Supreme Court of the United States

Jose TORRES, Petitioner
v.
OAKLAND SCAVENGER COMPANY et al.
No. 86-1845.

Argued Feb. 23, 1988.
Decided June 24, 1988.

[These opinions have been edited.]

MARSHALL, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and WHITE, BLACKMUN, STEVENS, O'CONNOR, and KENNEDY, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment, *post*, p. ---. BRENNAN, J., filed a dissenting opinion, *post*, p. ---.

Justice MARSHALL delivered the opinion of the Court.

This case presents the question whether a federal appellate court has jurisdiction over a party who was not specified in the notice of appeal in accordance with Federal Rule of Appellate Procedure 3(c).

I

Petitioner Jose Torres is one of 16 plaintiffs in an employment discrimination suit against respondent Oakland Scavenger Co. (hereafter respondent). In their complaint, the intervenors purported to proceed not only on their own behalf, but also on behalf of all persons similarly situated. On August 31, 1981, the District Court for the Northern District of California dismissed the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim warranting relief.

On September 29, 1981, a notice of appeal was filed in the Court of Appeals for the Ninth Circuit. The Court of Appeals reversed the District Court's dismissal and remanded the case for further proceedings. Both the notice of appeal and the order of the Court of Appeals omitted petitioner's name. It is undisputed that the omission in the notice of appeal was due to a clerical error on the part of a secretary employed by petitioner's attorney.

On remand, respondent moved for partial summary judgment on the ground that the prior judgment of dismissal was final as to petitioner by virtue of his failure to appeal. The District Court granted respondent's motion. The Court of Appeals affirmed, holding that "[u]nless a party is named in the notice of appeal, the appellate court does not have jurisdiction over him."

We granted certiorari to resolve a conflict in the Circuits over whether a failure to file a notice of appeal in accordance with the specificity requirement of Federal Rule of Appellate Procedure 3(c) presents a jurisdictional bar to the appeal. [FN1] We now affirm.

FN1. Compare *Farley Transportation Co. v. Santa Fe Trail Transportation Co.*, 778 F.2d 1365, 1368-1370 (CA9 1985) (failure to specify party to appeal is jurisdictional bar); *Covington v. Allsbrook*, 636 F.2d 63, 64 (CA4 1980) (same); *Life Time Doors, Inc. v. Walled Lake Door Co.*, 505 F.2d 1165, 1168 (CA6 1974) (same), with *Ayres v. Sears, Roebuck & Co.*, 789 F.2d 1173, 1177 (CA5 1986) (appeal by party not named in notice of appeal is permitted in limited instances); *Harrison v. United States*, 715 F.2d 1311, 1312-1313 (CA8 1983) (same); *Williams v. Frey*, 551 F.2d 932, 934, n. 1 (CA3 1977) (same).

II

Federal Rule of Appellate Procedure 3(c) provides in pertinent part that a notice of appeal "shall specify the party or parties

taking the appeal." The Rule was amended in 1979 to add that an appeal "shall not be dismissed for informality of form or title of the notice of appeal." This caveat does not aid petitioner in the instant case. The failure to name a party in a notice of appeal is more than excusable "informality"; it constitutes a failure of that party to appeal.

More broadly, Rule 2 gives courts of appeals the power, for "good cause shown," to "suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion." Rule 26(b), however, contains certain exceptions to this grant of broad equitable discretion. The exception pertinent to this case forbids a court to "enlarge" the time limits for filing a notice of appeal, which are prescribed in Rule 4. We believe that the mandatory nature of the time limits contained in Rule 4 would be vitiated if courts of appeals were permitted to exercise jurisdiction over parties not named in the notice of appeal. Permitting courts to exercise jurisdiction over unnamed parties after the time for filing a notice of appeal has passed is equivalent to permitting courts to extend the time for filing a notice of appeal. Because the Rules do not grant courts the latter power, we hold that the Rules likewise withhold the former.

We find support for our view in the Advisory Committee Note following Rule 3:

> "Rule 3 and Rule 4 combine to require that a notice of appeal be filed with the clerk of the district court within the time prescribed for taking an appeal. Because the timely filing of a notice of appeal is 'mandatory and jurisdictional,' *United States v. Robinson,* [361 U.S. 220, 224, 80 S.Ct. 282, 285, 4 L.Ed.2d 259 (1960)], compliance with the provisions of those rules is of the utmost importance." 28 U.S.C.App., p. 467.

This admonition by the Advisory Committee makes no distinction among the various requirements of Rule 3 and Rule 4; rather it treats the requirements of the two Rules as a single jurisdictional threshold. The Advisory Committee's caveat that courts should "dispense with literal compliance in cases in which it cannot fairly be exacted," *ibid.,* is not to the contrary. The examples cited by the Committee make clear that it was referring generally to the kinds of cases later addressed by the 1979 amendment to Rule 3(c), which excuses "informality of form or title" in a notice of appeal. [FN2] Permitting imperfect but substantial compliance with a technical requirement is not the same as waiving the requirement altogether as a jurisdictional threshold. Our conclusion that the Advisory Committee viewed the requirements of Rule 3 as jurisdictional in nature, although not determinative, is "of weight" in our construction of the Rule. *Mississippi Publishing Corp. v. Murphree,* 326 U.S. 438, 444, 66 S.Ct. 242, 245-246, 90 L.Ed. 185 (1946).

> FN2. For example, the Advisory Committee approvingly cited cases permitting a letter from a prisoner to a judge to suffice as a notice of appeal, see *Riffle v. United States,* 299 F.2d 802 (CA5 1962), and permitting the mailing of a notice of appeal to constitute its time of "filing" rather than its receipt by the court, see *Halfen v. United States,* 324 F.2d 52 (CA10 1963).

The requirements of the rules of procedure should be liberally construed, and "mere technicalities" should not stand in the way of consideration of a case on its merits. *Ibid.* Thus, if a litigant files papers in a fashion that is technically at variance with the letter of a procedural rule, a court may nonetheless find that the litigant has complied with the rule if the litigant's action is the functional

equivalent of what the rule requires. See, *e.g., Houston v. Lack,* 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988) (delivery of notice of appeal by *pro se* prisoner to prison authorities for mailing constitutes "filing" within the meaning of Federal Rules of Appellate Procedure 3 and 4). But although a court may construe the Rules liberally in determining whether they have been complied with, it may not waive the jurisdictional requirements of Rules 3 and 4, even for "good cause shown" under Rule 2, if it finds that they have not been met.

Applying these principles to the instant case, we find that petitioner failed to comply with the specificity requirement of Rule 3(c), even liberally construed. Petitioner did not file the functional equivalent of a notice of appeal; he was never named or otherwise designated, however inartfully, in the notice of appeal filed by the 15 other intervenors. Nor did petitioner seek leave to amend the notice of appeal within the time limits set by Rule 4. Thus, the Court of Appeals was correct that it never had jurisdiction over petitioner's appeal.

Petitioner urges that the use of "et al." in the notice of appeal was sufficient to indicate his intention to appeal. We cannot agree. The purpose of the specificity requirement of Rule 3(c) is to provide notice both to the opposition and to the court of the identity of the appellant or appellants. The use of the phrase "et al.," which literally means "and others," utterly fails to provide such notice to either intended recipient. Permitting such vague designation would leave the appellee and the court unable to determine with certitude whether a losing party not named in the notice of appeal should be bound by an adverse judgment or held liable for costs or sanctions. The specificity requirement of Rule 3(c) is met only by some designation that gives fair notice of the specific individual or entity seeking to appeal.

We recognize that construing Rule 3(c) as a jurisdictional prerequisite leads to a harsh result in this case, but we are convinced that the harshness of our construction is "imposed by the legislature and not by the judicial process." *Schiavone v. Fortune,* 477 U.S. 21, 31, 106 S.Ct. 2379, 2385, 91 L.Ed.2d 18 (1986) (construing Federal Rule of Civil Procedure 15(c) in a similarly implacable fashion).

The judgment of the Court of Appeals is affirmed.

It is so ordered.

Justice SCALIA, concurring in the judgment.

I agree with the judgment of the Court, but I do not believe that the principles set forth in its opinion produce it. If it is the fact that the requirements of the rules of procedure should be "liberally construed," that " 'mere technicalities' should not stand in the way of consideration of a case on its merits," and that a rule is complied with if "the litigant's action is the functional equivalent of what the rule requires," *ante,* at 2409, it would seem to me that a caption listing the first party to the case and then adding "et al." is enough to suggest that all parties are taking the appeal; and that the later omission of one of the parties in listing the appellants can, "liberally viewed," be deemed to create no more than an ambiguity which does not destroy the effect of putting the appellee on notice.

The principle that "mere technicalities" should not stand in the way of deciding a case on the merits is more a prescription for

ignoring the Federal Rules than a useful guide to their construction and application. By definition all rules of procedure are technicalities; sanction for failure to comply with them always prevents the court from deciding where justice lies in the particular case, on the theory that securing a fair and orderly process enables more justice to be done in the totality of cases. It seems to me, moreover, that we should seek to interpret the rules neither liberally nor stingily, but only, as best we can, according to their apparent intent. Where that intent is to provide leeway, a permissive construction is the right one; where it is to be strict, a permissive construction is wrong. Thus, the very first of the Rules of Civil Procedure does not prescribe that they are to be "liberally construed," but rather that they are to be "construed to secure the just, speedy, and inexpensive determination of every action." Fed.Rule Civ.Proc. 1.

