



IN THE
Indiana Supreme Court

Supreme Court Case No. 21S-CT-56

Cooper's Hawk Indianapolis, LLC d/b/a
Cooper's Hawk Winery & Restaurant,
Appellant-Defendant,

—v—

Katherine Ray,
Appellee-Plaintiff.

Decided: February 9, 2021

Appeal from the Marion Superior Court

No. 49D01-1810-CT-42030

The Honorable Heather Welch, Judge

On Petition to Transfer from the Indiana Court of Appeals

No. 20A-CT-127

Per Curiam Opinion

Chief Justice Rush and Justices David, Massa, Slaughter, and Goff concur.

Per curiam.

In February 2018, Katherine Ray was injured when she slipped and fell in Cooper's Hawk Winery & Restaurant. Ray filed a negligence complaint against Cooper's Hawk in October 2018. On November 18, 2019, the trial court denied Cooper's Hawk's motion for summary judgment, and Cooper's Hawk timely moved to certify this order for interlocutory appeal.

On January 6, 2020, the trial court certified its order. On February 12, the Court of Appeals accepted the interlocutory appeal, making any Notice of Appeal due on or before Thursday, February 27. *See* Ind. Appellate Rule 14(B)(3). Cooper's Hawk did not file a Notice of Appeal until March 3, 2020.

On March 20, Ray moved to dismiss the appeal on timeliness grounds. In its response, Cooper's Hawk conceded that the Notice of Appeal was belated but argued that the appeal presents a substantial question of law and should be allowed to proceed. A divided Court of Appeals motions panel denied Ray's motion to dismiss without explanation.

In a split opinion, the Court of Appeals reversed the denial of the summary judgment motion. *Cooper's Hawk Indianapolis, LLC v. Ray*, 150 N.E.3d 698 (Ind. Ct. App. 2020). Neither the majority nor the dissenting opinion addressed the untimeliness of the Notice of Appeal.

We grant transfer, thereby vacating the Court of Appeals opinion. App. R. 58(A).

Discussion and Decision

Indiana Appellate Rule 9 prescribes the procedure for filing a party's Notice of Appeal with the Clerk. Rule 9(A)(2) states that "[t]he initiation of interlocutory appeals is covered in Rule 14," while the section of Rule 14 governing discretionary interlocutory appeals provides that "[t]he appellant shall file a Notice of Appeal ... within fifteen (15) days of the Court of Appeals' order accepting jurisdiction over the interlocutory appeal." Ind. App. R. 14(B)(3). Rule 9(A)(5) states that "[u]nless the Notice

of Appeal is timely filed, the right to appeal **shall be forfeited** except as provided by P.C.R. 2.” (emphasis added).

Although it is never error for an appellate court to dismiss an untimely appeal, the forfeiture of the right to appeal on timeliness grounds does not deprive the appellate court of jurisdiction to hear the appeal. *In re D.J. v. Ind. Dep’t of Child Servs.*, 68 N.E.3d 574, 579 (Ind. 2017); *In re Adoption of O.R.*, 16 N.E.3d 965, 970 (Ind. 2014). To reinstate a forfeited appeal, an appellant must show that there are “extraordinarily compelling reasons why this forfeited right should be restored.” *O.R.*, 16 N.E.3d at 971. In *O.R.* — a father’s challenge to the adoption of his child — these extraordinarily compelling reasons included “the constitutional dimensions of the parent-child relationship.” *Id.* at 972; *see also D.J.*, 68 N.E.3d at 580; *Robertson v. Robertson*, 60 N.E.3d 1085, 1090 (Ind. Ct. App. 2016). The Court of Appeals also has reinstated a forfeited appeal upon finding that the trial court’s order was “manifestly unjust.” *Cannon v. Caldwell*, 74 N.E.3d 255, 259 (Ind. Ct. App. 2017).

In its “Response to Appellee’s Motion to Dismiss Appeal,” Cooper’s Hawk argued that the Court of Appeals should accept the appeal despite its untimeliness because “the legal issue on appeal involve[s] a substantial question of law, the early determination of which would promote a more orderly disposition of the case.” But this merely restates one of the three Appellate Rule 14(B)(1)(c) grounds for granting a discretionary interlocutory appeal; to overcome the forfeiture Rule 9(A)(5) requires, much more is needed.

Having granted transfer, and finding no extraordinarily compelling reasons to restore the forfeited appeal, we dismiss the appeal and remand to the trial court for further proceedings.¹

Rush, C.J., and David, Massa, Slaughter, and Goff, JJ., concur.

¹ Cooper’s Hawk’s “Motion to Strike Portions of Appellee’s Petition for Transfer” is denied.

ATTORNEYS FOR APPELLANT

Robert G. Sylvester

Ronald A. Mingus

Reminger Co., LPA

Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Kyle L. Christie

Christie Farrell Lee & Bell, P.C.

Indianapolis, Indiana

ATTORNEY FOR AMICUS CURIAE, INDIANA TRIAL LAWYERS
ASSOCIATION

Ashley N. Hadler

Garau Germano, P.C.

Indianapolis, Indiana