STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

JOHN MULLANEY	)	
	)	
VS.	)	W.C.C. 2005-00176
	)	
CITY OF PROVIDENCE	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the employee's appeal from an order entered on March 24, 2009 dismissing his claim of appeal for failure to perfect the appeal, specifically failure to file reasons of appeal. After reviewing the record in this matter, we deny and dismiss the employee's appeal and affirm the order of the trial judge dismissing the underlying appeal.

On January 10, 2005, the employee filed a petition to review alleging that he sustained a return of total incapacity beginning September 30, 2002 due to the effects of a work-related injury he sustained on August 2, 1993. The trial judge ordered that the employee be examined by an impartial medical examiner. After receiving the report of that examination, the trial judge entered a pretrial order on November 18, 2005 denying the employee's petition. The employee claimed a trial from that order.

Prior to any testimony being taken or evidence presented, the employee elected to proceed *pro se* on his petition. In addition, the original trial judge recused himself *sua sponte* from hearing the matter and the case was assigned to Chief Judge George E. Healy, Jr. to preside

over the trial. On October 7, 2008, a decree was entered denying and dismissing the petition with prejudice based upon the findings that the employee "has deliberately refused to produce the evidence in support of his petition in a timely and respectful manner," and "has failed to demonstrate any cogent excuse for his failure to proceed." The employee, still acting *pro se*, filed a timely claim of appeal.

The employee ordered and paid for the transcript of the proceedings. The stenographer notified him that the transcript was ready by notice dated November 17, 2008. At that time, the date for filing his reasons of appeal was set for December 8, 2008. The employee signed out the transcript on November 28, 2008. On December 9, 2008, the court issued an order, pursuant to Rule 4.3 of the Rules of Practice of the Workers' Compensation Court, requesting that the employee appear on December 19, 2008 to show cause why the appeal should not be dismissed for failure to perfect the appeal by filing his reasons of appeal. The matter was reassigned to December 23, 2008, and again to January 22, 2009 at the employee's request. The employee did not appear on that date and the show cause hearing was rescheduled to January 30, 2009. That morning the employee called the clerk's office and indicated that he had transportation problems which prevented him from attending. The case was assigned to March 5, 2009 and then rescheduled to March 23, 2009 at the employee's request due to a conflict with another appointment.

On March 23, 2009, the employee did not appear and did not contact the court, nor did anyone on his behalf. As a result, the trial judge dismissed the claim of appeal for failure to perfect the appeal. An order to that effect was entered on March 24, 2009. On March 25, 2009, a typed letter was received by the court signed by Annemarie Mullaney, the employee's wife,

indicating that she had been unable to leave her job as a nurse at Miriam Hospital in time to get the employee ready to attend the hearing on March 23, 2009.

On March 30, 2009, the employee filed a claim of appeal from the order dismissing his appeal. Attached to the claim of appeal form is a typed document from Mr. Mullaney dated March 27, 2009 stating his reasons of appeal. In the document the employee notes several reasons for not attending the show cause hearing – a transportation problem on one occasion, frozen and bursting pipes on another occasion, and his wife's inability to leave work in time to shower, shave, diaper, and dress him to appear in court on another date. He contends that "the court is not accommodating to someone who is disabled and relies on others for care, rides and judgments," and that he is "being treated unfairly, unjustly and unnecessarily harsh . . . ." The matter was scheduled for oral argument on June 3, 2009. Both parties appeared and presented their arguments.

Our standard of review in this situation is very deferential and requires a finding that the trial judge abused his discretion when he dismissed the employee's appeal for failure to file the reasons of appeal. *See* Sentas v. Sentas, 911 A.2d 266, 269 (R.I. 2006). A thorough review of the file reveals that the reasons of appeal regarding the employee's appeal of the dismissal of his petition to review were never filed. Although the employee offers some explanations of why he missed several court dates for the show cause hearing, he never addressed why he did not file the reasons of appeal in the underlying case on or before December 8, 2008. He never requested an extension of the time period to file the reasons.

The purpose of the show cause hearing was to allow the employee to demonstrate to the trial judge that the reason he failed to perfect his appeal was due to circumstances beyond his control or constituting excusable neglect. "A litigant asserting excusable neglect must

demonstrate extenuating circumstances sufficient to excuse his or her noncompliance with the court rules . . . [u]nexplained neglect alone is insufficient to excuse a party's noncompliance." Sentas, 911 A.2d at 270 (internal citations omitted). Mr. Mullaney did not provide any explanation, oral or written, to the trial judge as to why he failed to perfect his prior appeal. In the absence of any evidence explaining the failure to file reasons, there is no basis for a finding that the trial judge abused his discretion in dismissing the employee's appeal.

An employee who undertakes to represent himself before this court assumes a very difficult task; however, he is not relieved of the responsibility of complying with the applicable rules and procedures simply because he has elected to proceed *pro se*.

> ". . . [T]he courts of this state cannot and will not entirely overlook established rules of procedure, 'adherence to which is necessary [so] that parties may know their rights, that the real issues in controversy may be presented and determined, and that the business of the courts may be carried on with reasonable dispatch.'"

Gray v. Stillman White Co., Inc., 522 A.2d 737, 741 (R.I. 1987) (quoting O'Connor v. Solomon, 103 Conn. 744, 746, 131 A. 736, 736 (1926)). In the present matter, the trial judge allowed a significant amount of latitude in scheduling the show cause hearing in an attempt to accommodate Mr. Mullaney, as documented in a letter addressed to him from the trial judge dated February 6, 2009, informing him of the final date for hearing. At that time, the employee was advised of the potential consequences of his failure to appear. We find that the trial judge provided ample opportunity for the employee to explain his failure to perfect the underlying appeal.

For the foregoing reasons, we deny and dismiss the employee's appeal and affirm the trial judge's order dismissing the employee's appeal of the dismissal of his petition to review. In

accordance with Rule 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

Bertness and Ferrieri, JJ. concur.

ENTER:

_____
Olsson, J.

_____
Bertness, J.

_____
Ferrieri, J.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the petitioner/employee, and upon consideration thereof, the appeal is denied and dismissed, and it is

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and orders contained in an order of this Court entered on March 24, 2009 be, and they hereby are, affirmed.

Entered as the final decree of this Court this day of

PER ORDER:

_____
John A. Sabatini, Administrator

ENTER:

_____
Olsson, J.

_____
Bertness, J.

_____
Ferrieri, J.

I hereby certify that copies of the Decision and Decree of the Appellate Division were mailed to John Mullaney and Michael T. F. Wallor, Esq., on

_____