



Unanimous Supreme Court Scolds Lower Court Over Appellate Deadline Rule

TRANSLATION: SICK SCOTUS BURN OVER HYPER-TECHNICAL LEGAL DISTINCTION INVOLVING BORING LAWYER STUFF

Insights

11.08.17

In a unanimous decision, the U.S. Supreme Court ruled today that a federal procedural rule that allows a district court to extend an appeal deadline by no more than 30 days is a non-jurisdictional, mandatory claims processing rule. While this is a generally inconsequential decision when it comes to workplace law, it is a decision about which every litigant and participant in the judicial system should be aware, as it could impact litigation options and strategy. While this decision might potentially lead to a slight uptick in extension requests from pro se plaintiffs and overall delays in commencing appeals, it may also have a marginal impact on appellate litigation (*Hamer v. Neighborhood Housing Services of Chicago, et al.*).

Employment Lawsuit Leads To Appellate Confusion

Charmaine Hamer worked as an intake specialist for Neighborhood Housing Services of Chicago and Fannie Mae. Hamer ultimately resigned her employment, and later filed a lawsuit in the U.S. District Court for the Northern District of Illinois alleging age discrimination, sex discrimination, and retaliation. After rigorous litigation, Hamer's former employers ultimately won summary judgment on all claims and had the claims dismissed. What seemed like the end of the road turned out to be the first step in a long appellate journey.

The following procedural events occurred over the next several years:

- On September 14, 2015, a final judgment was entered in favor of the employers. Pursuant to Federal Rule of Appellate Procedure (FRAP) 4(a)(1)(A), absent an extension, Hamer had until October 14, 2015 to file her notice of appeal.
- On October 8, 2015, **a week before** the original appeal deadline, Hamer timely filed a motion requesting a 60-day extension of the appeal deadline. The lower court **granted the 60-day extension**, making the new appeal deadline December 14, 2015.
- On December 11, 2015, three days **prior to the new appeal deadline** set by the lower court, she filed her appeal with the 7th Circuit Court of Appeals.
- The employers did not challenge the timeliness of the appeal. In fact, their docketing statement conceded that "Hamer filed a timely Notice of Appeal." After receiving briefs on both the procedural questions and the merits of the appeal, the 7th Circuit Court of Appeals **dismissed the**

procedural questions and the merits of the appeal, the 7th Circuit Court of Appeals **dismissed** the appeal on its own accord (a “sua sponte” action), holding the lower court lacked jurisdiction because the appeal was untimely.

- Hamer then appealed the dismissal to the United States Supreme Court, which accepted her case and heard arguments on October 10, 2017. Less than a month later, the SCOTUS issued its ruling.

Question Presented

The question before the Court was the proper characterization and application of FRAP 4(a)(5)(C), and whether that Rule is jurisdictional or whether it is subject to waiver, forfeiture, or equitable exceptions. At least three appellate courts (the 2nd, 4th, and 10th Circuits) had previously held that this rule was jurisdictional, which means it would serve as an absolute bar to proceeding on appeal. Meanwhile, two other appellate courts (the 9th and D.C Circuits) held that this rule was merely a non-jurisdictional, claims processing rule, and therefore subject to forfeiture, waiver and equitable exceptions.

While observers were hoping that the Court would decide whether a district court can only grant up to a 30-day extension of the deadline to file an appeal, or whether a district court has the power to grant a longer extension where good cause is shown, the Court did not go that far.

“Jurisdictional Rule” v. “Claims Processing Rule”

While the question of whether FRAP 4(a)(5)(C) is a “jurisdictional rule” or a “claims processing rule” might seem like a hyper-technical debate over semantics, this distinction has profound ramifications on litigators and lower courts. This nuanced legal debate arises from a quirk in legislative drafting.

The Rule itself (FRAP 4(a)(5)(C)) clearly states that an extension of the appeal deadline cannot exceed 30 days: *“No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time...”* However, the underlying enacting statute found at 28 U.S.C. § 2107(c) makes no mention of the 30-day cap. If the 30-day cap rule is found to be derived from the statute, then the rule is a “jurisdictional rule.” If the rule is not derived from the statute, then the 30-day cap rule is just a “mandatory claims processing” rule.

