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Summary of Huckabay Props., Inc. v. NC Auto Parts L.L.C., 130 Nev. Adv. Op. 23

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CIVIL PROCEDURE

Summary

The Court determined three issues: (1) whether precedential uniformity requires a reinstatement of appeals; (2) whether failure to follow court rules is grounds for dismissing a civil appeal; and (3) whether failure to serve each attorney with a motion to dismiss is grounds for en banc reconsideration.

Disposition

Precedential uniformity does not require a reinstatement of appeals in order to decide a case on the merits. Therefore, failure to follow court rules is grounds for dismissing a civil appeal. Additionally, failure to serve each attorney with a motion to dismiss is not grounds for reconsideration.

Factual and Procedural History

Two appeals, one challenging the judgment of a district court in a real property contract action and one challenging the same district court's post-judgment orders awarding attorney fees and costs, were consolidated on December 12, 2012. Appellants' opening brief was due on or before March 12, 2013.

Overdue Opening Brief

Appellants' counsel repeatedly failed to file the opening brief after several extended deadlines. After receiving one extension, Appellants' counsel sought a second, but still did not submit the brief by their proposed deadline. The Court denied the extension as moot, but granted appellants some ten additional days to file and serve the opening brief and appendix. The order warned that failure to file the brief by this new deadline could result in the appeals' dismissal. However, Appellants failed to do so. Appellants had two attorneys throughout the appeals process, Mr. Sterling and Mr. Collier. Mr. Sterling was responsible for filing documents with the Court and briefing the appeal. Mr. Collier was trial counsel, and received copies of the court's orders and notices.

Motion to Dismiss

After the Court's final deadline passed, Respondents filed a motion to dismiss. Appellants, by way of Mr. Sterling, filed an opposition and asked the Court for more time to file the brief, until June 12, noting to the court that deadlines on a number of urgent matters had all fell due around the same time. However, the Court was unpersuaded by Appellants' plight and granted Respondents' motion to dismiss, based on appellants' failure to file the brief and appendix by the final deadline, and because of appellants' failure to comply with court rules and directives.

¹ By Michael Bowman

Motion for Reconsideration and Petition for Rehearing

Appellants retained new counsel and filed a petition for rehearing to reinstate their appeals and a motion for reconsideration. Appellants argued they were unaware of Mr. Sterling's pattern of brushing-off the Court's orders. Furthermore, appellants relied on the Court's policy of favoring merit-based consideration of appeals. Additionally, appellants claimed that both Mr. Sterling and respondents' counsel failed to notify Mr. Collier about the motion to dismiss, preventing Mr. Collier from rectifying the situation.

Respondents opposed both the rehearing petition and the motion, and argued that Mr. Collier knew of the deadlines and was served the Court's orders and notices warning of possible dismissal for failing to file documents. Additionally, respondents argued that Mr. Collier should have known the appeals weren't being handled properly because he never received a copy of the opening brief from Mr. Sterling before the deadline expired. Furthermore, respondents stated that Mr. Sterling contacted Mr. Collier on June 4, asking for copies of the transcripts. Because the transcripts were necessary in preparing the brief, respondents claimed that this contact should have alerted Mr. Collier that the brief wasn't ready in time. Finally, respondents argued that even though Mr. Collier was not served the motion to dismiss, he was aware that dismissal could be imminent because he received the Court's order containing the final deadline, after which the Court could have dismissed the appeals sua sponte.

Unfortunately for Appellants, the petition for rehearing and the motion for reconsideration were both denied. This petition for en banc reconsideration followed.

Discussion

Appellants' petition to reinstate their case focused on two reasons. First, appellants asserted the principle of uniformity required reinstatement in order to preserve a public policy favoring a decision on the merits. Second, appellants contended that dismissal was improper because Mr. Collier never received service of either the motion to dismiss or Mr. Sterling's motions for extensions of time.

The Court began its analysis noting that en banc consideration is "disfavored," and proper only to "preserve precedential uniformity" or when involving important constitutional or public policy issues.² The Court found, however, that Appellants case did not meet these requirements.

Precedential uniformity does not mandate reinstatement of these appeals

To support their uniformity argument, appellants cited to *Hansen v. Universal Health Servs. of Nevada, Inc.*,³ where the Court denied respondents' motion to dismiss because: (1) the compelling nature of the facts; (2) the Court's preference for deciding cases on the merits; and (3) because the dilatory conduct was committed solely by counsel's inexcusable neglect, and not by the client.⁴

However, the Court took this opportunity to overrule the "compelling nature" and "dilatory conduct . . . by counsel" components in *Hansen*. The Court rejected *Hansen's* compelling nature component, noting the *opinion* did not provide any reasoning or legal basis for the conclusion that compelling facts may preclude dismissal." Next, the Court rejected *Hansen's* dilatory conduct provision, stating it was inconsistent with general agency principles.⁵

² Nev. R. App. P. 40A(a).

³ 112 Nev. 1245, 924 P.2d 1345 (1996).

⁴ *Id.* at 1247-48, 924 P.2d at 1346.

⁵ *Id.*, 924 P.2d at 1346.

Finally, the Court affirmed the public policy favoring decision on the merits over dismissal, but observed it was not a panacea stating “dismissal of an appeal after a party fails to comply with court rules and orders is not inconsistent with the policy preference to decide cases on the merits when balanced with other policy concerns.”

Failure to follow court rules as grounds for dismissing civil appeal

First, the Court cites the U.S. Supreme Court’s holding in *Link* that when an action is dismissed because a party fails to follow court rules, the party cannot seek a do-over claiming that dismissal is too harsh a penalty for counsel’s actions, because that would offend general agency principles.⁶ Here, the Court noted that appellants failed to follow rules governing briefing and motions practice, disregarded the briefing deadlines, and provided no adequate reason for doing so. The Court further stated that appellants cannot expect the Court to consider the merits of the appeals whenever appellants decide to submit their brief. The Court also stated that appellants were warned in the May 24 order that dismissal may be forthcoming if the brief was not filed on time. Therefore, the Court stated, the dismissal should not come as a surprise. The Court also noted that this outcome is consistent with federal authority and with general agency principles.

Respondents’ failure to serve appellants’ second attorney with their motion to dismiss is not grounds for reconsideration

The Court rejected appellants’ argument that neglecting to serve Mr. Collier constituted a Due Process violation. The Court noted that appellants freely chose their counsel, and counsel was served with all documents in the matter. Further, the Court stated that both attorneys of record for the appellants received the May 24 order and therefore both should have been aware of the briefing deadlines. The Court then states that NRPC 5(b)⁷ requires that service be made upon the attorney in the singular. The Court interpreted this to mean that only one attorney representing a party needs to be served with a document in order to receive notice of the document. Because Mr. Sterling was served with the motion to dismiss, and because Mr. Sterling and Mr. Collier were both served with the May 24 order, respondents’ failure to serve Mr. Collier with the motion to dismiss does not provide a basis for en banc reconsideration.

Conclusion

Precedential uniformity does not require a reinstatement of appeals. Furthermore, failure to follow court rules is grounds for dismissing a civil appeal. Additionally, failure to serve each attorney representing a party with a motion to dismiss is not grounds for en banc reconsideration. Therefore, the Court denied appellants’ reinstatement of appeals. Further, the Court denied en banc reconsideration.

⁶ *Link. v. Wabash R.R. Co.*, 370 U.S. 626, 633–34 (1962).

⁷ Nev. R. Civ. P. 5(b).