

SUPREME COURT OF KENTUCKY

Norwest Bank Minnesota, N.A. v. Hurley

103 S.W.3d 21 (Ky. 2003) · Decided April 24, 2003

SUMMARY

The Kentucky Supreme Court reversed the dismissal of Norwest Bank Minnesota, N.A.'s appeal as untimely. The court held that the notice of appeal was timely filed even though the filing fee check was initially unsigned and payment was completed after the filing date. Under Kentucky Rule of Civil Procedure 73.02(2), violations of appellate rules other than the timely filing requirement are subject to the appellate court's discretion rather than automatic dismissal.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Johnstone; Chief Justice Lambert; Justice Cooper; Justice Graves; Justice Keller; Justice Stumbo; Justice Wintersheimer
JURISDICTION	Kentucky
DECIDED	April 24, 2003
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Norwest sought discretionary review of the Kentucky Court of Appeals' dismissal of its appeal as untimely after the circuit clerk docketed the notice of appeal before receiving a signed filing-fee check.
PRECEDENTIAL VALUE	Published Kentucky Supreme Court opinion; precedential
PARTIES	Norwest Bank Minnesota, N.A. v. Darrel Hurley

TOPICS

appellate procedure

final judgment rule

civil procedure

foreclosure

PRACTICE AREAS

Appellate procedure

Civil procedure

Real estate foreclosure

QUESTIONS PRESENTED

1. Whether the Court of Appeals was required to dismiss Norwest's appeal because the filing fee was not recorded as paid until after the thirty-day appeal period.

2. Whether CR 73.02(2) permits an appellate court to impose a sanction other than automatic dismissal when a notice of appeal was timely filed but another appellate-rule requirement was not satisfied.
3. Whether the erroneous identification of the order and date in Norwest's notice of appeal required dismissal.

HOLDINGS

1. Automatic dismissal was not required because Norwest's notice of appeal was timely filed; the failure to comply with another appellate-rule requirement was subject to the appellate court's discretionary sanction authority under CR 73.02(2).
2. The erroneous designation of the order and date did not require dismissal where the notice otherwise identified the appeal from the final order and the Court of Appeals had treated the error as saved by substantial compliance.

KEY QUOTATIONS

“In the case at bar, the Court of Appeals concluded that Foxworthy and Excel Energy could not be construed consistently with each other:” (23)

“Therefore, we hold that automatic dismissal of Norwest’s appeal was not appropriate under either CR 73.02 or Excel Energy.” (24)

“For the reasons set forth above, we reverse the decision of the Court of Appeals and remand this case for a decision on the merits.” (24)

FACTUAL BACKGROUND

Norwest instituted a foreclosure action against Hurley and failed to respond to Hurley's interrogatories and document requests. The circuit court ordered Norwest to provide discovery within ten days, but Norwest failed to comply, prompting Hurley to move for dismissal with prejudice. The circuit court granted the motion and awarded \$750 in attorney's fees. Norwest filed a notice of appeal within thirty days of the dismissal order, but its counsel's filing-fee check was initially unsigned; the clerk nevertheless docketed the notice when received and recorded payment after a signed check was submitted.

PROCEDURAL HISTORY

Norwest filed a foreclosure action against Hurley. After Norwest failed to comply with a discovery order, the circuit court dismissed the action with prejudice and awarded Hurley attorney's fees. Norwest filed a notice of appeal that identified the wrong order and was accompanied by an unsigned check; the circuit clerk docketed the notice on April 20, 2000, and recorded payment on May 9, 2000. The Court of Appeals dismissed the appeal as untimely, and the Supreme Court of Kentucky granted discretionary review, reversed, and remanded for a decision on the merits.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the Kentucky Court of Appeals for a decision on the merits of Norwest's appeal.

CASES CITED

- Foxworthy v. Veneers, 816 S.W.2d 907 (Ky. 1991)
- Excel Energy, Inc. v. Commonwealth Institutional Securities, Inc., 37 S.W.3d 713 (Ky. 2001)
- Dubost v. U.S. Patent and Trademark Office, 777 F.2d 1561 (Fed. Cir. 1985)

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