

*Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-179

NOVEMBER TERM, 2005

In re Appeal of Frederick LeBlanc	}	APPEALED FROM:
	}	
	}	
	}	Environmental Court
	}	
	}	DOCKET NO. 48-2-05 Vtec
	}	
	}	Trial Judge: Thomas S. Durkin

In the above-entitled cause, the Clerk will enter:

Frederick Leblanc appeals the environmental court=s order dismissing, as untimely filed, his notice of appeal of a decision by the Town of Colchester Development Review Board. We reverse the judgment and remand the matter for further factfinding.

Following a January 12, 2005 hearing, the Board issued its decision on January 26, 2005. Appellant=s notice of appeal was received and date-stamped by the environmental court on February 28, 2005, the thirty-third day following the January 26 decision. On April 22, 2005, the environmental court granted appellee=s motion to dismiss the appeal as untimely filed. Appellant appeals that order, arguing that the court erred by dismissing the appeal because his notice of appeal was mailed to the court on February 24, 2005, the day before the thirty-day appeal period expired.

We find no merit to appellant=s argument that the date of mailing is the date for determining the timeliness of his appeal. The timely filing of a notice of appeal is a prerequisite to appellate jurisdiction. See City Bank & Trust v. Lyndonville Sav. Bank & Trust Co., 157 Vt. 666, 666 (1991) (mem.). An appeal from a development review board decision is taken by filing with the clerk of the environmental court a notice of appeal within thirty days of the date of the decision being appealed from, unless the court extends the time as provided in Rule 4 of the Vermont Rules of Appellate Procedure. V.R.E.C.P. 5(b)(1) (superseding V.R.C.P. 76(e)(2)(B), as amended, effective January 31, 2005). A notice of appeal is filed on the date that it is received rather than mailed. City Bank & Trust, 157 Vt. at 666 (recognizing that timely filing means filing at designated place within designated time); see Reporter=s Notes, V.R.E.C.P. 5(b)(1) (date of receipt of notice of appeal by court determines whether thirty-day filing deadline has been met). Appellant=s reliance on Vermont Rule of Civil Procedure 5, which concerns the service and filing of pleadings, is misplaced and unavailing. Hence, appellant did not file a timely notice of appeal by placing the notice in the mail on February 24, 2005. Nor did he timely seek or obtain permission to extend the time to file a notice of appeal. See V.R.A.P. 4 (court may extend time for filing notice of appeal (1) for good cause if request is made before expiration of appeal period, or (2) for excusable neglect if request is made within thirty days of expiration of appeal period).

As appellant claims in his brief, however, his notice of appeal appears to have been date-stamped by the Town on February 23, 2005, two days before the appeal period expired. If a notice of appeal is mistakenly filed with the tribunal that rendered the decision being appealed to the environmental court, the tribunal Ashall note thereon the date on which it was received . . . and it shall be deemed filed with the Environmental Court on the date so noted.@ V.R.E.C.P. 5(b) (1). The record before us contains only a copy of the notice of appeal filed with the Town, and the stamped date is not

entirely clear. Nor is it clear how that notice of appeal could have been filed with the Town one day before appellant signed it. Nevertheless, if the Board received the notice of appeal on or before February 25, 2005, it was timely filed, even if the notice was not sent to the environmental court until after February 25. On the other hand, if the Board did not receive the notice of appeal before that date, it was untimely filed. Accordingly, the matter must be remanded for the environmental court to determine whether the Board received the notice of appeal on or before August 25, 2005.

Reversed and remanded.

BY THE COURT:

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John A. Dooley, Associate Justice

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice