

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-207

JANUARY TERM, 2020

In re Estate of Hollis Edwards, Jr.	}	APPEALED FROM:
(Martha Manning* & Linda Haines*)	}	
	}	Superior Court, Lamoille Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 145-8-17 Lecv
		Trial Judge: Megan J. Shafritz

In the above-entitled cause, the Clerk will enter:

Petitioners, Martha Manning and Linda Haines, appeal a civil division order denying their motion to extend the time to file a notice of appeal. We affirm.

The underlying dispute in this case concerns the estate of Hollis Edwards, Jr. Following Mr. Edwards' death, petitioners presented a will to be probated. The will was challenged on several grounds. The probate division concluded that the will was properly executed, Edwards had testamentary capacity, was not unduly influenced at the time of execution, and that the will had not been revoked. The challengers of the will appealed to the civil division and a jury found in their favor on the issue of undue influence. On November 5, 2018, the civil division entered judgment. Petitioners then filed a timely motion for a new trial or to amend the judgment under Vermont Rule of Civil Procedure 59(a) and (e). The court denied that motion on January 29, 2019. Petitioners filed a notice of appeal. This Court received it on March 1, 2019 and the civil division received it on March 4, 2019. This Court, on March 20, 2009, dismissed the appeal as untimely filed because it was filed beyond the 30-day appeal period.

On March 28, 2019, petitioners filed a motion in the civil division seeking an extension of time to file their notice of appeal. Petitioners alleged that their counsel put the notice of appeal in the mail on February 27, 2019 expecting that it would be delivered the following day and the lack of delivery within the time anticipated amounted to both good cause and excusable neglect to extend the time to appeal. The civil division denied the motion, finding no showing of excusable neglect or good cause. Petitioners appeal.

On appeal, petitioners reassert the claim of excusable neglect made below. They argue that the civil division abused its discretion in denying their motion for an extension of time to file a notice of appeal based upon excusable neglect.*

* Petitioners did not brief the issue of good cause. To the extent this issue has not been abandoned, petitioners would fare no better under this standard. The court did not abuse its

A notice of appeal must be filed within thirty days “after entry of the judgment or order appealed from.” V.R.A.P. 4(a)(1); see V.R.A.P. 4(b)(5), (6) (providing that if party files a timely V.R.C.P. 59 motion to alter or amend or for a new trial, the appeal period begins to run from entry of the order disposing of the motion). Here, there is no dispute that the appeal period began to run on January 29, 2019. Therefore, a notice of appeal had to be filed by February 28, 2019. The court may extend the time to file a notice of appeal if the motion is filed “no later than 30 days after the expiration of” the 30-day filing period and “the party shows excusable neglect or good cause.” V.R.A.P. 4(d)(1)(A), (B). Excusable neglect relates to failures made on the part of the movant. In re M.S., 2017 VT 64, ¶ 20, 205 Vt. 204. It does not concern the substance of the underlying case. Id. This Court reviews the trial court’s decision on whether to grant an extension of time for an abuse of discretion. Clark v. Baker, 2016 VT 42, ¶ 20, 201 Vt. 610 (trial court has discretion to determine if there has been excusable neglect); In re Lund, 2004 VT 55, ¶ 3, 177 Vt. 465 (review of a trial court decision on whether to extend time to file notice of appeal is abuse-of-discretion standard).

The determination of excusable neglect is equitable and considers the following factors “the danger of prejudice to the [opposing party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.” Clark, 2016 VT 42, ¶ 18 (alteration in original) (quotation omitted). Excusable neglect is “strictly construed to prevent a de facto enlargement of the appeal period.” Lund, 2004 VT 55, ¶ 5. The civil division concluded that the facts here did not meet this high standard, emphasizing that the cause for the delay was a matter totally within petitioners’ control and they could have avoided the untimely filing by hand delivering the notice or sending the letter by overnight guarantee.

We conclude that the court did not abuse its discretion in finding no excusable neglect. The time for mailing the notice of appeal was a matter wholly within petitioners’ control and petitioners chose to wait until the day before the appeal period closed to send the notice by mail. Petitioners claim that they had a legitimate expectation that mail collected by 3:00 p.m. on a weekday would be delivered in state by the end of the next business day. As the trial court explained, petitioners’ expectation that in-state mail would be delivered within one day was not reasonable. This belief was not based on any objective facts or on a guarantee by the post office. Indeed, as the civil division noted, the civil rules accord three days for delivery of mail. See V.R.C.P. 6(e) (adding three days to any deadline where time is initiated by service and service is made by several means including mailing). The fact that the mailing took more than one day to

discretion in concluding that petitioners failed to show good cause. Good cause occurs when a delay is caused through no fault of the movant, such as the postal service’s failure to deliver a notice of appeal. In re M.S., 2017 VT 64, ¶ 20. The court determined that the late delivery in this case was the result of petitioners’ own decisions and not external interference. The notice of appeal was delivered; it was just not delivered in the one day expected by petitioners. As explained below, petitioner’s expectation that delivery would be made within one day was not reasonable and did not shift the fault for delayed delivery away from petitioners.

arrive at its destination “was not unforeseeable human error beyond attorney’s control.” In re von Turkovich, 2018 VT 57, ¶ 6, 207 Vt. 545 (quotation omitted).

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice