

SUPREME COURT OF VERMONT

Coles v. Coles

193 Vt. 605 (2013) · No. 2011-322 · Decided May 24, 2013

SUMMARY

The Vermont Supreme Court affirmed the denial of a father's motion to reopen the time for appealing a maintenance and child-support order under Vermont Rule of Appellate Procedure 4(c). The court held that notice is received when delivered to the party's or counsel's mailbox, not when the mail is opened, and that an attorney's vacation or failure to open mail does not constitute excusable neglect.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Burgess, J.; Reiber, C.J.; Dooley, J.; Skoglund, J.; Robinson, J.
JURISDICTION	Vermont
DECIDED	May 24, 2013
DOCKET	2011-322
DISPOSITION	affirmed
PROCEDURAL POSTURE	Tedley Coles appealed the Vermont Superior Court, Washington Unit, Family Division's denial of his motion under Vermont Rule of Appellate Procedure 4(c) to reopen the time for appealing a maintenance and child-support order.
STANDARD OF REVIEW	Not expressly stated; the Supreme Court independently interpreted Vermont Rule of Appellate Procedure 4(c).
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Tedley Coles v. Suzanne Coles

TOPICS

- appellate procedure
- final judgment rule
- preservation of error
- civil procedure
- family law procedure

PRACTICE AREAS

- appellate procedure
- civil procedure
- family law

QUESTIONS PRESENTED

1. Whether a party or counsel receives notice of a judgment or order under Vermont Rule of Appellate Procedure 4(c) when the document is delivered to the party's or counsel's mailbox, rather than when it is actually opened or read.
2. Whether father's failure to establish the date the order arrived in the mailbox satisfied Rule 4(c)'s requirements for reopening the appeal period.
3. Whether absence from the office during vacation and failure to open delivered mail constituted excusable neglect under Vermont Rule of Appellate Procedure 4(d).

HOLDINGS

1. For purposes of reopening the time to appeal under V.R.A.P. 4(c), notice is received when the order is delivered to the litigant's address or, when represented by counsel, to counsel's address; actual opening or reading of the mail is not required.
2. Father failed to establish that notice did not arrive within twenty-one days of entry and therefore failed to satisfy the threshold requirements of Rule 4(c); he also failed to establish that his motion was filed within seven days after actual mailbox receipt.
3. The court declined to consider father's excusable-neglect argument because it was not raised below; in any event, being away from delivered mail during vacation or failing to open mail, without more, is not excusable neglect.

KEY QUOTATIONS

“We similarly conclude that the “receipt” of notice contemplated under Rule 4(c) is receipt in a party’s mailbox.” (¶ 8)

“The judiciary is not entitled to add time just because a litigant fails to open or read his mail.” (¶ 8)

“Jurisdictional time limits do not and cannot depend on the vagaries of an attorney’s vacation schedule.” (¶ 10)

FACTUAL BACKGROUND

The parties divorced in February 2010, and Tedley Coles was ordered to pay child support and spousal maintenance. After motions to modify those obligations, the family division entered a February 22, 2011 order decreasing child support but increasing spousal maintenance. The order and an acceptance-of-service form were mailed on March 14, 2011; father's attorney was on vacation beginning March 17 and moved to reopen the appeal period after returning and opening his mail on April 4.

PROCEDURAL HISTORY

After the family division entered an order modifying child support and spousal maintenance, the clerk mailed the order to the parties. Father's attorney moved to reopen the appeal period after returning from vacation and opening his mail, asserting that he had not received notice within twenty-one days of entry. The trial court initially granted the motion, but after reconsideration denied relief, and the Vermont Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Khor Chin Lim v. Courtcall Inc., 683 F.3d 378 (7th Cir. 2012)
- Rule v. Tobin, 168 Vt. 166, 169, 719 A.2d 869, 871 (1998)
- Bull v. Pinkham Eng'g Assocs., 170 Vt. 450, 459, 752 A.2d 26, 33 (2000)
- In re Town of Killington, 2003 VT 87A, ¶ 17, 176 Vt. 60, 838 A.2d 98
- Bergeron v. Boyle, 2003 VT 89, ¶ 22, 176 Vt. 78, 838 A.2d 918
- In re Lund, 2004 VT 55, ¶ 7, 177 Vt. 465, 857 A.2d 279 (mem.)

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