

FILED SEP 13 2000

JEANNE A. SZULIM
CLERK OF COURT

IN THE COURT OF APPEALS
FOR THE
SHAKOPEE MDEWAKANTON SIOUX (DAKOTA) COMMUNITY

SCOTT COUNTY

STATE OF MINNESOTA

In re: Trust Under Little Six, Inc.
Retirement Plan.

CT. APP. 024-00

Court File No. 055-95

MEMORANDUM OPINION AND ORDER

INTRODUCTION

Respondents Leonard Prescott, F. William Johnson and Peter Riverso have filed a motion to dismiss Appellant Little Six Inc. (LSI)'s appeal for failure to file notice of the appeal within fifteen days after filing of the trial court's final order under Community Resolution Number 02-13-88-01 § VII (the Ordinance). Because a plain reading and equitable interpretation of the Community's Ordinance indicates a fifteen day *minimum* and thirty day maximum period in which to file, and Appellant has filed within the prescribed time period, Respondents' motion to dismiss the appeal is denied.

I. FINDINGS OF FACT

On March 29, 2000, a final Memorandum, Opinion & Order was filed in the above captioned matter, Court File 055-95. Fourteen days later, on April 12, 2000, Appellant served notice of its appeal on all other parties, through their counsel. At that time, Appellant placed the original Notice of Appeal in the U.S. Mail for filing with this Court. Due to a clerical error, the original Notice of Appeal was sent for filing to the Court's former address, 810 Lumber Exchange Building, Ten South Fifth Street, Minneapolis, Minnesota, 55402. The original Notice was then returned to LSI's counsel on April 18, 2000, marked "ADDRESSEE UNKNOWN,

RETURN TO SENDER.” Prior to that date, neither LSI nor its counsel were aware of the misaddressed notice. LSI promptly filed the Notice of Appeal upon return receipt on April 18, 2000, twenty days after the final Memorandum, Opinion & Order was filed.

On April 26, 2000, Respondents filed a Notice of Motion and Motion to Dismiss LSI’s Appeal, along with a certificate of service. Respondents argue that the Ordinance requires appellants to file notice of their appeal within fifteen days after a final order is entered, and Appellant’s filing twenty days after entry of the final order was untimely and, therefore, precludes appellate review. Appellant counters by citing the plain language of the Ordinance, which imposes a fifteen-day *minimum* period for filing, not maximum, so that the filing of the notice of appeal twenty days after entry of the final judgment was, in fact, timely. Alternatively, Appellant argues that it should not be denied appellate review when the failure to file within fifteen days was due to excusable neglect for which LSI should not be prejudiced by dismissing its appeal.

II. ANALYSIS

The Community’s Ordinance concerning the time period in which to file notice of an appeal is ambiguous because it appears to confuse the duties of a party to file a timely notice of appeal with the duty of the Court to certify the matter for appeal within a reasonable time period without prejudice to the parties. The Ordinance, promulgated in Resolution Number 02-13-88-01 § VII, reads:

Appeals Cases shall be heard by one Judge, under assignment procedures which shall be determined by the Court. Upon the motion; of any party, a matter may be certified for appeal to a three Judge panel of the full Court by any Judge of the Court. Motions for appeal shall be filed with the clerk of Court and served upon all parties *not less than 15* calendar days after the date of entry of a final order for judgment. If the motion for certification is not granted *within 30 days*, no further appeal shall be available.

(emphasis added) The ambiguity of the Ordinance arises from its imposition upon the parties of a fifteen day *minimum* period for filing, and imposition upon the Court of a 30 day *maximum* period for certification of appeal. The Ordinance is confusing because practitioners looking for a maximum time period in which to file can find none. Although it has been the general practice of practitioners before this Court to observe a self-imposed fifteen-day deadline for lack of any clear limitation from the Ordinance, it would be unjust and prejudicial to Appellant to enforce custom over the plain language of the Ordinance.

The thirty-day limitation for certification of appeal also is misleading because it prejudices the filing party for any failure of the Court to certify a matter for appeal within thirty days of filing of the final Order for Judgment. As written, the Ordinance's limitation on the Court would result in unavailability of appellate review if a matter is not certified timely due to judicial or clerical oversight or delay not attributable to the parties. In short, the Ordinance purports to punish parties for mistakes by the Court. This Court, therefore, interprets the thirty-day maximum period as a limitation on the parties for filing a notice of appeal, and will not enforce the Ordinance as a limitation on the Court for certification of the matter for appeal.

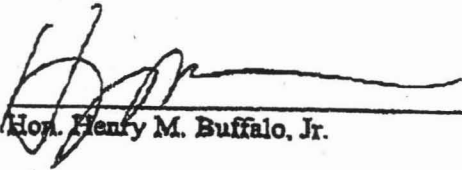
In this case, Appellant served notices of the appeal on all parties fourteen days after entry of the final Order for Judgment and filed the notice of appeal with the Court twenty days after entry of the final Order for Judgment.¹ Because Appellant's service and filing of notices of appeal occurred within thirty days of entry of the Order for Judgment, Appellant's service and

¹ Because the Court finds that Appellant's filing of its notice of appeal was timely, Appellant's alternative argument that its failure to file within fifteen days constituted excusable neglect need not be considered. The Court notes, however, that such a clerical error ordinarily would be considered excusable under principles of equity and would not justify dismissal of the appeal unless it were shown to be prejudicial to the opposing party.


filing of notices of appeal were timely, and Respondent's Motion to Dismiss LSI's Appeal is denied.

IT IS SO ORDERED.

Dated: 9/13/00



Hon. Henry M. Buffalo, Jr.



Hon. Robert Grey Eagle