

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

John L. Padgett
Plaintiff,

v.

Georgia Republican Party, Inc
Defendant.

Civil Action File
No: 2021CV354612

ORDER DISMISSING PLAINTIFF JOHN PADGETT'S APPEAL
OF ORDER GRANTING SUMMARY JUDGMENT

This matter came before the Court on Defendant Georgia Republican Party, Inc.'s Motion to Dismiss Plaintiff John Padgett's Appeal filed on February 20, 2024. On April 30, 2024, the Court held a hearing on the Motion. This Court, having considered written submissions and argument of counsel, evidence presented in connection therewith, pertinent portions of the record and the applicable law, finds and concludes as follows:

i. FINDINGS OF FACT

On September 16, 2021, Plaintiff John Padgett filed this lawsuit against Defendant Georgia Republican Party, Inc. Defendant filed its Answer and Counterclaim on March 15, 2022. Plaintiff failed to provide responsive documents to Defendant's written discovery. On August 17, 2022, Defendant filed a Motion to Compel to which Plaintiff did not respond. Thereafter, the Court granted Defendant's Motion to Compel.

Upon granting the Motion to Compel, the Court extended the dispositive motion deadline to June 23, 2023. On June 23, 2023, the deadline within which to file dispositive deadlines, Plaintiff

dismissed his claims; Defendant moved for summary judgment on its counterclaim for breach of fiduciary duty. Plaintiff failed to file a timely response to Defendant 's Motion for Summary Judgment. The Court scheduled a hearing on Defendant's Motion for Summary Judgment for August 22, 2023.

On August 18, 2023, twenty-five (25) days after the responsive briefing deadline had passed, Plaintiff filed his response to defendant's Motion for Summary Judgment, accompanied by an unsworn "Declaration of John Padgett." On August 22, 2023, this Court heard argument from counsel on the issue of liability. On September 29, 2023, the Court entered an Order granting Defendant's Motion for Summary Judgment as to that issue. The Court further ordered that a hearing on the issue of damages would be scheduled to occur within forty-five (45) days of the date of entry of its Order Granting Summary Judgment as to liability (i.e., on or before November 13, 2023).

Plaintiff filed a Notice of Appeal (the "Notice of Appeal") on October 30, 2023. In the Notice of Appeal, Plaintiff's Counsel directed the clerk to "*omit nothing from the record, including a transcript of the hearing of Defendant's Motion for Summary Judgment.*" Despite filing the Notice of Appeal, which is a certification before this Court by the attorney that the transcript had been ordered from the court reporter, counsel for Plaintiff had not ordered the transcript from the Court Reporter, as required by Uniform Superior Court Rule 41.3.

The next day, on October 31, 2023, the Clerk's office notified Plaintiff that his Notice of Appeal was deficient, inasmuch as, the Notice lacked the jurisdictional statement required by O.C.G.A. §5-6-37. On January 17, 2024, counsel for Defendant communicated with Plaintiff's counsel *via* email regarding Plaintiff amending his Notice of Appeal, per the Clerk's instructions. Despite receiving both the Clerk's notification and the email from Defendant's Counsel, Plaintiff failed to take any action to amend his Notice of Appeal.

On February 20, 2024, Defendant filed its Motion to Dismiss Appeal, pursuant to O.C.G.A. § 5-6-48(c). In the Motion to Dismiss Appeal, Defendant provided the Affidavit of court reporter Whitney Guynes, which revealed that Plaintiff's counsel had never ordered the transcript of the Motion for Summary Judgment hearing. The court reporter's Affidavit contradicts Plaintiff counsel's initial instruction to the Clerk to transfer the transcript of the Summary Judgment hearing to the Court of Appeals and is a violation of Uniform Superior Court Rule 41.3. At the time Defendant's Motion to Dismiss Appeal was filed, more than one hundred (100) days had passed since Plaintiff filed his Notice of Appeal.

Plaintiff failed to file a response to Defendant's Motion to Dismiss Appeal within thirty (30) days of filing Defendant's Motion to Dismiss Appeal. Instead, Plaintiff, on the day of the hearing on the Motion to Dismiss Appeal, filed a response amending his Notice of Appeal, a few hours before the hearing on the Motion to Dismiss Appeal was to occur. In his Amended Notice of Appeal, Plaintiff removed the request that the transcript be included in the Notice of Appeal, therein newly

contending he had no need for the transcript of the hearing on Defendant's Motion for Summary Judgment.