The Appellate Rule at issue here requires the appellant to "specify the party or parties taking the appeal," Fed.Rule App. Proc. 3(c), which suggests to me more than just a residual "et al." Moreover, that it was thought necessary to specify that "informality of form or title" would not entail dismissal, *ibid.*, suggests that a strict application was generally contemplated. I concur in today's judgment, therefore, for essentially the same reasons that I dissented from the judgment in *Houston v. Lack*, 487 U.S. 266, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988), which the Court appropriately cites to support its reasoning in the present case, but which in my view stands in stark contrast to its conclusion.

Justice BRENNAN, dissenting.

"The Federal Rules," we have previously observed, "reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Foman v. Davis*, 371 U.S. 178, 181-182, 83 S.Ct. 227, 229-230, 9 L.Ed.2d 222 (1962). Although the Court today pays lip-service to the spirit of liberality animating the Federal Rules, it nevertheless holds that the Court of Appeals below lacked jurisdiction over petitioner's suit because his lawyer's secretary inadvertently omitted his name from the notice of appeal filed on behalf of him and his 15 coplaintiffs. Eschewing any inquiry into whether this omission was excusable or whether respondent suffered any prejudice as a result of it, the Court concludes that this "misstep by counsel" decides the outcome of petitioner's case because compliance with the party-specification requirement of Federal Rule of Appellate Procedure 3(c) is a jurisdictional prerequisite to appellate review. Nothing in the Federal Rules, however, compels such a construction of Rule 3(c), which I believe to be wholly at odds with the liberal policies underlying those Rules, as well as our own prior construction of them.

In 1979, Rule 3(c) was amended to provide that "[a]n appeal shall not be dismissed for informality of form or title of the notice of appeal." The Advisory Committee Note accompanying this amendment explained that "so long as the *function* of notice is met by the filing of a paper indicating an intention to appeal, the substance of the rule has been complied with." Advisory Committee Note to Rule 3, 28 U.S.C.App., p. 467 (emphasis added). The function of a notice of appeal, of course, is to notify the court of appeals and the opposing party that an appeal is being taken, see *Cobb v. Lewis*, 488 F.2d 41, 45 (CA5 1974) (cited with approval in Advisory Committee Note to Rule 3), which in turn ensures that the

appellees are not prejudiced in any way by the appeal and that the appellants have made the requisite commitment to assuming the obligations of the appeal, particularly the obligation to pay any costs and fees that the appellate court might ultimately assess. These are factual inquiries that the courts of appeals are entirely capable of undertaking, and that better serve the purposes supposedly advanced by the bright-line jurisdictional rule the Court announces today. [FN*]

> FN* Although the Court's jurisdictional approach to the specificity requirement provides no greater protection to litigants than the equitable approach adopted by several Courts of Appeals, like all bright-line tests its application is more certain and predictable. This advantage, however, is of marginal significance inasmuch as few courts have found the notice function satisfied where a party's name is omitted, and those that have have acknowledged that it is the exceptional case in which such a finding is even possible. See *Harrison v. United States*, 715 F.2d 1311, 1313 (CA8 1983) ("[T]his is a very rare but appropriate case for a liberal construction of FRAP 3"); *Williams v. Frey*, 551 F.2d 932, 934, n. 1 (CA3 1977) ("Under most circumstances, the designation of the party appellant in the notice of appeal will govern"). Certainly no responsible lawyer would intentionally omit a party's name in reliance on an equitable construction of the notice of appeal.

After today's ruling, appellees will be able to capitalize on mere clerical errors and secure the dismissal of unnamed appellants no matter how meritorious the appellant's claims and no matter how obvious the appellant's intention to seek appellate review, and courts of appeals will be powerless to correct even the most manifest of resulting injustices. The Court identifies no policy supporting, let alone requiring, this harsh rule, which I believe is patently inconsistent not only with the liberal spirit underlying the Federal Rules, but with Rule 2's express authorization permitting courts of appeals to forgive noncompliance where good cause for such forgiveness is shown. Instead, the Court simply announces by fiat that the omission of a party's name from a notice of appeal can never serve the function of notice, thereby converting what is in essence a factual question into an inflexible rule of convenience. Because the Court has failed to demonstrate that the notice filed in this case failed to apprise the court below or respondents that petitioner intended to join in the appeal taken by his 15 coplaintiffs, I would reverse the case and remand for the necessary factual inquiry.

Accordingly, I dissent.