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FILED
May 31 2011, 9:36 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

EUGENE G. ZIOBRON,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 29A05-1007-PL-449
	)	
STREETLINKS NATIONAL APPRAISAL SERVICE, LLC, a Foreign LLC,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Wayne A. Sturtevant, Judge
Cause No. 29D05-0908-PL-1670

MAY 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF CASE

Plaintiff-Appellant Eugene G. Ziobron ("Ziobron") appeals the trial court's decision in favor of Defendant-Appellee Streetlinks National Appraisal Service, LLC ("Streetlinks"). We dismiss.

ISSUE

The following restated issue is dispositive: whether this appeal should be dismissed under Indiana Trial Rule 72 and case law interpreting the rule.

FACTS AND PROCEDURAL HISTORY

Ziobron contacted Stonegate Mortgage Corporation ("Stonegate") regarding a conventional refinance of his Hamilton County residential property, and Stonegate contacted Streetlinks in an effort to obtain a local certified appraiser to evaluate the property. Streetlinks selected Benchmark Coastal Appraisals ("Benchmark") to appraise the property, and Benchmark's appraiser, Gary Clark, did so.

On August 7, 2009, Ziobron filed a complaint against Streetlinks, which was amended on September 3, 2009. Streetlinks filed a motion for summary judgment, which the trial court granted by an order entered on March 3, 2010.[1] On April 13, 2010, Ziobron filed a motion requesting that the trial court vacate its summary judgment order. In the motion, Ziobron claimed that he had not received notice of the trial court's

[1] The trial court designated its determination as "[s]ummary judgment entered in favor of the Defendant and against the Plaintiff as to Count 1 of the Plaintiff's Amended Complaint per Order signed." Appellant's App. p. 4. Count 1 of the amended complaint was the linchpin of Ziobron's claim. Accordingly, the trial court's order was effectively a final order on all of the issues. *See* Appellant's Brief p. 2; Appellant's App. p. 73 ("Plaintiff's Verified Motion For Relief From Summary Judgment"); Appellee's Brief p. 1, n.1.

summary judgment ruling. The trial court denied Ziobron's motion, noting that its "records reflect that a copy of the Court's ruling was mailed to [Ziobron] on 3/4/10."[2] Appellant's App. p. 72.

On June 27, 2010, Ziobron filed a motion for relief pursuant to Trial Rule 60(B)(1) and (8), which the trial court denied. On July 22, 2010, Ziobron filed his notice of appeal (139 days after the issuance of the trial court's order granting summary judgment).

DISCUSSION AND DECISION

Ziobron argues that the trial court abused its discretion in denying his Trial Rule 60(B) motion. The crux of Ziobron's argument is that the trial court should have found under Trial Rule 60 that his failure to file a timely appeal was excused because he did not receive notice of the trial court's summary judgment order.[3]

In *Collins v. Covenant Mut. Ins. Co.*, 644 N.E.2d 116, 116 (Ind. 1994), our Supreme Court held that Trial Rule 60 is not the proper vehicle for extending the date to file an appeal when notice is at issue. Indeed, the court held that the "only available avenue for such relief from a trial court is Trial Rule 72." *Id*. Trial Rule 72(D) sets forth the requirements of court clerks to provide notice of court rulings. In pertinent part, the rule provides:

> **(D) Notice of Orders or Judgments.** Immediately upon the notation in the Chronological Case Summary of a ruling upon a motion, an order or judgment, the clerk shall serve a copy of the entry by mail in the manner provided for in Rule 5 upon each party who is not in default for failure to

[2] The trial court's reference to "3/4/10" appears to be a typographical error as there is no entry in the court's Chronological Case Summary on that date. The trial court appears to refer to an entry dated "3/05/2010." *See* Appellant's App. p. 4.

[3] Indiana Appellate Rule 9(A) requires that a party wishing to appeal a final judgment file a notice of appeal within thirty days of entry of that judgment.

