



Mind the RAP: Colorado Court of Appeals Decision Reiterates Importance of the Rules of Appellate Procedure

All lawyers live and die by their deadlines, and one of the most important deadlines for any attorney is the deadline to file an appeal. Appellate deadlines can be some of the most difficult to track and calculate. Indeed, on more than one occasion, the Colorado Court of Appeals has lamented this “confusing appellate labyrinth” that often catches the unwary off guard, leading to disastrous results for them and their clients.

Recently, *In the Matter of the Estate of Ybarra*, the Colorado Court of Appeals took the opportunity to explain and try to simplify the complex considerations for determining appellate deadlines. *Ybarra* involved an attempt to appeal an order entered by a magistrate in a probate proceeding. All parties had consented to magistrate jurisdiction and the substance of the underlying dispute is not particularly germane to the ultimate ruling. In short, the case was a dispute between Raymond Ybarra and his sister Connie Zamora concerning their father’s estate. The magistrate entered judgment against Ybarra and in favor of Zamora.

After entry of the judgment, Ybarra switched counsel and moved for an extension of time to file post-trial motions so that his new counsel could get up to speed with the case. The magistrate granted this extension and Ybarra eventually moved for post-trial relief under Rule 59 of the Colorado Rules of Civil Procedure. The magistrate, however, denied this motion because magistrates in Colorado state courts have no authority to entertain Rule 59 motions. Ybarra filed a notice of appeal 29 days after the denial of his Rule 59 motion, which was also 110 days after the magistrate’s judgment and 66 days after the deadline to file post-trial motions.

As the reader may be aware, as a general rule, appeals in most civil matters in Colorado must be filed within 49 days of the judgment or order to be appealed, and this deadline is tolled by the filing of a Rule 59 motion. For Ybarra, this meant that his appeal would be timely only if his deadline was tolled by the filing of his Rule 59 motion.

Unfortunately for Ybarra, the Court of Appeals determined that it did not. Although Ybarra timely filed his Rule 59 motion, the Court concluded that this filing did not toll his deadline to appeal. Relying on its prior decision from 2023, the Colorado Court of Appeals held that, because magistrates cannot consider Rule 59 motions, the filing of such a motion before a magistrate does not toll the deadline to appeal.

Ybarra countered that the magistrate's order allowing an extension to file post-trial motions tolled the deadline for him to appeal and the filing of such a motion could have "destroyed the finality of the" judgment. The Court of Appeals disagreed, finding that the only post-trial motion the magistrate could have considered was a motion under Rule 60(a) of the Colorado Rules of Civil Procedure. The *Ybarra* court found, however, that the filing of a Rule 60(a) motion, unlike a Rule 59 motion, does *not* toll the deadline to file an appeal. Further, the Court of Appeals held that, regardless of the type of post-trial relief ultimately sought, an order allowing an extension to file post-trial motions does not toll the deadline to appeal – only those motions specifically contemplated by the Colorado Rules of Appellate Procedure toll the deadline to appeal. So, because Ybarra could not have filed any post-trial motion that would have tolled his appellate deadline, the Court of Appeals found his appeal untimely.

The *Ybarra* court also declined to retroactively extend the deadline to file an appeal for excusable neglect because such a request must be made no later than 35 days from the original deadline to appeal. And, because Ybarra filed his appeal 66 days after that deadline, the Court of Appeals could not entertain his request.

As a last-ditch effort to save his untimely appeal, Ybarra contended that he should be permitted to pursue his appeal under the "unique circumstances" doctrine. This doctrine is a narrow one that applies only in "extreme situations," particularly those involving fundamental liberty interests. The doctrine may also apply where a party reasonably relies on an erroneous or misleading ruling concerning appellate

procedures and deadlines.

Ybarra contended that the magistrate's order extending his deadline to file post-trial motions was such a misleading ruling. The Court of Appeals quickly disposed of this argument finding that Ybarra was represented by counsel and that the order extending the post-trial motions deadline was not limited to Rule 59 motions (which the magistrate would have been unable to hear) and instead was broad enough to capture post-trial motions that the magistrate could have entertained but which would not have tolled Ybarra's deadline to appeal.

Ybarra is a strong reminder for all practitioners and their clients to be mindful of the "confusing appellate labyrinth" of rules related to the deadline to file an appeal. Lawyers and their clients should carefully review the Colorado Rules of Appellate Procedure to determine when their appellate deadlines are. In many cases, this may be as simple as adding 49 days to the date of the judgment. But, in complex cases involving post-trial matters, a party's deadline to appeal may or may not change. Because this determination is not always straightforward, in the event of any doubt, practitioners should err on the side of caution and presume that the earliest possible date is their deadline to appeal.

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