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Does a Subsequent Order Labeling Another a 'Final Judgment' Impact the Deadline for Filing an Appeal?

This week saw a fairly substantial amount of interesting cases from both the Indiana Court of Appeals and the Seventh Circuit. Even though there was a glut of interesting cases, there were not too many that stood out well suited for a blog post. I debated just entitling this post "Miscellaneous Entries" and providing a short discussion of some of the more interesting cases. Instead, I've settled on one case from the Indiana Court of Appeals–*Goodrich Quality Theaters, Inc. v. Fostcorp Heating & Cooling, Inc.*–that has an interesting discussion on the timeliness of appeals from final judgments and whether a subsequent order that retroactively refers to a prior order as a "final judgment" renders the prior order a final judgment for the purposes of taking an appeal. Also, tantalized by the abundance of interesting cases this week, I add a quick synopsis of other interesting cases from this week for those who are interested.

Interesting Other Cases

One of the more interesting cases of the week was *City of Greenville, Ill. v. Syngenta Crop Protection, LLC*, in which the Seventh Circuit addressed the issue of confidentiality of documents placed into the record of a case that are not relied upon by the parties or considered by the court. After recognizing the failings of the ECF

system used by federal courts for filing documents–"Software must reflect the judge's decisions; it does not control them."–the court affirmed the trial court's denial of access to the documents. The core of the decisions is premised on the view "that the presumption [in favor] of public access [of documents] turns on what the judge did, not on what the parties filed." Thus, because the court explicitly did not consider the documents at issue, the documents were not necessary to an understanding of the court's decision and, therefore, their confidentiality was not subject to challenge by members of the public.

Another case from the Seventh Circuit garnered some recognition from the legal community at large. In *Goins v. Colvin* we got to witness another scathing opinion, though timid by comparison to *Hughes v. Astrue*, in which Judge Posner demolished a decision by a Social Security Administration administrative law judge (ALJ). In a post for ABAJournal.com, the author notes indicates that Seventh Circuit reversals of Social Security Administration denials is a growing trend. Frequent readers of the Hoosier Litigation Blog will remember that we've previously discussed this issue in a post aptly titled *Biting 7th Circuit Decision Reverses Denial of Social Security Disability Benefits*.

The marquee passage from *Goins* sums up the court's exasperation with the SSA's ALJs.

> If we thought the Social Security Administration and its lawyers had a sense of humor, we would think it a joke for its lawyer to have said in its brief that the administrative law judge "accommodated [the plaintiff's] obesity by providing that she could never [be required as part of her work duties to] climb ladders, ropes, or scaffolds, and could only occasionally climb ramps or stairs, balance, kneel, crawl, stoop, and/or crouch." (The administrative law judge must have forgotten that the primary consulting physician thought the plaintiff can crawl and crouch at work.) Does the SSA think that if only the plaintiff were thin, she could climb ropes? And that at her present weight and with her present symptoms she can, even occasionally, crawl, stoop, and crouch?

A third noteworthy case from the Seventh Circuit is *Hansen v. Fincantieri Marine Group, LLC*. The case, though less interesting as a whole, stands for the proposition that plaintiffs seeking recovery for violations of the Family and Medical Leave Act do not need to provide testimony by a designated expert to prove incapacity. In the case, the plaintiff had testified and provided evidence from his doctor as a fact witness, but did not designate his doctor as an expert. Relying on

cases from its sister circuits, the court found "that lay testimony combined with medical testimony raises a genuine issue of material fact as to incapacity" sufficient to survive a motion for summary judgment and to progress to trial.

Not to be outdone, the Indiana Court of Appeals handed down an interesting opinion of its own. In *McIntire v. Franklin Township Community School Corp.* the court once more visited the issue of whether monetary damages are available for a school system's charging of fees for services that are associated with attendance of the school in violation of Indiana Constitution Article 8, Section 1–providing for free attendance of a public school. Following the lead of another court of appeals case from earlier this year, in which transfer to the Indiana Supreme Court is being sought, the court held that the plaintiff did not need to file a claim under the Indiana Tort Claims Act–because the claim is not the type contemplated by the ITCA–and that monetary damages are not available for violations of the Indiana Constitution.

Goodrich Quality Theaters, Inc. v. Fostcorp Heating & Cooling, Inc.

Now that we have finished our sojourn amongst other interesting cases this week, let us now turn to the main course for today's discussion. Although the case discusses a great many topics, there is one that merits discussion here. It is the issue of when an appeal of a final judgment is timely. Under Indiana law, which largely mirrors federal procedure, an appeal can be taken from either a final judgment or an interlocutory order. For our purposes here, the major distinction between an appeal from a final judgment and an interlocutory order is the compulsory nature of the appeal. An interlocutory order a decision in the case that does not end the case. Generally speaking, these kind of decisions can only be taken up on appeal if the trial court and the court of appeals see fit to permit an appeal. Consequently, they are discretionary in nature–not only by the court, but also by the parties themselves. That is, a party to the case is not obligated to seek leave to appeal an interlocutory order. Instead, the party can wait until the end of the case. Final judgments, on the other hand, must be appealed shortly after the entry of the final judgment or no appeal may be taken thereafter.

