IN THE COURT OF APPEALS OF IOWA

No. 1-308 / 90-1628

FILED
DEC 31 1991
CLERK SUPREME COURT

483

ESTATE OF RAYMOND J. MORGAN, Deceased,

Appellant,

vs.

NORTH STAR STEEL COMPANY,

Appellee.

Appeal from the Iowa District Court for Muscatine County, Max R. Werling, Judge.

The estate of Raymond J. Morgan appeals from a judgment of the district court finding that North Star Steel had established that it was unable to reasonably accommodate Morgan's disability. **APPEAL DISMISSED.**

David L. Scieszinski, Wilton, for appellant.

Iris Muchmore and Matthew Petrzelka of Simmons, Perrine, Albright & Ellwood, Cedar Rapids, for appellee.

Considered by Donielson, P.J., and Sackett and Habhab, JJ.

DONIELSON, P.J.

Raymond Morgan was employed by North Star Steel in Wilton, Iowa. Morgan was employed as a millwright, which is a maintenance mechanic who does all of the mechanical repairs within the North Star plant. The plant manufactures steel from scrap iron. The millwrights are required to work at elevated heights in order to maintain the equipment. Stairs and ladders are used to access the equipment.

On August 5, 1986, Morgan injured his knee during the course of his employment. After this, Morgan only performed his duties as a millwright for a short period of time. He had surgery twice and spent several months recuperating each time. North Star assigned him to light duty work. Morgan was permanently restricted from stair or ladder climbing.

On June 20, 1988, Morgan was laid off by North Star due to his inability to perform millwright work. The company felt it did not have continuous light duty work available.

On December 14, 1988, Morgan filed a complaint with the Iowa Civil Rights Commission, claiming that he was improperly discharged because of his disability. On February 17, 1989, Morgan died of a heart attack which was unrelated to the present action. The Civil Rights Commission issued Morgan a right to sue letter. Morgan's estate filed the present action claiming damages against North Star for violation of his civil rights.

The district court entered its ruling on August 30, 1990. The district court found that North Star had terminated Morgan from his job as a millwright due to his disabilities. The district court held North Star had presented a sufficient defense of business necessity and thus dismissed the lawsuit. The court pointed out that the job of millwright required a good deal of climbing, which Morgan was permanently restrained from doing.

On September 11, 1990, the estate filed a motion pursuant to Iowa Rule of Civil Procedure 179(b). North Star resisted the motion, alleging that the motion was untimely. On September 28, 1990, the district court denied the motion on the grounds that the motion was untimely. Morgan's estate appealed on October 29, 1990.

Iowa Rule of Civil Procedure 179(b) provides that a motion filed under this rule must be filed within the time allowed for a motion for new trial. Iowa Rule of Civil Procedure 247 provides that a motion for new trial must be filed within ten days after the verdict, report, or decision is filed. The rule 179(b) motion in this case was not filed within ten days after the district court's ruling on August 30, 1990. The motion should have been filed by Monday, September 10, 1990. The motion was not filed until September 11, 1990.

Under Iowa Rule of Appellate Procedure 5(a), an appeal must be taken within, and not after, thirty days from the entry of the district court's order, judgment, or decree.

Kunau v. Miller, 328 N.W.2d 529, 530 (Iowa 1983). A proper rule 179(b) motion or motion for a new trial extends the time for appeal until thirty days after the entry of the ruling on such motion. In re Estate of Dull, 303 N.W.2d 402, 404 (Iowa 1981).

A timely appeal is jurisdictional, and the time limit for taking an appeal cannot be extended by filing an improper posttrial motion. Lutz v. Iowa Swine Exports Corp., 300 N.W.2d 109, 110 (Iowa 1981). An untimely posttrial motion is defective and does not toll the running of the thirty-day period within which an appeal must be taken. Id. Where a posttrial motion is untimely a trial court is deprived of jurisdiction, and the thirty-day appeal time commences with the filing of the judgment. Id. at 112.

Because the filing of the untimely rule 179(b) motion did not toll the thirty-day period in this case, the notice of appeal should have been filed within thirty days after the court's ruling of August 30, 1990. The plaintiff thus had until September 29, 1990, to file its appeal. The plaintiff's appeal was not filed until October 29, 1990, almost a month later. The plaintiff's appeal is untimely and we are without jurisdiction to consider it. The appeal must be dismissed.

APPEAL DISMISSED.