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IN THE
COURT OF APPEALS OF INDIANA

Syndicate Claim Services, Inc.,
Appellant-Defendant,

v.

Jill Trimmel,
Appellee-Plaintiff.

December 8, 2021

Court of Appeals Case No.
21A-PL-1231

Appeal from the
Marion Superior Court

The Honorable
Gary L. Miller, Judge

Trial Court Cause No.
49D03-2002-PL-4878

Molter, Judge.

- [1] In this discretionary interlocutory appeal, Defendant Syndicate Claim Services, Inc. appeals the trial court’s order denying its motion for partial summary judgment on Plaintiff Jill Trimmel’s claim under Indiana’s Wage Payment Statute. Because Syndicate filed its notice of appeal one week late, it forfeited

its appeal under [Indiana Appellate Rule 9\(A\)\(5\)](#). And because there are no extraordinarily compelling reasons to restore the appeal, we dismiss it.

Facts and Procedural History

- [2] Trimmel sued Syndicate for breach of contract and violations of Indiana’s Wage Payment Act, [Indiana Code section 22-2-5-1](#) *et seq.*, alleging that Syndicate failed to pay her commissions and profit share payments it owed her. The trial court denied Syndicate’s motion for partial summary judgment on the Wage Payment Act claim and certified the order for interlocutory review. Our court accepted jurisdiction over the interlocutory appeal, but then Syndicate filed its notice of appeal one week late.
- [3] After recognizing the mistake, Syndicate filed a Verified Motion to Accept Belated Notice of Appeal for Interlocutory Appeal explaining that when this court issued its order accepting jurisdiction over the appeal, lead counsel was on vacation. While on vacation, his elderly father broke his arm. Counsel is responsible for his father’s care, so when he returned from vacation, he spent considerable time finding long-term care for his father. Although co-counsel had appeared, he overlooked the deadline too. Also, the firm’s calendaring system had been malfunctioning, but counsel did not investigate whether that contributed to the oversight before filing the motion.
- [4] Trimell moved to dismiss the appeal on timeliness grounds. Our court’s motions panel denied that motion and granted Syndicate’s motion for a belated appeal.

Discussion and Decision

- [5] Although the motions panel denied Trimell’s motion to dismiss, we retain inherent authority to revisit that decision. *Core v. State*, 122 N.E.3d 974, 976 (Ind. Ct. App. 2019). We are generally reluctant to do so, *id.*, but earlier this year our Supreme Court concluded that interlocutory appeals like this one should be dismissed, so we exercise our discretion to revisit the decision of the motions panel here. *Cooper’s Hawk Indianapolis, LLC v. Ray*, 162 N.E.3d 1097, 1098 (Ind. 2021) (*per curiam*) (granting transfer of an interlocutory appeal and explaining that “finding no extraordinarily compelling reasons to restore the forfeited appeal, we dismiss the appeal and remand to the trial court for further proceedings”).
- [6] After our court accepts jurisdiction over a discretionary interlocutory appeal, the appellant must file a notice of appeal within fifteen days. *Ind. Appellate Rule 14(B)(3)*. If they do not, they forfeit their appeal. App. R. 9(A)(5). At that point, the only way to restore the appeal is to demonstrate “extraordinarily compelling reasons” to do so. *In re Adoption of O.R.*, 16 N.E.3d 965, 971 (Ind. 2014). Other panels of this court have lamented a lack of guidance as to what qualifies as extraordinarily compelling reasons, *see, e.g., Cannon v. Caldwell*, 74 N.E.3d 255, 259 (Ind. Ct. App. 2017), but our cases restoring appeals tend to fall in two categories.
- [7] The first category covers cases with fundamental liberty interests at stake, like the right to maintain the parent-child relationship or the right to bail. *See, e.g.,*

Robertson v. Robertson, 60 N.E.3d 1085, 1090 (Ind. Ct. App. 2016) (restoring a forfeited appeal and recognizing that “a parent’s interest in the custody of his child is a fundamental liberty interest, and the parent-child relationship is one of the most valued relationships in our culture”); *Satterfield v. State*, 30 N.E.3d 1271, 1275 (Ind. Ct. App. 2015) (restoring a forfeited appeal and recognizing that the right to bail is “a traditional and cherished right”). The second category covers cases where there is an “obvious injustice,” such as the violation of child support guidelines that is clear on the face of the trial court’s order. *Cannon*, 74 N.E.3d at 258–59.

[8] *Cooper’s Hawk* seemed to endorse these two categories while still leaving room to recognize others. While “it is never error for an appellate court to dismiss an untimely appeal,” the Supreme Court explained that appeals may be restored when important constitutional interests are at stake, and it cited approvingly our court’s *Caldwell* decision dealing with appellate review of orders that are manifestly unjust. *Cooper’s Hawk Indianapolis, LLC*, 162 N.E.3d at 1098. Because the interlocutory appeal in *Cooper’s Hawk* did not fit into either category, and there were no other extraordinarily compelling reasons to restore the forfeited appeal, the Supreme Court concluded that the appeal should be dismissed. *Id.*

[9] We likewise conclude this appeal does not fit into either category, and there are no other extraordinarily compelling reasons to restore it. This is a dispute about employment compensation, so there is no fundamental liberty interest at stake. *Id.* (concluding there was no basis to restore a forfeited interlocutory

appeal which involved claims to recover damages for personal injury). There is also no suggestion that this appeal seeks review of an order that is manifestly unjust, and the interlocutory nature of the summary judgment order means it remains subject to reconsideration by the trial court and available for appellate review following a final judgment. *Id.* (concluding that the involvement of a substantial issue of law warranting early review is not a sufficient reason to restore a forfeited interlocutory appeal). Lastly, there is no argument that a calendaring oversight or any other aspect of the appealed order qualifies as an extraordinarily compelling reason to restore an appeal.

[10] Admittedly, dismissing this interlocutory appeal may not promote judicial economy. Both the trial court and our court’s motions panel concluded that the most efficient process for this case is an early review of the trial court’s analysis of the Wage Payment Statute, and that review is now postponed to an appeal of a final judgment. But the Supreme Court’s *Cooper’s Hawk* decision makes clear that the standard for restoring an untimely notice of appeal for an interlocutory appeal is the same as the standard for restoring an appeal of a final judgment, and “much more is needed” than a desire for judicial economy to qualify as an extraordinarily compelling reason to restore an appeal. *Id.*

[11] There are certainly ways to eliminate this procedural pitfall. For example, rather than requiring appellants in an interlocutory appeal to file a notice of appeal after we accept jurisdiction, appellants could be required to tender the notice of appeal with their motion to accept jurisdiction, and our order granting the motion could direct the clerk to file that notice so that there is no further

action required of the appellant. But that would require a change in the Appellate Rules, and we lack authority to mandate those changes.

[12] Because Syndicate forfeited its interlocutory appeal, and there are no extraordinarily compelling reasons to restore it, we dismiss this appeal.

[13] Dismissed.

Robb, J., and Riley, J., concur.