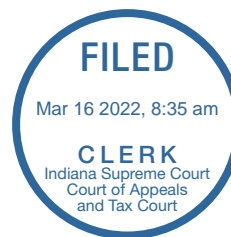


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Wayde M. Coleman,

Appellant-Petitioner,

v.

Marion County Treasurer and
Marion County Auditor,

Appellees-Respondents.

March 16, 2022

Court of Appeals Case No.
21A-TP-365

Appeal from the
Marion Circuit Court

The Honorable
Amber C. Collins-Gebrehiwet,
Magistrate

Trial Court Cause No.
49C01-1907-TP-28667

Molter, Judge.

- [1] Wayde M. Coleman appeals the trial court's order denying his motion to void the tax deed transferring ownership of his property to Marion County. Because

Coleman filed his notice of appeal five days late, he forfeited his appeal under Indiana Appellate Rule 9(A)(5). And because there are no extraordinarily compelling reasons to restore his appeal, we dismiss it.

Facts and Procedural History

- [2] For several years, Coleman failed to pay property taxes on real estate he owned in Indianapolis. In October of 2017, when the arrearage reached about \$34,000, Marion County offered the real estate for sale at a tax sale. When the property did not sell, Marion County acquired a lien on it. Coleman failed to redeem the property, and in June 2018, Marion County acquired the property through a tax deed.
- [3] About one year later, Marion County transferred the deed to Covenant Community Housing. Six weeks after, Coleman filed a motion to void the tax deed that had given Marion County title to the property. The trial court denied the motion, and on January 27, 2021, it denied Coleman’s motion to correct error. On February 26, 2021—the deadline to appeal—Coleman filed his notice of appeal with the trial court clerk instead of the appellate clerk, and on March 2, 2021, the trial court directed him to file his notice of appeal with our court. On March 3, 2021, thirty-five days after the trial court denied Coleman’s motion to correct error, he tendered both his notice of appeal and motion for belated appeal to this court. On March 11, 2021, our court’s motions panel granted Coleman’s motion to file belated notice of appeal by a 2-1 vote. Coleman now appeals the denial of his motion to void the tax deed.

Discussion and Decision

[4] Although the motions panel granted Coleman’s motion to file a belated notice of appeal, we retain inherent authority to revisit that decision. *See Core v. State*, 122 N.E.3d 974, 976 (Ind. Ct. App. 2019). A party who does not file a notice of appeal with the appellate clerk within thirty days after a ruling on a motion to correct error forfeits the right to appeal. Ind. Appellate Rule 9(A)(1), (5). At that point, the only way to restore the appeal is to demonstrate “extraordinarily compelling reasons” to do so. *In re Adoption of O.R.*, 16 N.E.3d 965, 971 (Ind. 2014). Other panels of this court have lamented a lack of guidance as to what qualifies as extraordinarily compelling reasons, *see, e.g., Cannon v. Caldwell*, 74 N.E.3d 255, 259 (Ind. Ct. App. 2017), but our cases restoring appeals tend to fall into a few categories.

[5] The first category covers cases with fundamental liberty interests at stake, like the right to maintain the parent-child relationship or the right to bail. *See, e.g., Robertson v. Robertson*, 60 N.E.3d 1085, 1090 (Ind. Ct. App. 2016) (restoring a forfeited appeal and recognizing that “a parent’s interest in the custody of his child is a fundamental liberty interest, and the parent-child relationship is one of the most valued relationships in our culture”); *Satterfield v. State*, 30 N.E.3d 1271, 1275 (Ind. Ct. App. 2015) (restoring a forfeited appeal and recognizing that the right to bail is “a traditional and cherished right”). A second category involves criminal cases where the delay is not the defendant’s fault, such as when there is a delay in the appointment of appellate counsel. *See Strong v. State*, 29 N.E.2d 760 (Ind. Ct. App. 2015) (finding extraordinarily compelling

reasons to restore an appeal where the appointment of appellate counsel occurred after the appeal deadline expired and the defendant's file was then lost through no fault of his own). A third category covers cases in which there is an "obvious injustice," such as the violation of child support guidelines clear on the face of the trial court's order. *Cannon v. Caldwell*, 74 N.E.3d 255, 259 (Ind. Ct. App. 2017).

- [6] This appeal does not fit into any of these categories. This is a dispute about setting aside a tax deed that transferred ownership of Coleman's property to Marion County, so no fundamental liberty interest is at stake. Coleman acknowledges he bears sole responsibility for filing his appeal late, and there is no suggestion that he seeks review of a manifestly unjust order.
- [7] Coleman's mistake of waiting until the deadline to file his appeal and then filing it in the wrong court is akin to cases where parties have filed their appeals late because of calendaring errors, which our court and the Supreme Court have concluded do not present extraordinarily compelling reasons for restoring an appeal. See *Cooper's Hawk Indianapolis, LLC v. Ray*, 162 N.E.3d 1097 (Ind. 2021) (dismissing an interlocutory appeal after the notice of appeal was filed four days late); *Syndicate Claim Servs., Inc. v. Trimmel*, No. 21A-PL-1231, 2021 WL 5816716 (Ind. Ct. App. Dec. 8, 2021) (dismissing interlocutory appeal after the notice of appeal was filed one week late). Indeed, Coleman has not suggested otherwise. His motion for a belated appeal merely acknowledged his appeal was late without attempting to identify compelling reasons to restore it. Thus,

because Coleman forfeited his right to appeal, and there are no extraordinarily compelling reasons to restore his appeal, it must be dismissed.

[8] Dismissed.

Riley, J., and Robb, J., concur.