SUPREME COURT OF ILLINOIS

Huber v. American Accounting Association

Huber v. American Accounting Ass'n, 2014 IL 117293 (Ill. 2014) · No. 117293 · Decided December 29, 2014

SUMMARY

The Illinois Supreme Court affirmed dismissal of an appeal for lack of jurisdiction because the appellant's notice of appeal was received after the 30-day deadline and was not supported by the attorney certificate or nonattorney affidavit required to establish timely mailing. The court held that an Automated Postal Center postage label showing only a date of sale did not establish the date the notice was mailed.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice Theis; Chief Justice Garman; Justice Freeman; Justice Thomas; Justice Kilbride; Justice Karmeier; Justice Burke
JURISDICTION	Illinois
DECIDED	December 29, 2014
DOCKET	117293
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiff appealed the dismissal of his petition for judicial dissolution of a corporation. The Illinois Appellate Court dismissed the appeal for lack of jurisdiction because the notice of appeal was received after the 30-day deadline and plaintiff had not supplied the certificate or affidavit required to prove timely mailing. The Illinois Supreme Court granted leave to appeal and affirmed.
STANDARD OF REVIEW	De novo review of whether the appellate court properly applied the Illinois Supreme Court Rules governing the timeliness and proof of mailing of a notice of appeal.
PRECEDENTIAL VALUE	published Illinois Supreme Court opinion
PARTIES	William Dennis Huber v. American Accounting Association

TOPICS

appellate procedure · appellate jurisdiction · final judgment rule · civil procedure · dissolution

PRACTICE AREAS

appellate procedure · civil procedure · corporate law

QUESTIONS PRESENTED

1. Whether a notice of appeal received after the 30-day filing deadline may be deemed timely based on the mailing date.
2. Whether an Automated Postal Center postage label showing only a date of sale establishes timely mailing under Illinois Supreme Court Rules 373 and 12(b)(3).
3. Whether the absence of the required attorney certificate or nonattorney affidavit deprived the appellate court of jurisdiction.

HOLDINGS

1. A notice of appeal received after the 30-day deadline may be deemed timely if it was mailed on or before the deadline, but timely mailing must be proven as required by Illinois Supreme Court Rules 373 and 12(b)(3).
2. An Automated Postal Center postage label showing a date of sale does not establish the date on which a notice of appeal was placed in the mail and accepted into postal custody.
3. Because timely filing of a notice of appeal is jurisdictional, the appellate court must dismiss an appeal when the notice is not timely filed.

KEY QUOTATIONS

> *"In the absence of a properly filed notice of appeal, the appellate court lacks jurisdiction and must dismiss the appeal."* (¶ 8)

> *"Plaintiff's failure to do so rendered his notice of appeal, received after the 30-day deadline, untimely."* (¶ 19)

FACTUAL BACKGROUND

Huber filed a petition seeking judicial dissolution of the American Accounting Association. After the circuit court dismissed his second-amended petition on March 6, 2013, Huber mailed a notice of appeal that the circuit clerk received on April 9, 2013, after the April 5 deadline. The envelope contained an Automated Postal Center postage label showing only a date of sale of April 3, 2013, and Huber supplied neither an attorney certificate nor a nonattorney affidavit proving the time and place of mailing.

PROCEDURAL HISTORY

Huber filed a petition in the Sangamon County circuit court seeking judicial dissolution of the American Accounting Association. The circuit court dismissed his second-amended petition under section 2-619 of the Code of Civil Procedure on March 6, 2013. Huber's notice of appeal was received on April 9, 2013, four days after the filing deadline; the appellate court dismissed the appeal for lack of jurisdiction. The Illinois Supreme Court affirmed that dismissal.

DISPOSITION

affirmed

CASES CITED

- General Motors Corp. v. Pappas, 242 Ill. 2d 163, 176 (2011)
- Harrisburg-Raleigh Airport Authority v. Department of Revenue, 126 Ill. 2d 326, 341 (1989)
- Chand v. Schlimme, 138 Ill. 2d 469, 476 (1990)
- People v. Thompson, 238 Ill. 2d 598, 606 (2010)
- People v. Hansen, 2011 IL App (2d) 081226, ¶ 14
- People v. Lugo, 391 Ill. App. 3d 995, 1000 (2009)
- People v. Blalock, 2012 IL App (4th) 110041, ¶ 11
- Wickman v. Illinois Property Tax Appeal Board, 387 Ill. App. 3d 414, 417 (2008)
- Darden v. Daniel, 2009-1097 (La. 9/4/09), 16 So. 3d 1162, 1163 (per curiam)
- McNamara v. Ohio Department of Job & Family Services, 2010 Ohio 5619, ¶ 3
- Secura Insurance Co. v. Illinois Farmers Insurance Co., 232 Ill. 2d 209, 216 (2009)