Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-415

JUNE TERM, 2006

Karen Gagne	}	APPEALED FROM:
	}	
v.	}	Franklin Superior Court
	}	
Verdelle Village, Inc.	}	
	}	DOCKET NO. S433-04 Fc

Trial Judge: Ben W. Joseph

In the above-entitled cause, the Clerk will enter:

Employer Verdelle Village, Inc., appeals from the trial court=s denial of its motion for summary judgment in this workers= compensation case. It argues that the trial court erred in allowing claimant Karen Gagne to pursue an untimely appeal. We reverse and remand for dismissal.

The following facts are undisputed. In May 2004, the Department of Labor and Industry held a hearing on claimant=s request for workers= compensation benefits. The Department denied her request, and mailed notice of its decision to claimant on August 26, 2004. The notice informed claimant that she could file an appeal within thirty days of the date the decision was mailed. Claimant filed a pro se notice of appeal on October 5, 2004, outside of the thirty-day period.

Employer moved for summary judgment, asserting that the appeal should be dismissed because claimant failed to comply with the thirty-day filing requirement of 21 V.S.A. ' 670. After a hearing, the trial court denied employer=s request. The court concluded that ' 670 applied only when the Department=s decision was mailed to a claimant Aas provided by [chapter 9 of Title 21].@ The court reasoned that because the Department had not issued its decision within sixty days after the hearing as required by 21 V.S.A. ' 664, the decision was not mailed to claimant Aas provided by@ chapter 9, and thus claimant did not need to file her notice of appeal within thirty days. The court also concluded that claimant=s failure to file a timely notice of appeal was excusable neglect in light of the Department=s failure to comply with 21 V.S.A. ' 664. Employer=s request for permission to take an interlocutory appeal was granted.

Employer argues that the trial court erred in interpreting 21 V.S.A. ' 670 and denying its motion for summary judgment. We agree. The trial court plainly lacked jurisdiction to consider claimant=s untimely appeal, and the appeal should have been dismissed. We review a summary judgment decision according to the same standard as the trial court. Richart v. Jackson, 171 Vt. 94, 97 (2000) (summary judgment appropriate when, taking all allegations made by the nonmoving party as true, there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law).

Pursuant to 21 V.S.A. ' 669, the Department=s decision in a workers= compensation proceeding is conclusive unless an appeal is taken. Section 670 allows either party to appeal the Department=s decision to the superior court A[w]ithin thirty days after copies of an award have been sent as provided by this chapter.@ The plain language of the statute reflects the Legislature=s intent that all appeals to superior court be filed within thirty days. In re Middlebury Coll. Sales and Use Tax, 137 Vt. 28, 31 (1979) (when the meaning of a statute is plain, it must be enforced according to its terms).

It defies logic to conclude that the Legislature intended the words Asent as provided by this chapter@ to establish an open-ended appeal process when the Department does not issue its decision within sixty days after the hearing. See Roddy v. Roddy, 168 Vt. 343, 347 (1998) (AThis Court construes statutes to avoid absurd

results manifestly unintended by the Legislature@); see also Peabody v. Home Ins. Co., 170 Vt. 635, 638 (2000) (mem.) (use of the words Ahave been sent@ in ' 670 signify that time to appeal begins to run when Department=s decision is mailed); cf. Coleman v. United Parcel Serv., 155 Vt. 646, 646 (1990) (mem.) (rejecting argument that Department must strictly comply with requirements of ' 664 or lose jurisdiction over workers= compensation proceeding). There is no discernable connection between the amount of time that elapses before the Department issues its decision and the purpose served by a notice of appeal. See Casella Constr., Inc. v. Dep=t of Taxes, 2005 VT 18, & 6, 178 Vt. 61 (discussing purposes served by notice of appeal, and explaining that strict adherence to deadlines for filing notice of appeal serves goal of finality). The trial court=s interpretation of ' 670 would create inconsistent and absurd results, and it would undermine the purpose of the statute.

It follows from our conclusion that the Department=s failure to issue its decision within sixty days does not in any way warrant a finding of Aexcusable neglect@ on claimant=s part. Moreover, as employer notes, claimant did not argue that her late filing resulted from excusable neglect, and the trial court erred in reaching this conclusion sua sponte. See V.R.A.P. 4 (superior court may extend time for filing notice of appeal for excusable neglect Aupon motion and notice, if request therefore is made within 30 days after the expiration@ of the relevant period); Turner v. Turner, 160 Vt. 646, 647 (1993) (mem.) (where defendant did not request an extension of time to file an appeal, court had no authority to grant such an extension).

We have repeatedly stated that the timely filing of a notice of appeal is a jurisdictional requirement. In re Shantee Point, Inc., 174 Vt. 248, 259 (2002). Pursuant to 21 V.S.A. ' 670, claimant needed to file her notice of appeal within thirty days of the date that the Department mailed its decision. Her failure to do so deprived the trial court of jurisdiction over her appeal. Employer was entitled to summary judgment.

Reversed and remanded for dismissal.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Brian L. Burgess, Associate Justice