the consequences of erroneously timely filing only by facsimile transmission a Notice of Appeal. We hold that it does not.

Rule 60.02, in pertinent part, reads:

Mistake - Inadvertence - Excusable Neglect - Fraud, etc. -

On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; * * * * (5) any other reason justifying relief from the operation of the judgment. * * * * *

While it has been held that Rule 60.02 is available to persons who fail to timely file a Notice of Appeal, the same case

holds that the mere fact that a lawyer is ignorant of the rules or mistakenly reads the rules is not within itself reason to invoke Rule 60.02 (1). Kilby v. Sivley, 745 S.W. 2d 284. (Tenn. App. 1987). Counsel's ignorance of law or Rules was held not to justify Rule 60 relief in Food Lion, Inc. v. Washington County Beer Board, 700 S.W. 2d 893 (Tenn. 1985) and Algee v. State Farm Gen. Ins. Co., 890 S.W. 2d 445 (Tenn. App. 1994).

Rule 60.02 (5), despite its broad language, is construed narrowly. Its standards are more demanding than those applicable to other grounds for Rule 60.02 relief. NCNB v. National Bank of Thrailkill, 856 S.W. 2d 150 (Tenn. App. 1963).

We hold that it was error for the trial judge to vacate and reinstate the court's judgment so as to give the appellant the opportunity to prosecute this appeal when no valid Notice of Appeal was timely filed. The appeal is dismissed, with costs assessed to the appellant.

WILLIAM S. RUSSELL, SPECIAL JUDGE

CONCUR:

LYLE REID, ASSOCIATE JUSTICE

W. MICHAEL MALOAN, SPECIAL JUDGE

IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

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JIMMY R. TURNER,	}	SEQUATCHIE CIRCUIT
	}	No. 6674 Below
Plaintiff/Appellee	}	
	}	Hon. Buddy D. Perry,
vs.	}	Judge
	}	
TRAVELERS INSURANCE	}	No. 01S01-9610-CV-00203
	}	
Defendant/Appellant	}	APPEAL DISMISSED.

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Travelers Insurance and their Surety, for which execution may issue if necessary.

IT IS SO ORDERED on November 7, 1997.

PER CURIAM