

SUPREME COURT OF DELAWARE

Benner v. Correctional Medical Services

974 A.2d 857 (Del. 2009) · No. No. 89, 2009 · Decided May 22, 2009

SUMMARY

The Delaware Supreme Court dismissed Lawrence Benner’s appeal as untimely. The Court held that filing a notice of appeal with the Superior Court does not satisfy the jurisdictional requirement that the notice be received by the Supreme Court Clerk or a county deputy clerk within the applicable period, absent court-related fault causing the delay.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Myron T. Steele, Chief Justice; Henry duPont Ridgely, Justice; William B. Chandler III, Justice
JURISDICTION	Delaware
DECIDED	May 22, 2009
DOCKET	No. 89, 2009
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from the Superior Court's dismissal of a civil complaint; the Supreme Court issued a notice to show cause why the appeal should not be dismissed as untimely.
PRECEDENTIAL VALUE	published
PARTIES	Lawrence Benner v. Correctional Medical Services

TOPICS

- appellate jurisdiction
- appellate procedure
- civil procedure

PRACTICE AREAS

- appellate procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether the appeal had to be dismissed because Benner's notice of appeal was not received by the Delaware Supreme Court within the applicable thirty-day period.

2. Whether filing the notice of appeal with the Superior Court within the appeal period satisfied the jurisdictional filing requirement.
3. Whether the untimely filing could be excused under the exception for delay attributable to court-related personnel.

HOLDINGS

1. Timely filing of a notice of appeal is a jurisdictional requirement, and the notice must be received by the Clerk of the Supreme Court or a Deputy Clerk within the applicable period.
2. Filing a notice of appeal with the Superior Court, rather than with the Supreme Court Clerk or a Deputy Clerk, does not comply with the jurisdictional requirement governing an appeal to the Supreme Court.
3. An untimely notice of appeal may be excused only when the appellant demonstrates that the delay was attributable to court-related personnel; Benner failed to make that showing.

KEY QUOTATIONS

“Time is a jurisdictional requirement. The Clerk of this Court, or a Deputy Clerk in any county, must receive a notice of appeal within the applicable time period.”

FACTUAL BACKGROUND

The Superior Court dismissed Benner's civil complaint on January 21, 2009. Although Benner filed a notice of appeal with the Supreme Court on February 23, 2009, he asserted that he had filed it with the Superior Court earlier in February. The record did not show that court-related personnel caused or contributed to the delay in filing with the Supreme Court.

PROCEDURAL HISTORY

The Superior Court dismissed Benner's civil complaint on January 21, 2009. Benner filed a notice of appeal on February 23, 2009, after the applicable thirty-day deadline, and argued that he had initially filed the notice with the Superior Court in early February. The Supreme Court concluded that filing with the Superior Court did not satisfy the jurisdictional filing requirement and dismissed the appeal.

DISPOSITION

dismissed

CASES CITED

- Carr v. State, 554 A.2d 778, 779 (Del. 1989)
- Smith v. State, 2002 WL 31109924 (Del. Supr.)
- Riggs v. Riggs, 539 A.2d 163, 164 (Del. 1988)

OPINION

PER CURIAM.

LAWRENCE BENNER, Plaintiff Below, Appellant, v. CORRECTIONAL MEDICAL SERVICES, Defendant Below, Appellee. No. 89, 2009. Supreme Court of Delaware. Submitted: March 20, 2009. Decided: May 22, 2009. Before STEELE, Chief Justice, HOLLAND and RIDGELY, Justices. ORDER Myron T. Steele, Chief Justice. This 22nd day of May 2009, upon consideration of the Clerk's notice to show cause why this appeal should not be dismissed as untimely filed, the appellant's response to the notice to show cause, and the State's memorandum in support of dismissal, it appears to the Court that: (1) On February 23, 2009, the appellant, Lawrence Benner, filed a notice of appeal from the Superior Court's January 21, 2009 dismissal of his civil complaint.

On its face, Benner's notice of appeal appeared to be untimely.[1] A notice of appeal from the Superior Court's January 21, 2009 dismissal should have been filed on or before February 20, 2009.[2] (2) On February 24, 2009, the Clerk issued a notice directing that Benner show cause why the appeal should not be dismissed as untimely.[3] In his response to the notice to show cause, Benner states that he filed his notice of appeal with the Superior Court in early February 2009, well within the thirty-day appeal period.

(3) "Time is a jurisdictional requirement." [4] The Clerk of this Court, or a Deputy Clerk in any county, must receive a notice of appeal within the applicable time period.[5] Filing a notice of appeal with the Superior Court within the applicable time period does not constitute compliance with the jurisdictional requirement governing this Court.[6] (4) Under Delaware law, the jurisdictional defect that was created by the untimely notice of appeal cannot be excused unless Benner can demonstrate that the delay in filing was attributable to court-related personnel.[7] It does not appear that Benner's case falls within the exception to the general rule that mandates the timely filing of a notice of appeal.

Benner has not demonstrated, and the record does not suggest, that court-related personnel are responsible for the untimely filing of his notice of appeal. NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rules 6 and 29(b), that the appeal is DISMISSED. NOTES [1] See Del. Sup. Ct. R. 6(a)(i) (providing that a notice of appeal in a civil case must be filed within thirty days of the entry upon the docket of the order from which the appeal is taken).

[2] Id. [3] Del. Supr. Ct. R. 29(b). [4] Carr v. State, 554 A.2d 778, 779 (Del. 1989). [5] Del. Supr. Ct. R. 6(a), 10(a). [6] E.g., Smith v. State, 2002 WL 31109924 (Del. Supr.). (dismissing untimely notice of appeal that appellant initially filed in error with the Superior Court).

[7] See Riggs v. Riggs, 539 A.2d 163, 164 (Del. 1988) (excusing untimely notice of appeal that appellant mistakenly filed with Family Court when actions of Family Court personnel in response to notice of appeal suggested to appellant that appeal was properly filed).

