IN THE COURT OF APPEALS OF IOWA

FILED
JUN 26 1984
CLERK SUPREME COURT

372

JERRY E. HERRICK,

Petitioner-Appellant,

vs.

AMERICAN FREIGHT SYSTEM, INC., Employer, Self-Insured, HERBERT ROSEN, D.O., and ROBERT C. LANDESS, Iowa Industrial Commissioner,

Respondents-Appellees.

Filed June 26, 1984

4-154
83-979

GEORGE BISHOP,

Petitioner-Appellant,

vs.

AMERICAN FREIGHT SYSTEM, INC., Employer, Self-Insured, HERBERT ROSEN, D.O., and ROBERT C. LANDESS, Iowa Industrial Commissioner,

Respondents-Appellees.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Petitioners appeal from the district court decision on judicial review dismissing as moot their petitions for judicial review. APPEAL DISMISSED.

Fred D. Huebner, Des Moines, for petitioners-appellants.

W. C. Hoffman and Steve Udelhofer, Des Moines, for respondents-appellees.

Heard by Snell, P.J., and Hayden, and Sackett, JJ.

Petitioners appeal from the district court decision on judicial review dismissing as moot their petitions for judicial review, asserting that the industrial commissioner had authority to grant the substantive relief requested. We are compelled to dismiss the appeal for lack of jurisdiction.

Petitioners are two employees who suffered work-related injuries. Counsel for petitioners was informed by two doctors designated by the company to treat injured employees that relevant medical records would not be released when no legal action had been commenced. Petitioners then filed separate but substantially identical requests that the industrial commissioner permit them to select their own doctor, order the two doctors to release the records, and bar the two doctors from practice before the industrial commissioner as a sanction for failure to release the records. Separate but substantially identical petitions for judicial review were filed after a decision of the industrial commissioner that he lacked authority to limit the practice of a physician, that a doctor was not a proper party in a workers' compensation proceeding, and that the petitioners' request for permission to select another doctor for treatment should be set for further hearing.

The petitions for judicial review named as respondents the employer, one of the doctors, and the industrial commissioner. Only the employer answered or otherwise participated as an adverse party in the judicial review proceeding. The employer asserted that it had released all medical records under its control, authorized the two doctors to release all records under their control, and denied any relationship with the doctors sufficient to justify petitioners' characterization of them as "company doctors." The employer also noted that one of the doctors had died and asserted that all medical records requested by petitioners had been released to them. The district court dismissed the case as moot on the ground

that the medical records sought by petitioners had been "delivered by the Respondent." This appeal followed.

Our review of the record in this consolidated case reflects that only the counsel for the employer was served with a copy of the notice of appeal. Neither the industrial commissioner nor the doctor, both parties to the action, were so served. The petitioners' "Certificate of Service" indicates that an "Information Copy" was sent to the clerk of the supreme court and to the industrial commissioner.

Rule 6(a) of the Iowa Rules of Appellate Procedure provides that an appeal is taken and perfected by filing a notice of appeal with the clerk of the trial court specifying the parties taking the appeal, and the decree, judgment, order or part thereof appealed from, and that:

> The appellant shall serve a copy of the notice on each other party or his counsel in the manner prescribed in R.C.P. 82"b". The notice presented to the clerk of the trial court for filing shall be accompanied by a proof of service in the form prescribed in R.C.P. 82"g". Promptly after filing the notice of appeal with the clerk of the trial court appellant shall mail or deliver to the clerk of the supreme court a copy of such notice for his information.

The Iowa Supreme Court, in Schrader v. Sioux City, 167 N.W.2d 669, 672 (Iowa 1969), held that compliance with the rules pertaining to notice of appeal is mandatory and jurisdictional. While "substantial compliance" is sufficient with regard to the contents of the notice, Hawkeye Security Insurance Co. v. Ford Motor Co., 199 N.W.2d 373, 378 (Iowa 1972), the mailing of an informational copy is not sufficient to constitute "service" as required by rule 6(a) since the language of the rule itself distinguishes such a mailing from service on the parties.

Because the appellants failed to serve a copy of the notice of appeal on "each other party" as required by rule 6(a), we must dismiss the appeal for lack of jurisdiction.

APPEAL DISMISSED.