

SUPREME COURT OF DELAWARE

Cahall v. Thomas

889 A.2d 966 (Del. 2005) · No. No. 303, 2005 · Decided September 16, 2005

SUMMARY

The Delaware Supreme Court granted in part the appellee's motion to dismiss the Cahalls' appeal from the jury verdict as untimely. The court held that the jury's verdict became a final, appealable order when the Superior Court denied the motion for a new trial, and that a pending motion for costs did not suspend finality or extend the appeal period. The appeal was therefore dismissed as to the jury verdict, while the appeal concerning costs was permitted to proceed.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Holland, Justice; Berger, Justice; Ridgely, Justice
JURISDICTION	Delaware
DECIDED	September 16, 2005
DOCKET	No. 303, 2005
DISPOSITION	dismissed
PROCEDURAL POSTURE	The appellee moved to dismiss in part an appeal from a jury verdict as untimely. The Supreme Court of Delaware granted the motion as to the jury verdict and directed that the appeal proceed only on the issue of costs.
STANDARD OF REVIEW	The court treated the timeliness of the notice of appeal as jurisdictional and applied established Delaware precedent governing finality of judgments.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Barbara Ann Cahall, Ronald E. Cahall v. Debbie D. Thomas

TOPICS

- appellate jurisdiction
- final judgment rule
- appellate procedure
- civil procedure

PRACTICE AREAS

- Appellate procedure
- Civil procedure

QUESTIONS PRESENTED

1. Whether a pending motion for costs delayed the finality of the Superior Court's judgment or extended the time to appeal the jury verdict.
2. Whether the Cahalls' appeal from the jury verdict was timely when filed after the Superior Court ruled on the motion for costs rather than within thirty days after denial of the motion for a new trial.

HOLDINGS

1. A pending motion for costs does not delay the finality of a judgment on the merits.
2. The jury verdict became a final, appealable order when the Superior Court denied the motion for a new trial on July 16, 2004, and the Cahalls' failure to file a notice of appeal within the required thirty-day period deprived the Supreme Court of jurisdiction to review the verdict.

KEY QUOTATIONS

“The pendency of a motion for costs ... does not delay the finality of a judgment on the merits.” (968)

“The Cahalls' failure to properly notice an appeal from the jury's verdict within the required time period deprives this Court of jurisdiction to review the jury's verdict in this appeal.” (968)

FACTUAL BACKGROUND

Thomas's vehicle struck Barbara Cahall's vehicle from behind. Following trial, the jury awarded Barbara Cahall \$2,500 but made no award to Ronald Cahall on his loss-of-consortium claim. The Superior Court denied the Cahalls' motion for additur or a new trial on July 16, 2004, and later ruled on Thomas's motion for costs.

PROCEDURAL HISTORY

The Cahalls sued Thomas in the Delaware Superior Court for bodily injury and loss of consortium arising from an automobile accident. After the jury awarded Barbara Cahall \$2,500 and awarded nothing to Ronald Cahall, the Cahalls moved for additur or a new trial; the Superior Court denied that motion on July 16, 2004. They appealed that ruling in Cahall I, and after the mandate issued, filed the present appeal from a later costs ruling while also attempting to appeal the March 10, 2004 jury verdict. The Supreme Court held that the appeal from the verdict was untimely because the motion for costs did not suspend finality.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The Clerk was directed to establish a briefing schedule on the Cahalls' appeal with respect to the issue of costs only.

CASES CITED

- Cahall v. Thomas, 873 A.2d 1099 (Del. 2005)
- Trowell v. Diamond Supply Co., 91 A.2d 797 (Del. 1952)
- Emerald Partners v. Berlin, 811 A.2d 788 (Del. 2001)
- McDaniel v. DaimlerChrysler Corp., 860 A.2d 321 (Del. 2004)

OPINION

HOLLAND, J.

889 A.2d 966 (2005) Barbara Ann CAHALL and Ronald E. Cahall, Plaintiffs Below-Appellants, v. Debbie D. THOMAS, Defendant Below-Appellee. No. 303,2005. Supreme Court of Delaware. Submitted: July 28, 2005. Decided: September 16, 2005. Beverly L. Bove, Esquire and Vincent J.X. Hedrick II, Esquire, Wilmington, Delaware for the appellants. Donald Ransom, Esquire, Casarino, Christman & Shalk, Wilmington, Delaware for the appellee.

Before HOLLAND, BERGER and RIDGELY, Justices. *967 HOLLAND, Justice. Pending before the Court is appellee Debbie Thomas' motion to dismiss that portion of appellants Barbara and Ronald Cahall's appeal from the jury's verdict entered on March 10, 2004. Thomas asserts that the Cahalls' appeal from the jury's verdict should have been filed within thirty days of the Superior Court's order denying the Cahalls' motion for a new trial.

