

Georges v. OB-GYN Services, P.C.: Another Lesson in Filing Early and Often

By CHARLES D. RAY and MATTHEW A WEINER

It's every lawyer's nightmare: you miss a deadline and, by doing so, potentially cost your client millions of dollars. The nightmare came true in *Georges v. OB-GYN Services, P.C.*, ___ Conn. ___ (2020).

Georges was a medical malpractice action that arose from mistakes made during the delivery of Jenniyah Georges. Georges' mother sued the defendants seeking compensation for her daughter's "severe, permanent" injuries. Before trial, the plaintiff filed an offer of compromise to settle her medical malpractice claim against the defendants for \$2 million, which the defendants did not accept. After a trial, a jury returned a verdict in favor of the plaintiff in the amount of \$4.2 million. The trial court accepted the jury's verdict on October 28, 2016.

On November 8, 2016, the plaintiff filed a motion seeking offer of compromise interest pursuant to General Statutes § 52-192(c) and Practice Book § 17-18, and postjudgment interest pursuant to General Statutes § 37-3b. On December 12, 2016, the trial court issued a written memorandum of decision awarding the plaintiff both offer of compromise and postjudgment interest. The court further ruled that the end date for calculating the offer of compromise interest was October 28, 2016—the date that the court accepted the jury's verdict. The beginning date for postjudgment interest was November 17, 2016, which was 20 days from the date of judgment.

Four days after the trial court ruled on the plaintiff's interest motion—but 49



days after it accepted the jury's verdict—the defendant appealed to the appellate court, challenging both the jury's verdict and the trial court's interest rulings. The plaintiff moved to dismiss the appeal as untimely because the defendants had filed it more than 20 days after judgment entered. *See* Practice Book § 63-1(a). The defendants objected on two bases. First, they claimed that their appeal was timely because they had filed it within twenty days of the trial court's ruling that awarded offer of compromise and postjudgment interest. Second, they argued that, even if the portion of the appeal challenging the jury's verdict was untimely, the appellate court, pursuant to Practice Book §§ 60-2(5) and 60-3, should suspend the rules of practice and permit the late appeal. In support of this second argument, the defendants contended that there was good cause to permit the late appeal because a "significant amount of confusion" existed concerning the date

the trial court had rendered judgment. The defendants cited the fact that, on November 28, 2016, an erroneous entry appeared on the electronic docket, stating "judgment on verdict for plaintiff."

The appellate court granted the plaintiff's motion to dismiss the portion of the defendants' appeal that related to the jury's verdict and denied, without any opinion, the defendants' request to file a late appeal. It rejected the rest of the defendants' appeal in a per curiam decision. *Georges v. OB-GYN Services, P.C.* 182 Conn. App. 901 (2018).

Before the Supreme Court, the defendants asserted that the appellate court had improperly refused to consider the portion of the appeal that related to the jury's verdict for two reasons. First, they reiterated their argument that they had timely filed the appeal. Second, they argued that the appellate court had abused

its discretion by refusing to suspend the rules to permit a late appeal. The Supreme Court unanimously rejected the defendants' first argument, but split on whether the appellate court improperly refused to suspend the rules.

In an opinion authored by Justice Mullins and joined by Justices McDonald, Kahn, and Ecker, the court first explained why the twenty day appeal period began to run on October 28, 2016—the date that the trial court accepted the jury's verdict—rather than on the date that the trial court granted the plaintiff's request for offer of compromise and postjudgment interest. Regarding the defendants' claim that the judgment was not final until after the trial court ruled on the plaintiff's request for offer of compromise interest, the court noted that “an unresolved claim for relief can delay the finality of a judgment on the merits,” but that is an exception to the “usual rule.” The exception only applies when a party “seeks[s] compensation for the alleged[ly] wrongful conduct of the defendants, which depend[s] upon an assessment of the underlying merits of the transaction between the parties.” However, “when the postverdict relief is not designed to compensate the plaintiffs for the underlying wrongdoing and does not require the trial court to examine the merits of the underlying case, it is collateral to the judgment and does not affect its finality for the purposes of appeal.”

Here, the plaintiff's request for offer of compromise interest sought compensation for the defendants' rejection of the offer to settle. It did not relate to the conduct that gave rise to the plaintiff's suit and did not require the trial court to examine the merits of the underlying action. Indeed, pursuant to § 52-192a(c), the trial court had no discretion to decide whether to award interest, or how much to award. Therefore, the trial court's “determination of the amount of offer of compromise interest to be awarded [was] not an essential prerequisite to an appealable final judgment on the merits.”

The court also rejected the defendants' assertion that, pursuant to Practice Book

§ 63-1(c)(1), the plaintiff's motion for offer of compromise interest and postjudgment interest created a new 20-day period. Practice Book § 63-1(c)(1) provides that a new appeal period may begin if a party files a motion “that, if granted, would render the judgment, decision or acceptance of the verdict ineffective....” Because neither request for interest sought a change to the underlying judgment and, in fact, merely sought the trial court's exercise of a “ministerial” function, the defendants' reliance on that provision was misplaced.