A jurisdictional rule determines whether a lower court has the authority to hear the case and decide the issues. Similar to a statute of limitations (e.g., “you have six years to file suit for breach of contract”), a jurisdictional rule essentially is a rule that says you waited too long to move forward with your claim. And, like a statute of limitation, a court cannot modify that deadline no matter how meritorious the claim might be or what last-minute emergency might have arisen.

This is an important distinction because anyone can raise a lack of jurisdiction at any time during the litigation, and the court can even raise the jurisdictional issue on its own initiative. In this case, a *sua sponte* dismissal is the judicial equivalent of falling through a concealed trap door — like the court saying, “Surprise!! Game over, you lose, everyone go home!”

In contrast, a violation of a mandatory claims processing rule must be raised in a timely motion and is subject to forfeiture, waiver, and other doctrines of fairness. An example of this would be insufficient service of process (e.g., “you failed to serve a copy of the Complaint on the correct person within 90 days”). A claims processing rule such as this can be modified by a court order, and technical failures to comply with these procedures can be excused if the court believes it is warranted.

Furthermore, mere claims processing rules can be waived where it would be unfair to dismiss the case on such grounds at a given point in time. For example, it would be unfair for one to actively participate in litigation for two years, knowing the whole time that service was improper, and then seek to get the case dismissed on the eve of trial because the Complaint was technically served on her twin sister.

In this case, the equitable arguments are readily apparent since Hamer filed her appeal before the deadline set by the lower court’s order, and the employers never filed a motion for reconsideration or otherwise objected to the 60-day extension.

Outcome: Hamer Should Have Her Day In Appellate Court

In today’s unanimous ruling, the Court reiterated what it had previously said in the 2007 case of *Bowles v. Russell*, where it had held that “an appeal filing deadline prescribed by statute enacted by Congress will be regarded as ‘jurisdictional,’ meaning that late filing of the appeal notice necessitates dismissal of the appeal. But a time limit prescribed only in a court-made rule . . . is not jurisdictional.”

The Court chastised the lower courts stating “in conflating Rule 4(a)(5)(C) with § 2107(c), the Court of Appeals failed to grasp the distinction our decisions delineate between jurisdictional appeal filing deadlines and mandatory claim-processing rules, and therefore misapplied *Bowles*.”

The SCOTUS did not give much weight to the employers’ argument that Congress “absentmindedly” deleted the 30-day cap language from the statute, finding instead that the “legislature says . . . what it means and means . . . what it says.” The Court said it would resist the urge to speculate whether Congress acted inadvertently when it passed that statute. Ultimately, the Court concluded that the statutory text was clear and did not contain the 30-day cap, making FRAP 4(a)(5)(C) a non-jurisdictional – but still mandatory claims processing – rule.

What Does This Mean For Appellate Litigants?

It is important to note that the Court did not resolve whether the lower court was actually allowed to grant the 60-day extension on equitable grounds, it only stated that the employers forfeited or waived their right to bring the objection at some point. Thus, the Court left open the question of whether the employers’ silence (failure to raise an objection to the lower court when the overly long extension was granted) was in itself the act of forfeiture.

The Court overturned the *sua sponte* dismissal of the 7th Circuit on jurisdictional grounds and remanded the case to the appeals court to issue a determination on the merits of the appeal.

This is not a case that should change the way employers do business. In fact, the only employers significantly impacted by this decision are the specific employers in this case, who have had to litigate the finality of this matter for more than two years, only to essentially have the appeal resurrected and sent back to the 7th Circuit Court of Appeals for a determination on the merits.

However, this is a case that should attract the attention of those litigating civil appeals, relating to workplace law or not. We now know that the federal procedural rule that allows a district court to extend an appeal deadline by no more than 30 days is a non-jurisdictional, mandatory claims processing rule, and you should adjust your appellate practice accordingly.

If you have any questions about the implications of this decision, contact your local Fisher Phillips attorney.

This Legal Alert provides an overview of a specific Supreme Court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

Related People



Allison Kheel
Associate
702.862.3817
Email

Service Focus

Litigation and Trials