> appear and shall make a record of such mailing . . . . It shall be the duty of the attorneys when entering their appearance in a case or when filing pleadings or papers therein, to have noted on the Chronological Case Summary and on the pleadings or papers so filed, their mailing address, and service by mail at such address shall be deemed sufficient.[4]

A notation in the Chronological Case Summary ("CCS") satisfies the recording requirement. *Collins*, 644 N.E.2d at 117; *Lodge of the Wabash, Ltd. v. Sullivan*, 654 N.E.2d 40, 43 (Ind. Ct. App. 1995), *trans. denied*. Trial Rule 72(E) governs when a party claims that he or she did not receive notice of a ruling. It provides:

> **(E) Effect of Lack of Notice.** Lack of notice, or the lack of the actual receipt of a copy of the entry from the Clerk shall not affect the time within which to contest the ruling, order or judgment, or authorize the Court to relieve a party of the failure to initiate proceedings to contest such ruling, order or judgment, except as provided in this section. When the mailing of a copy of the entry by the Clerk is not evidenced by a note made by the Clerk upon the Chronological Case Summary, the Court, upon application for good cause shown, may grant an extension of any time limitation within which to contest such ruling, order or judgment to any party who was without actual knowledge, or who relied upon incorrect representations by Court personnel. Such extension shall commence when the party first obtained actual knowledge and not exceed the original time limitation.

In *Collins*, the trial court issued several rulings on a particular case, two by written order. The remaining rulings, including a summary judgment granted in favor of Covenant Mutual, were issued in a separate written entry. Collins' counsel claimed he did not receive the separate entry granting the summary judgment until four months after it was entered. During those four months, Collins' counsel telephoned the court on three occasions to inquire about the status of the pending motions, and each time counsel was misinformed by court personnel. Our Supreme Court held that under the plain language

[4] Trial Rule 5 provides that service upon the attorney or party "shall be made by delivering or mailing a copy of the papers to him at his last known address."

of Trial Rule 72(E), "only if the CCS does not contain evidence that a copy of the court's entry was sent to each party may a party claiming not to have received such notice petition the trial court for an extension of time to initiate an appeal." *Id*. at 117-18.

The *Collins* court then noted that the trial court's CCS contained the typewritten notation "1/31/91 Notice: Y" preceding a description of both the order and the entry. *Id*. at 118. The court further noted that "[e]very entry in the CCS follows the form of the one at issue in this appeal . . . . Following the date, the word 'Notice:' appears and is immediately followed by either the letter 'Y' for yes, or 'N' for no." *Id*. The court concluded that "[t]his is the sort of 'note' contemplated by Trial Rule 72(E)." *Id*. The court then held that the references to notice contained in the CCS sufficiently demonstrated mailing notice of the grant of summary judgment, that Collins' appeal was untimely, and that Covenant Mutual was entitled to dismissal. *Id*.

In the present case, the trial court entered its order granting Streetlinks' summary judgment motion on March 3, 2010, and noted on the CCS on March 5, 2010. The CCS states "Notice by bc" after a description of the order. Appellant's App. p. 4. Indeed, every entry in the CCS that reflects either an "Order Issued" or "Notice Issued" is followed by the word "Notice" along with the "by bc" or "by sh" notation to evidence the initials of the clerk that sent the corresponding order or notice. Appellant's App. pp. 3-5. These entries sufficiently demonstrate mailing notice of the grant of summary judgment to Ziobron. Accordingly, Ziobron's appeal is untimely and Streetlinks is entitled to dismissal.

Ziobron argues that the consistency of the CCS is called into question by an entry on 5/7/10 stating that first class mail sent to Streetlinks' attorney had been returned. However, this defective mailing does not correspond with notice of the grant of summary judgment. Furthermore, Ziobron does not argue that the CCS contains an incorrect address for him. Indeed, the address from the CCS and the address used by Ziobron on appeal are the same.

CONCLUSION

Ziobron did not timely file his appeal. Accordingly, the appeal is dismissed.[5]

NAJAM, J., and FRIEDLANDER, J., concur.

[5] Ziobron claims that the trial court erred in failing to conduct the summary judgment hearing requested by Streetlinks under Trial Rule 56(C). We need not address this issue, as we have determined that Ziobron failed to timely appeal. However, we note that Ziobron failed to raise the issue below. Thus, it is waived.