Where this case gets sticky is in the definition of a final judgment for the purpose of triggering the clock on appeal. The appellate rules define a judgment as "final if it disposes of all claims as to all parties." However, there is a separate category of judgments that are "final" even though they do not meet that definition: where a "trial court in writing expressly determines that there is no just reason for delay and in writing expressly directs the entry of judgment as to at least one, but

not all, claims or parties, and that the parties may take an appeal upon the issue resolved by the judgment."

In *Goodrich Quality Theaters*, the procedural posture reveals a case marred in an inexplicable, absolute quagmire. The case was filed in May 2007. It proceeded to bench trial that covered fourteen days, but not fourteen consecutive days. No. The opinion states, "The trial court held a bench trial across fourteen days in August 2009, November 2009, May 2010, and July 2010." Then, almost two years later, the court issued an order in May 2012 that resolved almost all of the claims and parties. Then, in July 2013, the court issued an order stating:

> Upon the completion of a long-going bench trial where witness testimony was given, exhibits were produced, and evidence taken, this Court entered its Judgment our [sic] May 1, 2012, "Order From Long–Going Bench Trial." That Order disposed of most all claims properly presented by the parties to this litigation and was a final judgment. Yet, disputes between Intervening Plaintiff JOHNSON CARPET, INC. d/b/a/ JOHNSON COMMERICAL INTERIORS, (hereinafter "Johnson Carpet"), and RONCELLI, INC., (hereinafter "Roncelli"), went unresolved.

Notably, the 2013 Order refers to the 2012 Order as a "final judgment" and specifically recognizes that there were unresolved issues.

Because the 2012 Order did not dispose of all the parties/claims, it could only be a final judgment if the trial court expressly determined that it should be so in writing. But, the 2012 Order never said that it was a final judgment. The only time it was labeled a "final judgment" was in the 2013 Order. So, when did the clock on appealing the 2012 Order begin? Could the trial court retroactively label an order as final and bar an appeal? Of course not.

> Despite the trial court's statement in the [2013] Order that the [2012] Order was final, simply referring to it as such later without including the requisite language in the original order is not enough to make it so. Therefore, it was not a final judgment from which Roncelli could have appealed. Roncelli's present appeal is timely.

Another jaw dropping fact of the 2013 Order was the recognition that the unresolved party had submitted proposed findings back in January 2011. I find Judge Robb's restraint here laudable, but as an outside observer I desperately want to know why a bench trial was completed three years before final judgment was entered. If this appeal had been to the Seventh Circuit, I have little doubt that we'd

either have an explanation or, more likely, a vitriolic dressing down of the trial court and parties for such a seemingly egregious delay. Again, and I cannot stress this enough, my observations are entirely as an outside observer with no further guidance than the opinion and a brief look at the docket from DoxPop.com. Nevertheless, this seems like a case that somehow fell through the cracks, including a gap between February 1, 2011–the last filing by any party of proposed findings–and May 1, 2012–the issuance of the 2012 Order.

Join us again next time for further discussion of developments in the law.

Sources

- *Goodrich Quality Theaters, Inc. v. Fostcorp Heating & Cooling, Inc.*, --- N.E.3d ---, No. 64A03-1308-PL-318, 2014 WL 4098766 (Ind. Ct. App. Aug. 20, 2014) (Robb, J.).

- *City of Greenville, Ill. v. Syngenta Crop Prot., LLC*, --- F.3d ---, No. 13-1626, 2014 WL 4092255 (7th Cir. Aug. 20, 2014) (Easterbrook, J.).

- *Goins v. Colvin*, --- F.3d ---, No. 13-3729, 2014 WL 4073108 (7th Cir. Aug. 19, 2014) (Posner, J.).

- *Hughes v. Astrue*, 705 F.3d 276 (7th Cir. 2013) (Posner, J.).

- *Hansen v. Fincantieri Marine Grp., LLC*, --- F.3d ---, No. 13-3391, 2014 WL 4058480 (7th Cir. Aug. 18, 2014) (Tinder, J.).

- *McIntire v. Franklin Twp. Cmty. Sch. Corp.*, --- N.E.3d ---, No. 49A02-1401-PL-2, 2014 WL 4065652 (Ind. Ct. App. Aug. 18, 2014) (Mathias, J.).

- Family and Medical Leave Act of 1993, codified at 29 U.S.C 2601 *et seq*.

- Indiana Tort Claims Act, codified at Ind. Code ch. 34-13-3.

- Colin E. Flora, *Biting 7th Circuit Decision Reverses Denial of Social Security Disability Benefits*, HOOSIER LITIG. BLOG (Jan. 18, 2013).

- Debra Cassens *Weiss, Posner opinion takes aim at denial of disability benefits; is it a 7th Circuit trend?*, ABAJournal.com (Aug. 21, 2014).

- Colin E. Flora, *Contract Interpretation & the Parol Evidence Rule*, HOOSIER LITIG. BLOG (Nov. 30, 2012).