After disposing of the defendants' claim that the appeal period ran from the date on which the trial court issued its interest ruling rather than from when the trial court accepted the jury's verdict, the court turned to the more difficult question: whether the appellate court had abused its discretion by not suspending the rules to permit a late appeal. In rejecting the defendants' arguments, the majority emphasized that the appellate court has “broad authority to manage its docket” and the deferential standard of review that the Supreme Court must apply. It also rejected the defendants' contention that legitimate confusion surrounding the date that the trial court rendered judgment justified their delay in filing the appeal. Observing that the twenty day appeal period had expired before the erroneous docket entry appeared, that Practice Book § 17-2 provides that “the date of judgment shall be the date the verdict was accepted,” that Practice Book § 63-1(b) expressly provides that “[i]n civil jury cases [] the appeal period shall begin when the verdict is accepted,” and that the Supreme Court previously had explained, in dictum, that undetermined offer of compromise interest does not affect the finality of a judgment, the majority determined that the defendants' confusion was their own fault. See *Earlington v. Anastasi*, 293 Conn. 194, 196-97

n.3 (2009). Therefore, the appellate court did not act unreasonably in denying the defendants' request to suspend the rules.

Justice D'Auria, joined by Justice Palmer, took a different view in a concurring and dissenting opinion. They concluded that the defendants had established good cause for their failure to timely file their appeal and, accordingly, that the appellate court had abused its discretion by refusing to accept it.

Justice D'Auria began by suggesting that, though the Supreme Court must review the appellate court's decision not to hear a late appeal for an abuse of discretion, the Supreme Court should afford less deference to such a decision than when it applies the abuse of discretion standard to certain trial court rulings. In support, Justice D'Auria explained that, unlike a discretionary trial court ruling, the Supreme Court's review of the appellate court's ruling “does not involve an exercise of discretion entirely unique to the appellate court” in that the Supreme Court, like the appellate court, also rules on motions to dismiss appeals and motions for permission to file late appeals. In addition, rarely, in this context, does the record contain an explanation for the appellate court's exercise of its discretion. As occurred in *Georges*, the appellate court usually dismisses appeals through a summary order that does not list or explain what “factors it considered, how close it found the question or whether it would have permitted a late appeal if

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■ Any views expressed herein are the personal views of DASA Weiner and do not necessarily reflect the views of the Office of the Chief State's Attorney and/or the Division of Criminal Justice.

President's Message

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NOTES

1. boardsource.org/nancy-lee
2. The Constitution of the Connecticut Bar Association, Inc. was last amended by the CBA House of Delegates on January 13, 2014 and may be viewed on the CBA website at www.ctbar.org/docs/default-source/leadership-resources/2019-2020/04-2019-cba-constitution-bylaws-and-procedures_10-15-18.pdf

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Connecticut Fines

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The general level of inconvenience and potential for fines relating to pandemic face covering requirements and social gathering size restrictions during the current public health emergency appear to be on par with pre-existing statutory safety, health, and public welfare requirements affecting operators and passengers of motor vehicles, that are intended to protect not just the operators and passengers themselves but also the general public's health, safety, and welfare. ■

NOTES

1. State enforcement of adherence to federal motor vehicle safety requirements is distinguishable from state regulation of motorcyclists' protective headgear. (Protective headgear requirements have been challenged in several jurisdictions on constitutional grounds (including discriminatory selective enforcement grounds, and arguments that a state's police power does not extend to helmet requirements that only protect the individual motorcyclist's life and health, not the general public's health, safety and welfare.) Protective headgear requirements that apply only to minors and that allow use of headgear meeting federal safety standards (without imposing additional, more restrictive state requirements) have been easier to defend against constitutional challenge.

2. Conn. Gen. Stat. Section 14-300f(b) includes the same penalties for failing to stop a motor vehicle at the direction of a school crossing guard.

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and Disciplinary Counsel offices were unable to find the respondent. *Ansonia Panel v. Jose L. Altamirano*, #19-0337 (7 pages).

Presentment ordered for violations of Rules 1.3, 1.4(a)(2),(3) and (4), 1.5(a) and (b), 1.15(d), 8.1(2), 8.4(3), 8.4(4) and Practice Book § 2-32(a)(1) in regards to a divorce case where respondent, while under suspension, took a fee to file a divorce and failed to do so. Respondent had a significant history of discipline which, combined with not answering the present case, led to the presentment order. SGC ordered an additional violation of Rule 5.5(b)(2) to be considered on presentment. *Monahan v. David V. Chomick*, #19-0450 (9 pages). ■

Supreme Deliberations

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any factors were different...." For Justice D'Auria, this "absence of any explanation for the ruling...makes entirely deferential review problematic."

Turning then to the merits, Justice D'Auria concluded that the appellate court should have granted the defendants' request to file a late appeal for three principal reasons. First, citing the plaintiff's "arguably unnecessary" motion for offer of compromise interest and the absence of any reviewing court ruling "definitely determin[ing]" whether, following a 1997 amendment to § 37-3b, the trial court retains some discretion over the amount of postjudgment interest it can award, Justice D'Auria concluded that "the events that transpired after the jury's verdict were...susceptible to reasonable confusion sufficient to constitute 'good cause' and to justify the defendants' late appeal." Second, the plaintiff was not prejudiced by the delay. Third, the appellate court's ruling caused a "complete forfeiture" of a statutory right that was "wildly out of proportion to any procedural violation in the case."

We certainly sympathize with the defendants. After all, the plaintiff was not substantially prejudiced by the late filing and it's not like the dismissal lightened the appellate court's docket much, given that it still had to resolve the defendants' appeal challenging the trial court's award of interest. On the other hand, the defendants should have known that the appellate clock began running when the trial court accepted the jury's verdict. And it's hard to conclude that the appellate court's decision was arbitrary, when there was really no sound basis for the defendants to believe that they had timely filed their appeal.

But in any event, the lesson of *Georges* has been around at least as long as we've been practicing appellate law: when in doubt, immediately file the appeal—or at least file a motion for an extension of time! ■