On April 30, 2024, the Court held the hearing on Defendant's Motion to Dismiss Appeal. Counsel for both parties were heard by this Court in connection with same and the Court took the matter under advisement at that time.

ii. CONCLUSIONS OF LAW

I. STANDARD

In reviewing a motion to dismiss an appeal pursuant to O.C.G.A. § 5-6-48(c), a trial court has broad discretion in making a determination of whether to dismiss an appeal. Premier Pediatric Providers, LLC v. Kennesaw Pediatrics, P.C., 318 Ga. 350, 360, 898 S.E.2d 481, 489 (2024). The Supreme Court of Georgia recently explained that a trial court is required to engage in a two-step analysis in making its decision to dismiss an appeal. Id. First, the trial court must determine "whether a delay in filing the transcript was unreasonable, inexcusable and the fault [of the party responsible for filing the transcript]." Id. "If so, the trial court must then decide whether to dismiss the appeal." See Propst v. Morgan, 288 Ga. 862, 863 (2011) ("OCGA § 5-6-48 (c) requires the trial court to determine the length of the delay, the reasons for the delay, whether the appealing party caused the delay and whether the delay was inexcusable--- and then exercise discretion in deciding whether to dismiss the appeal."). Prior to dismissing the appeal, the trial court must provide the non-moving party an opportunity to respond to the motion to dismiss the appeal. Lemmons v. Newton 269, Ga. App. 880, 882 (2004).

II. PLAINTIFF'S DELAY

Pursuant to O.C.G.A. § 5-6-42, Plaintiff, by and through his counsel, was responsible for causing the transcript to be filed within 30 days of filing his Notice of Appeal. The record reflects that Plaintiff never filed, let alone ordered, the transcript from the hearing on the motion for summary judgment. Instead, approximately fifty (50) days after Defendant filed its Motion to Dismiss Appeal, Plaintiff, filed a "response" to Defendant's Motion, just a few hours before the hearing on the Motion, amending his Notice of Appeal to remove his request to include the transcript of the hearing on the Defendant's Motion for Summary Judgment.

To prevail on a motion to dismiss an appeal for failure to file a transcript, Defendant was required to meet the following three criteria: 1) establish [Plaintiff] was responsible for an unreasonable delay, which was 2) inexcusable and 3) caused by [Plaintiff]. O.C.G.A. § 5-6-48(c). For the reasons communicated herein, the Court finds Defendant has met its burden.

The appellate courts of this State have consistently held that a delay of filing the transcript in excess of 30 days is *prima facie* unreasonable and inexcusable. Kelly v. Dawson Cnty., 282 Ga. 189, 189 (2007); SDM Invs. Grp., LLC v. HBN Media, Inc., 358 Ga. App. 421, 425 (2021). However, this presumption is subject to rebuttal if the non-moving party comes forward with evidence to show the delay was not reasonable nor inexcusable. Id. Here, Plaintiff failed to provide this Court with any evidence justifying his failure to order the transcript at issue. Hence, Plaintiff cannot and does

not overcome the presumption of unreasonable and inexcusable delay. The Court has determined Plaintiff's delay in filing the transcript was unreasonable and inexcusable.

The Court must then consider whether the delay was caused by the non-moving party – Plaintiff. The uncontroverted evidence before this Court shows that Plaintiff never ordered the transcript. After filing the Notice of Appeal requesting the transcript be included in the transmittal, Plaintiff failed to complete the initial and obvious task of *ordering a transcript*. It is clear to this Court Plaintiff's delay was a product of his own making. See Northeast. Georgia Med. Ctr., Inc. v. Healthsouth Rehab. Hosp. of Forsyth Cnty., LLC., 347 Ga. App. 852, 856 (2018) (the party seeking dismissal for failure to file a transcript must show that the delay was unreasonable, inexcusable, and caused by the appealing party).

