

APPELLATE

JURISDICTIONAL VS NONJURISDICTIONAL APPEAL FILING DEADLINES

by Phillip J. DeRosier¹

Most of us think of appeal filing deadlines as absolute. That certainly is the case under the Michigan Court Rules. But as demonstrated by a recent decision from the United States Supreme Court, *Hamer v Neighborhood Housing Serv of Chicago*, ___ US ___ (Nov 8, 2017), it is not always so when it comes to the Federal Rules of Appellate Procedure.

State Court

It is well established under the Michigan Court Rules that the “time limit for an appeal of right is jurisdictional.” MCR 7.204(A). In general, this means that an appeal of right in a civil case must be filed within 21 days of the judgment or order appealed from, MCR 7.204(A)(1)(a), or 21 days after the entry of an order denying a timely “motion for new trial, a motion for rehearing or reconsideration, or a motion for other relief from the order or judgment appealed.” MCR 7.204(A)(1)(b).² If an appeal as of right is not filed in accordance with the court rules, it will be dismissed for lack of jurisdiction. See *Baitinger v Brisson*, 230 Mich App 112, 113; 583 NW2d 481 (1998) (“We dismiss defendant’s appeal for lack of jurisdiction under MCR 7.203 because it was not filed within the period provided in MCR 7.204(A)(1).”).

Federal Court

But the analysis is more nuanced under the federal rules. Generally, civil appeals under Federal Rule of Appellate Procedure 4 must be filed “within 30 days after entry of the judgment or order appealed from.” FR App P 4(a)(1)(A). And just as under the Michigan Court Rules, the federal courts of appeals lack jurisdiction over appeals that are not filed within the 30-day period. *Bowles v Russell*, 551 US 205, 209-210 (2007) (“This Court has long held that the taking of an appeal within the prescribed time is ‘mandatory and jurisdictional.’”).

Unlike MCR 7.204, however, Rule 4 allows the 30-day appeal period to be extended even in cases where the losing party received timely notice of the judgment.³ This is where things become somewhat complicated. Under Rule 4(a)(5), a district court “may extend the time to file a notice of appeal” if the losing party files a motion “no later than 30 days after the [appeal period] expires” and shows “excusable neglect or good cause.” Rule 4(a)(5) also limits the length of an extension of time to appeal to “30 days after the [prescribed appeal period] or 14 days after the date when the order granting the motion is entered, whichever is later.” FR App P 4(a)(5)(C).

At first blush, it would seem that since the 30-day appeal period is jurisdictional, so too must be the time limit that Rule 4(a)(5)(C) places on a district court’s extension of the appeal period. Not so, according to a recent decision from the United States Supreme Court. In *Hamer v Neighborhood Housing Serv of Chicago*, ___ US ___ (Nov 8, 2017),

the district court granted summary judgment to the defendants and dismissed the plaintiff’s age discrimination claims on September 14, 2015. Just before the 30-day appeal period was set to expire on October 14, 2015, the plaintiff’s counsel moved to withdraw as well to extend the time for the plaintiff to file a notice of appeal. The district court granted both motions, extending the appeal period by an additional 60 days, from October 14 to December 14, 2015. Based on that extension, the plaintiff filed her notice of appeal to the Seventh Circuit on December 11, 2015.

On its own initiative, the Court of Appeals questioned the timeliness of the plaintiff’s appeal and, after requesting briefing on the issue, dismissed it for lack of jurisdiction. The court reasoned that since extensions of the appeal period are limited by Rule 4(a)(5)(C) to 30 days, the plaintiff’s notice of appeal was untimely and had to be dismissed.

The Supreme Court, however, reversed. The Court observed that although a district court’s ability to extend the appeal period under Rule 4(a)(5) ultimately derives from 28 USC 2107(c),⁴ the only *statutory*, and hence “jurisdictional,” time limit placed on such extensions is in “cases in which the appellant lacked notice of the entry of judgment.” In those cases, the district court can reopen the appeal period for up to “14 days from the date of entry of the order reopening the time for appeal.” 28 USC 2107(c)(2). But “for other cases, the statute does not say how long an extension may run.”

Consequently, the Court held, Rule 4(a)(5)(C)’s limitation on extensions of time is not a “jurisdictional appeal filing deadline,” but rather a “mandatory claim-processing rule” that is subject to “forfeiture” or other “equitable considerations.” The Court explained that only statutory time limitations affect a court’s “adjudicatory authority over the case,” whereas mandatory claim-processing rules such as Rule 4(a)(5)(C) “may be waived or forfeited.”

The Court concluded that because the Court of Appeals had “erroneously treated as jurisdictional Rule 4(a)(5)(C)’s 30-day limitation on extensions of time to file a notice of appeal,” a remand was necessary for that court to determine whether the defendants’ failure to object “effected a forfeiture,” or “whether equitable considerations may occasion an exception to Rule 4(a)(5)(C)’s time constraint.”

Conclusion

Although the best practice is to follow any appeal filing deadline, regardless whether it is contained in a statute or a court rule, the Supreme Court’s decision in *Hamer* suggests that, at least in federal court, the failure to do so is not necessarily fatal.

¹ A version of this article was previously published in the Michigan Defense Quarterly.

² There are certain exceptions to the 21-day time period (e.g., appeals from certain agency decisions where a different time period is prescribed by statute), but they are beyond the scope of this article.

CLIENT ALERT

³ MCR 7.204 and Rule 4 are similar in providing for extensions of time in cases in which a party did not receive notice of the judgment. Pursuant to MCR 7.204(A) (3), "[i]f the Court of Appeals finds that service of the judgment or order was delayed beyond the time stated in MCR 2.602 and the claim of appeal was filed within 14 days after service of the judgment or order, the claim of appeal will be deemed timely." Rule 4's analogous provision permits a district court to "reopen the time to file an appeal" if (1) the party files a motion either "180 days after the judgment or order is entered" or 14 days after the party received notice, whichever is earlier, and (2) "no party would be prejudiced." FR App P 4(a)(6).

⁴ 28 USC 2107(c) provides that a district court "may, upon motion filed not later than 30 days after the expiration of the time otherwise set for bringing appeal, extend the time for appeal upon a showing of excusable neglect or good cause."

This client alert is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the field of appellate law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered in here.

FOR MORE INFORMATION CONTACT:



Phillip J. DeRosier is a Member in Dickinson Wright's Detroit office. He can be reached at 313.223.3866 or pderosier@dickinsonwright.com