The order denying the motion for new trial was entered July 16, 2004. Thomas contends that this Court is without jurisdiction to review the jury's verdict because the Cahalls did not timely perfect an appeal from the Superior Court's final judgment.

We agree. Accordingly, the Cahalls' appeal from the jury's verdict must be dismissed. Procedural History The Cahalls are husband and wife. They filed a complaint against Thomas in the Superior Court asserting a claim for bodily injury by Barbara Cahall and a claim for loss of consortium by Ronald Cahall.

The claims arose from an automobile accident in which Thomas' vehicle struck Barbara Cahall's vehicle from behind. Following a trial in the Superior Court, the jury returned its verdict on March 10, 2004 in favor of Barbara Cahall in the amount of \$2,500 but made no award to Ronald Cahall on his loss of consortium claim.

The Cahalls filed a motion for additur or, in the alternative, for a new trial on the issue of damages. On July 16, 2004, the Superior Court denied the Cahalls' motion. On August 13, 2004, the Cahalls filed a notice of appeal, in case No. 350, 2004 ("Cahall I"), from the Superior Court's denial of their motion for additur or a new trial.

In their opening brief on appeal in Cahall I, the Cahalls raised five issues, only two of which related to the Superior Court's denial of their motion for additur or a new trial. As a result of the Cahalls notice of appeal, which was expressly limited to the Superior Court's denial of their

motion for additur or a new trial, the Court concluded, based on well-settled law, that it did not have jurisdiction to consider the Cahalls' other issues.[1] We affirmed the Superior Court's denial of the Cahalls' motion for new trial.

After the mandate issued in Cahall I, the Superior Court ruled upon Thomas' motion for costs, which had been filed in March 2004. On June 22, 2005, the Superior Court granted in part and denied in part Thomas' motion for costs. Thereafter, the Cahalls filed a notice of appeal in the present case, purporting to appeal not only from the Superior Court's June 22, 2005 ruling on Thomas' motion for costs, but also from the jury verdict entered on March 10, 2004.

Thomas' Motion to Dismiss Thomas has filed a motion to dismiss, in part, the Cahalls' appeal on the ground that their appeal from the jury's verdict is *968 untimely because it was not filed within thirty days of the Superior Court's final judgment, which was the denial of the motion for new trial.[2] Thomas asserts that the pending motion for costs did not suspend the finality of the Superior Court's judgment.[3] Thus, according to Thomas, this Court lacks jurisdiction to hear the Cahalls' untimely appeal from the jury's verdict.

Our ruling on Thomas' motion is dictated by established precedent. In *Emerald Partners v. Berlin*, [4] the appellees moved to dismiss that appeal as interlocutory because the notice of appeal was filed before the trial court ruled on a pending motion for costs.

We denied the motion to dismiss, holding that "the pendency of a motion for costs... does not delay the finality of a judgment on the merits." [5] We reiterated this point in *McDaniel v. DaimlerChrysler Corp.* [6] when we granted the appellees' motion to dismiss the appeal on the ground that notice of appeal was not filed within thirty days of the Superior Court's entry of summary judgment.

We rejected *McDaniel's* contention that a pending motion for costs suspended the finality of the trial court's summary judgment ruling.[7] In light of this clear precedent, Thomas' motion to dismiss in part must be granted.

The Cahalls should have filed their notice of appeal from the jury's verdict within thirty days after the Superior Court's entry of final judgment in this case. The jury's verdict in this case became a final, appealable order on July 16, 2004 when the Superior Court denied the Cahalls' motion for new trial.

The Cahalls' failure to properly notice an appeal from the jury's verdict within the required time period deprives this Court of jurisdiction to review the jury's verdict in this appeal. Consequently, Thomas' motion to dismiss in part is GRANTED.

The Clerk of the Court is directed to establish a brief schedule on the Cahalls' appeal with respect to the issue of costs only. NOTES [1] *Cahall v. Thomas*, 2005 WL 1175940, 873 A.2d 1099

(Del.Supr. May 16, 2005) (citing *Trowell v. Diamond Supply Co.*, 91 A.2d 797 (Del.1952)).

[2] See Del.Supr. Ct. R. 6(a)(i). [3] See *Emerald Partners v. Berlin*, 811 A.2d 788 (Del.2001). [4] *Id.* [5] *Id.* at 791. [6] 860 A.2d 321 (Del.2004). [7] *Id.* at 323.