Masthead Logo

DePaul Law Review

Volume 10
Issue 2 *Spring-Summer 1961: Symposium - A Decade of Developments in Illinois Law 1950-1960*

Article 5

Developments in Appellate Procedure - 1950-1960

Edward D. Feinberg

DEVELOPMENTS IN APPELLATE PROCEDURE–1950–1960

EDWARD D. FEINBERG

APPELLATE COURT PRACTICE and procedure is controlled by statutory law and rules of court. The first important changes in appellate court practice in the past decade were made by amendments to the ILLINOIS SUPREME COURT RULES OF PROCEDURE adopted in May, 1952.[1] The 1952 amendments changed the time table for filing printed abstracts and briefs so that the filing dates were computed from date of filing of the transcript of record on appeal,[2] and not from the first day of the term of court in which the case is submitted. The 1952 amended rules also provided for the following changes in Supreme Court Practice:

(a) Oral argument is postponed to at least twenty days after due date of appellee's brief.[3]

(b) The number of cases called on a particular day is designated in advance of the term by the Chief Justice.[4]

(c) The appellate courts are permitted to waive the printed abstract of record, or portions thereof, and it is provided that "the Abstract need only be sufficient to present every error relied upon,"[5] instead of the requirement that the abstract be "sufficient to present *fully* every error relied upon." This change omits the emphasis of presenting fully every error relied upon.

(d) The amended rules permit petitions for leave to appeal and answers thereto to stand as briefs without an order of court.[6] The appellate courts followed the lead of the Illinois Supreme Court and

[1] AMENDMENTS TO RULES, 413 Ill. xi (1952).

[2] ILL. SUP. CT. R. 41 (2).

[3] ILL. SUP. CT. R. 43.

[4] ILL. SUP. CT. R. 42.

[5] ILL. SUP. CT. R. 38.

[6] ILL. SUP. CT. R. 40.

MR. FEINBERG, *a member of the Illinois Bar, has also been admitted to practice before the Supreme Court of the United States. He received his B.S.L. and J.D. from Northwestern University, and is a former lecturer at that university. He is now a partner of the firm of Feinberg & Fried, and is a past member of the Chicago Bar Association Committee on National Legislation.*

amended their rules to implement their power to waive the filing of abstracts, or portions thereof.[7]

THE CHANGES EFFECTED BY THE 1956 CIVIL PRACTICE ACT AND SUPREME COURT RULES

The Revised Illinois Civil Practice Act and the REVISED RULES OF THE ILLINOIS SUPREME COURT which became effective on January 1, 1956,[8] have accomplished the most important changes in appellate court practice and procedure over the past decade. These changes have been thoroughly analyzed in various law journals.[9]

The trial lawyer must remember that the errors upon which he depends for reversal of a judgment based on a trial before a jury and also for reversal of a judgment entered by a trial court without a jury must be properly preserved by him in order that the Supreme Court or Appellate Court clearly have before it the errors upon which the appellant depends. In jury cases prior to the Revised Civil Practice Act, in order to preserve questions for review, appropriate motions after trial were required—motions for a new trial, for judgment notwithstanding the verdict, for judgment nonobstante veredicto, in arrest of judgment, and by a motion for a directed verdict.[10] Under the revised act, all relief desired after trial is sought in a post-trial motion. The motion must set out the points relied upon, specifying the grounds in support of said points and must state the relief desired.[11] A matter which is not specifically alleged in the motion cannot be raised on appeal. A motion for a directed verdict at the close of the evidence which is denied or a ruling which is reserved cannot be used on appeal unless the request is renewed in the post-trial motion.[12] If the motion fails to request a new trial, all right to apply for a new trial on appeal is waived.[13] The time for appeal does not commence to run until the trial court has ruled on the post-trial motion submitted to it.[14] The

[7] 346 Ill. App. xviii (1952).

