

IN THE SUPREME COURT OF OHIO

KAREN E. LIEBE, et al.,)	Supreme Court Case No. 2015-0465
)	
v.)	On Appeal from the
)	Cuyahoga County Court of Appeals
THE INDUSTRIAL)	Eighth Appellate District
COMMISSION OF OHIO.)	
)	Court of Appeal
)	Case No. CA-13-100649

**RESPONDENT-APPELLEE MARCH HODGE LAMARCH CLEVELAND
LLC'S MOTION TO DISMISS APPEAL**

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INTRODUCTION

Respondent-Appellee March Hodge LaMarch Cleveland LLC hereby moves for dismissal of this attempted appeal. The basis for this motion, as discussed more fully below, is that Relator-Appellant Michael H. Gruhin failed to timely file his Notice of Appeal.

STATEMENT OF THE CASE AND FACTS

This is an attempted appeal from an original action in the Eighth District Court of Appeals. By that original action, Mr. Gruhin and Karen Liebe sought a writ of prohibition against the Industrial Commission of Ohio and the Administrator of the Bureau of Workers Compensation preventing them from conducting further administrative hearings related to an injury claim Ms. Liebe had filed and from enforcing a decision issued by a district hearing officer in connection with that claim. Mr. Gruhin was Ms. Liebe's lawyer in the proceeding before the Industrial Commission.

The Eighth District permitted LaMarch, Ms. Liebe's employer, to intervene as a respondent in the original action, and Ms. Liebe eventually dismissed her application for a writ of prohibition as part of a settlement she reached with LaMarch. Mr. Gruhin, however, did not dismiss his application and eventually moved for summary judgment. LaMarch, the Industrial Commission, and the Administrator also moved for summary judgment and, on September 17, 2014, the

Eighth District granted LaMarch's, the Industrial Commission's, and the Administrator's motions, denied Mr. Gruhin's motion, and denied his application for a writ of prohibition.

Instead of immediately appealing the Eighth District's decision, Mr. Gruhin filed a "Motion for Reconsideration." The Eighth District denied his "Motion for Reconsideration" on February 3, 2015, and he filed his Notice of Appeal to this Court on March 20, 2015.

LAW AND ARGUMENT

Under Rules 5.01(A)(3), 5.01(B)(2), and 6.01 of the Supreme Court Practice Rules, a person wishing to appeal a decision of a court of appeals in a case that originated in the court of appeals must file a notice of appeal in the Supreme Court "within forty-five days from the entry of the judgment being appealed." By his Notice of Appeal, Mr. Gurin has attempted to appeal "from the order of the Court of Appeals for the Eighth Appellate District, Cuyahoga, Ohio (Case No. CA-13-100649), journalized on September 17, 2014." (Notice of Appeal of Relator-Appellant Michael H. Gruhin, at 2.) He filed his Notice of Appeal, however, on March 20, 2015, 184 days after entry of the order from which he attempted to appeal.

Apparently as an explanation for his late filing, Mr. Gruhin pointed out in his Notice of Appeal that he was filing it "within forty-five days of the denial of

[his] Motion for Reconsideration.” (Notice of Appeal of Relator-Appellant Michael H. Gruhin, at 2.) A motion for reconsideration following judgment in an action that originates in the court of appeals, however, is a nullity and does not extend the time within which to appeal. *State ex rel. Andrews v. Chardon Police Dep’t*, 137 Ohio St. 3d 468, 2013-Ohio-4772, 1 N.E.3d 333, ¶ 2; *Phillips v. Irwin*, 96 Ohio St. 3d 350, 2002-Ohio-4758, 774 N.E.2d 1218, ¶ 5. Mr. Gruhin’s Notice of Appeal, therefore, was untimely, and his attempted appeal must be dismissed.

CONCLUSION

Mr. Gruhin failed to file his Notice of Appeal within 45 days from the entry of the judgment he has attempted to appeal. Accordingly, his Notice of Appeal was untimely, and his attempted appeal must be dismissed.

Respectfully submitted,

/s/ Clair E. Dickinson

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Certificate of Service

I certify that a copy of this Motion to Dismiss Appeal was sent by ordinary U.S. mail to Marvin T. Galvin, Reminger Co., LPA, 101 West Prospect Avenue, Suite 1400, Cleveland, Ohio 44115, Michael H. Gruhin, Gruhin & Gruhin, LLC, 24100 Chagrin Boulevard, Suite 250, Beachwood, Ohio 44122, and Thomas M. McCarty, Assistant Attorney General, Workers' Compensation Section, State Office Building, 11th Floor, 615 West Superior Avenue, Cleveland, Ohio 44113 on October 22, 2015.

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