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Indiana Court of Appeals Addresses Right to Appeal Denial of Motion to Dissolve a Preliminary Injunction

Today's discussion is more short and technical than our usual discussion. Nevertheless, it is a topic that merits note, as it is a matter of first impression in Indiana. This week, the Indiana Court of Appeals addressed an apparent ambiguity in Indiana Appellate Rule 14 – the rule pertaining to interlocutory appeals. Because this case gives us an opportunity to speak a bit about some basic concepts in appellate law as well as a case addressing a novel issue, let us embark upon an examination of *Kindred v. Townsend*.

In order for the case to make sense, we must first delve briefly into the basic types of appeals. Fundamentally, an appeal is either of a "final judgment" or an "interlocutory order." The definition of a "final judgment" is laid out in Indiana Appellate Rule 2(H).

A judgment is a final judgment if:

(1) it disposes of all claims as to all parties;

(2) the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial

Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties;

(3) it is deemed final under Trial Rule 60(C);

(4) it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59 or Criminal Rule 16; or

(5) it is otherwise deemed final by law.

It is important to determine whether something constitutes a final judgment because a final judgment is appealable as a matter of right to the Indiana Court of Appeals or, in rare circumstances, to the Indiana Supreme Court. Interlocutory orders, on the other hand, have much greater limitations when it comes to filing an appeal. Interlocutory orders are decisions made during the course of a case that are not final judgments. An example of this is the denial of a motion for summary judgment. By its very nature, a denial of a decision that would otherwise end the case but by its denial keeps the case alive, is not a final judgment. Consequently, such a decision is an interlocutory order.

Appeals of interlocutory orders are governed by Ind. App. Rule 14: the subject of today's discussion. Rule 14 sets out four categories for interlocutory appeals. Subdivision (A) identifies a list of nine types of interlocutory orders from which, like a final judgment, an appeal can be taken as a matter of right. Subdivision (B) deals with seeking an appeal on almost every other interlocutory order. An appeal under subdivision (B) is not as a matter of right and therefore is not guarantied to be heard. In order for an appeal under subdivision (B) to be heard, the trial judge must first decide that the matter should be certified to the court of appeals. This means that if the trial judge does not think that the issue should be reviewed by the court of appeals, it cannot be appealed until after a final judgment in the case. The second step under subdivision (B) is to petition the court of appeals to permit the interlocutory appeal. Importantly, even if the trial judge is willing to certify the matter for an appeal, the court of appeals may decide under its own discretion to not hear the case.

Cynically, many of you might wonder why a trial judge would ever voluntarily permit an appeal of his or her decision in a case. While I can see why you might think that, rest assured, most judges realize that there are some decisions that are tough calls or must be made on an area of law that has never been decided. In such cases, trial judges often welcome appellate review with open arms to help clarify an otherwise murky area of law. In my experience, judges are

more concerned with getting a case right than with the vanity of not wanting to be overruled on appeal.

That said, there is good reason why trial judges are often hesitant to certify an interlocutory appeal: it usually results in a tremendous delay in bringing the case to trial. The rules are designed so that even if an interlocutory appeal is certified and taken by the court of appeals, proceedings in the case before the trial court are not necessarily stayed. Subdivision (H), in relevant part, provides: "An interlocutory appeal shall not stay proceedings in the trial court unless the trial court or a judge of the Court of Appeals so orders."

The other two categories for interlocutory appeals are limited. Subdivision (C) creates a specific appeals process for orders granting or denying class certification in a class action case. The decision to hear the appeal is still within the discretion of the court of appeals, but it removes the trial judge from the equation. The other category is subdivision (D), which acknowledges that "other interlocutory appeals may be taken only as provided by statute."

appeals as outlined in specific statutes.

The specific issue in *Kindred v. Townsend* was whether a trial court's denial of a motion to *dissolve* a preliminary injunction was an interlocutory order that could be appealed as matter of right under Rule 14(A). Looking plainly at the rule, it may seem like a no-brainer that the answer is yes. Rule 14(A)(5) states:

> "Appeals from the following interlocutory orders are taken as a matter of right by filing a Notice of Appeal within thirty (30) days after the notation of the interlocutory order in the Chronological Case Summary: . . . (5) Granting or refusing to grant, dissolving or *refusing to dissolve a preliminary injunction*[.]"

However, I've already dispelled such a cynical view above; don't make me do so here again. I obviously would not be discussing the case were the answer that easy.

The issue is that the challenge was not of the trial court's original decision to grant a preliminary injunction in June 2010. The order on appeal was a March 2011 decision denying a subsequent motion to dissolve the court ordered preliminary injunction filed back in January 2011. The Kindreds filed their appeal directly with the trial court in April 2011. At this point, more than thirty days had passed since the original decision to establish the preliminary injunction, but it was still within the thirty-day timeframe since the trial court denied the motion to dissolve the injunction. Consequently, the Kindreds could not appeal the original order imposing

the injunction, but, they contended, they could appeal the denial of their motion to dissolve the preliminary injunction.

As you can tell, a plain reading of the rule sure seems to agree with the Kindreds. However, the court of appeals did not. The problem for the court of appeals was that the Kindreds motion to dissolve was not based on any new information or facts than that which was used to oppose the original motion seeking the preliminary injunction. The court reasoned that were they to read Rule 14(A)(5) as broadly as the Kindreds sought, then there would functionally never be a time limit on challenging an order granting a preliminary injunction; the opposing party could always file a subsequent motion to dissolve then take an appeal from the denial of that subsequent motion. The court concluded that permitting such a reading "would render the time limitations of Appellate Rule 14(A) meaningless."

The interpretation that the court of appeals found to be more in keeping with the spirit of the rule, and within the confines of the specific language, is to:

> read Appellate Rule 14(A)(5) to mean that a party who wishes to challenge the entry of a preliminary injunction order (or the denial of a request for a preliminary injunction) must initiate their appeal within thirty days of the trial court's order granting or denying the request for a preliminary injunction. If a party fails to do so, it may not thereafter seek to dissolve the preliminary injunction based upon grounds that were known or knowable at the time of the entry of the preliminary injunction, as this would simply be a belated, collateral attack on the trial court's initial decision to enter or deny the injunction.

Put simply, in order to appeal the denial of a motion to dissolve a preliminary injunction under Rule 14(A)(5), the basis for the motion to dissolve must be founded upon new facts than were available at the time of the original motion.

An important note that I alluded to earlier and the court makes clear in footnote 3: just because the Kindreds cannot avail themselves of an interlocutory appeal does not mean that they can never appeal the preliminary injunction. They can still bring the appeal after the final judgment. As the Indiana Supreme Court has recognized, "A claimed error in an interlocutory order is not waived for failure to take an interlocutory appeal but may be raised on appeal from the final judgment." That said, an appeal of a *preliminary* injunction after a final judgment would not seem to make much sense for the Kindreds. At the end of the case, the court may issue a permanent injunction, or, more likely in this case due to the specific facts at issue, remove the injunction. At that point, whatever the reason for resisting the preliminary injunction will be moot.

Join us again next time for further discussion of developments in the law.

Sources

- *Kindred v. Townsend*, --- N.E.3d ---, No. 60A01-1304-PL-156, 2014 WL 712753 (Ind. Ct. App. Feb. 25, 2014).
- Ind. Appellate Rule 2(H).
- Ind. Appellate Rule 14.
- Colin E. Flora, *Understanding the Appeals Process*, HOOSIER LITIGATION BLOG (Aug. 3, 2012).