[8] ILL. REV. STAT. ch. 110, §§ 101.1–101.72 (1959).

[9] Rall, *Procedure in Courts of Review*, 44 ILL. B.J. 414 (1956); O'Connor & Proctor, *Appellate Procedure*, 50 NW. U.L. REV. 639 (1955).

[10] Ill. Laws 1933, at 786, 802.

[11] ILL. REV. STAT. ch. 110, § 68.1 (1959).

[12] *Ibid.*

[13] ILL. REV. STAT. ch. 110, § 68.1(5) (1959).

[14] ILL. REV. STAT. ch. 110, § 68.1(4) (1959).

post-trial motion must be made within thirty days after the entry of judgment.[15]

The preservation of certain questions to be determined on appeal requires other prior action in addition to specifying all grounds in the post-trial motion.[16] One of the important required actions to remember is that in a case involving the validity of a county zoning ordinance or resolution in which a direct appeal to the Supreme Court is desired, it is necessary that the trial court certify that in his opinion public interest requires a direct appeal.[17]

The time for filing the notice of appeal has been shortened to sixty days from the entry of the judgment, order or decree.[18] Formerly the time was ninety days.[19] A copy of the notice of appeal must be served within ten days after date of filing.[20] The prior rule required service of notice within the ninety-day period.

The previous requirement of a complete record as a condition of obtaining a supersedeas from the reviewing court is now no longer necessary. That part of the record is required which will allow the court of appeals to decide whether or not a supersedeas should be issued.[21] The abstract and brief in support of the motion for a supersedeas may be typewritten.[22]

Prior to the enactment of the Amended Civil Practice Act, in order to incorporate in the record the original report of proceedings, or the Master's Report, a stipulation to that effect with the opponent was necessary. Now, if originals are requested in the praecipe of the record, they will be included unless the court orders otherwise.[23]

The trial court is now empowered to dismiss an appeal by stipulation of the parties. The trial court may also dismiss for failure to file the record in the reviewing court within the statutory time.[24] If the record on appeal is insufficient, the appellee is no longer required to supply the portions of the record which he believes necessary to fully present to the appellate tribunal the questions involved, but the appellee is permitted so to do, at the cost of the appellant.[25]

15 ILL. REV. STAT. ch. 110, § 68.1(3) (1959).

16 See ILL. REV. STAT. ch. 110, §§ 8(2), 9, 20(1), (3), 50(2), 67(3), 68(4) (1959).

17 ILL. REV. STAT. ch. 110, § 75(1) (1959).

18 ILL. REV. STAT. ch. 110, § 76(1) (1959).

19 Ill. Laws 1933, at 806.

20 ILL. REV. STAT. ch. 110, § 34(1) (1959).

21 ILL. SUP. CT. R. 37 (2).

22 *Ibid.*

23 ILL. SUP. CT. R. 36 (1) (b).

24 ILL. SUP. CT. R. 36 (1) (e), 36 (2) (g).

25 ILL. SUP. CT. R. 36 (3).

Section 72 of the Revised Civil Practice Act specifically provides for judgments and decrees which are appealable.[26] Before enactment of the Amended Civil Practice Act the only interlocutory orders from which an appeal could be taken were orders granting a temporary injunction, overruling a motion to dissolve the injunction; enlarging the scope of an injunction, appointing a receiver or giving further powers to a previously appointed receiver. The amended act expands the scope of interlocutory appeals to include orders refusing, dissolving, modifying or refusing to modify an injunction, refusing to appoint a receiver, or refusing to expand the powers of a receiver.[27]

The Civil Practice Act has made amendments to eliminate review by writ of error in civil cases. Leave to appeal has been substituted for a writ of error to review a judgment of the Appellate Court in which section 11 of article XI of the Illinois Constitution gives a right of review.[28]

The abstract of the record is governed by the UNIFORM APPELLATE COURT RULES 6 and 20, and no material changes have been made with regard to the abstract.