Since defendant has established that the delay in filing the transcript was unreasonable, inexcusable and caused by Plaintiff and his counsel, the Court now determines the propriety of dismissing the Plaintiff's appeal. In doing so, the Court considers the length of the delay from the time the Notice of Appeal was filed (October 30, 2023) to the date Plaintiff withdrew his request for the transmittal of the transcript (April 30, 2024), the latter date being the date the hearing on the motion to dismiss appeal was held.

Approximately six (6) months passed since the filing of the Notice of Appeal-- and Plaintiff never ordered the transcript. This Court is unwilling to disregard a delay of six (6) months (183 days) in ordering a transcript. See also Morrell v. Western Services, LLC, 291 Ga. App. at 373-374 (2008)

(57-day delay caused by appellant was found to be unreasonable and inexcusable); Vaughn v. Faulkner, 288 Ga. App. 798, 798-799 (2007) (dismissal of appeal affirmed where appellant delayed filing transcript 81 days).

The Court has also considered that Plaintiff's counsel submitted the Notice of Appeal, which constitutes a "certificate by the attorney that the transcript has been ordered from the court reporter," without ever ordering the transcript. See Uniform Superior Court Rule 41.3

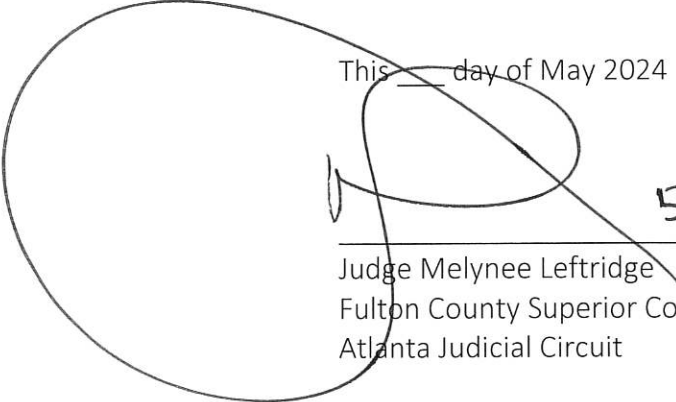
Furthermore, and worthy of note, the Court is unmoved by Plaintiff's argument that his exceedingly untimely request to remove the transcript from transmission to the appellate court somehow "cures" the delay at issue here ---and provides a basis for denying Defendant's motion to dismiss appeal. This Court believes it would be an abuse of its discretion to excuse Plaintiff's significant delay and his counsel's inaccurate certificate on the ground that he removed his request for the transcript some 183 days after the deadline for filing a notice of appeal. See SDM Investments v. HBN Media, Inc., 358 Ga. App. 425 (2021) (holding that trial court abused its discretion in denying motion to dismiss under OCGA § 5-6-48 (c) when appellant waited seven months after filing first notice of appeal to inform court that transcript was not necessary for appeal).

This Court opines a six (6) month delay in transferring this case to the Court of Appeals prejudices the Defendant, notwithstanding Plaintiff's argument to the contrary. As our appellate court has recognized, "justice delayed for even one day is justice denied to the litigant that was successful

in the lower court..." Fulton County Bd. of Tax Assessors v. Technology Square, 363 Ga. App. 571, 574 (2022). And, in the context of prejudice to Defendant, "a delay is unreasonable if it affects an appeal either by directly prejudicing the position of a party by allowing an intermediate change of conditions or otherwise resulting in inequity or by causing the appeal to become stale, for instance by delaying docketing and hearing in this Court." See *SDM Invs. Grp., LLC, supra* at 428.

This Court is aware Plaintiff's appeal would likely have been docketed in the past term of the Court of Appeals, if not within the past two terms. However, because Plaintiff waited so late to remove his request the transcript be included, the Clerk was unable to transmit the docket during an earlier term. Thus, even if there were no direct prejudice to defendant, this six-month delay was "still unreasonable as it delayed docketing for at least one term of [c]ourt" See *Id.* This Court hereby GRANTS Defendant's Motion to Dismiss Appeal with the result that Plaintiff's appeal hereby stands DISMISSED. The Clerk of this Court is hereby DIRECTED to mark this case "closed" upon the Court's docket, accordingly.

This 30 day of May 2024



5-30-2024

Judge Melynee Leftridge
Fulton County Superior Court Judge
Atlanta Judicial Circuit