

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BLUE HEN LINES, INC.,

Defendants Below,
Appellants,

v.

BRYAN TURBITT,

Plaintiff Below,
Appellee.

No. 243, 2000

Court Below: Superior Court of
the State of Delaware in and for
Kent County

C.A. No. 97C-06-036

Submitted: June 13, 2000

Decided: July 5, 2000

Before **VEASEY**, Chief Justice, **WALSH** and **BERGER**, Justices.

ORDER

This 5th day of July 2000, it appears to the Court that:

(1) On May 24, 2000, the Court received the appellant's untimely notice of appeal from a Superior Court order dated April 19, 2000, docketed April 20, 2000. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before May 22, 2000.

(2) On May 26, 2000, the Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing the appellant to show cause why the appeal should not be dismissed as untimely filed. On May 30, 2000, the appellee filed a

motion to dismiss the appeal as untimely filed. The appellant filed his response to the notice to show cause, dated June 5, 2000, on June 9, 2000.

The appellant has not filed a response to the motion to dismiss.

(3) In his response to the notice to show cause, the appellant contends that, pursuant to Supreme Court Rule 11(c), an additional three days may be added to the time calculation because the decision of the Court below was delivered by facsimile rather than by hand. Supreme Court Rule 11(c) contemplates no such thing. The provision in the Rule that allows an extra three days is for service by *mail* and does not include service by facsimile.

Furthermore, Rule 11(c) relates to service of papers upon one party by another party after an appeal has commenced. It has no application to the time limitation that governs the initiation of an appeal. *Root v. Stout, et al.*, Del. Supr., No. 152, 1984, Moore, J. (July 3, 1984) (ORDER). Supreme Court Rule 11(b) specifically states that the time for taking an appeal shall not be enlarged.

(4) Time is a jurisdictional requirement. *Carr v. State*, Del. Supr., 554 A.2d 778, 779, *cert. denied*, 493 U.S. 829 (1989). A notice of appeal *must* be received by the Office of the Clerk of this Court within the applicable

time period in order to be effective. Supr. Ct. R. 10(a). Unless an appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal cannot be considered. *Bey v. State*, Del. Supr., 402 A.2d 362, 363 (1979).

(5) There is nothing in the record that reflects that appellant's failure to file a timely notice of appeal in this case is attributable to court-related personnel. Consequently, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal. Thus, the Court concludes that the within appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rules 6 and 29(b), that the within appeal is DISMISSED.

BY THE COURT:

/s/ Carolyn Berger
Justice