The briefs refer to the parties as plaintiff and defendant.[29] Unless authorized by the court, no brief may exceed seventy-five pages.[30] The briefs no longer require a statement of "Errors Relied on for Reversal." The appellant need only make a summary statement of the nature of the case, including his theory justifying a reversal.[31] The appellant's theory is followed by "Points and Authorities." Next in line is the "Statement of Facts."[32] It is believed that the statement of facts can be the most important division of the brief. This division gives to the appellate tribunal a clear picture of the case which the court must decide. In direct appeals from the trial court or in appeals as a matter of right from an appellate court there must be set out a clear statement of the grounds relied upon to warrant the jurisdiction of the Supreme Court of Illinois.[33] The appellee's brief follows the form of his opponent. If the appellee is dissatisfied with the "Statement of Facts" contained in appellant's brief, he should make a further "Statement of Facts" which will give the appellate court a true

[26] ILL. REV. STAT. ch. 110, § 72(6) (1959).
[27] ILL. REV. STAT. ch. 110, § 78(1) (1959).
[28] ILL. REV. STAT. ch. 110, § 74(3) (1959).
[29] ILL. SUP. CT. R. 39 (1).
[30] *Ibid.*
[31] *Ibid.*
[32] *Ibid*
[33] *Ibid.*

picture of the case before it.[34] The appellee must include in his "Points and Authorities" propositions in law to sustain the judgment.

In appeals from an appellate court judgment as a matter of right, the appellant's brief and abstract must be filed on or before thirty days after notice of appeal is filed.[35]

Notice of intention to file a petition for rehearing has been eliminated. The time for filing such a petition has been reduced from twenty-five days to fifteen days. The court has a right to extend the fifteen-day period.[36]

The Amended Civil Practice Act has eliminated scattered appeals in multiple party and multiple claim cases. Heretofore the court might decide the case between certain parties or might decide certain claims, and attorneys appealed in order to protect the rights of their clients in spite of the fact that the trial court's ruling might not be final. Now the trial court has a right to enter a final order, judgment, or decree in multiple actions as to one or more parties, but only upon an express finding by the court, in rulings that affect fewer than all, that there is no just reason for delaying enforcement or appeal.[37] If the trial court refuses to make such a finding, the order, judgment, or decree is not enforceable or appealable and is subject to revision at any time before the entry of order, judgment, or decree adjudicating all the claims, rights, and liabilities of the parties.[38]

In non-jury cases a motion for a new trial may be made at any time within thirty days from the entry of judgment or decree. This motion, as in jury cases, tolls the time for appeal.[39]

Visual examination of original exhibits by appellate tribunals was previously difficult to obtain and was attainable only through stipulation with opponent, and special order of the trial court.[40] However, under the present rules of the Supreme and Appellate Courts an inspection of an original paper by the appellate tribunal may be obtained by order of the trial court.[41] This rule does not make the original exhibit a part of the record, and, therefore, caution requires

[34] *Ibid.*

[35] ILL. SUP. CT. R. 41 (3).

[36] ILL. SUP. CT. R. 44 (1), 44 (2).

[37] ILL. REV. STAT. ch. 110, § 50(2) (1959).

[38] *Ibid.*

[39] ILL. REV. STAT. ch. 110, § 68(3) (1959).

[40] Fortner v. Hill, 320 Ill. App. 483, 51 N.E.2d 790 (1943).

[41] ILL. SUP. CT. R. 51; ILL. APP. CT. R. 19.

that a copy of the exhibit be included in the report of proceedings submitted to the appellate court.[42]

The parties on appeal should, in the conclusion of their brief, briefly and succintly state the relief which is desired. Long and elaborate conclusions are of no value to the appellate court and are merely a waste of time and space by the parties on appeal.

[42] Rall, *The Use of Visual Aids in Courts of Review*, 52 Nw. U. L. Rev. 90 (1957).