

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHEIKH AHMED ELOHIM,	§
	§ No. 405, 2006
Plaintiff Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
ST. PAUL FIRE & MARINE	§ C.A. No. 04C-12-203
INSURANCE COMPANY,	§
	§
Defendant Below-	§
Appellee.	§

Submitted: March 6, 2007
Decided: March 15, 2007

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 15th day of March 2007, it appears to the Court that:

(1) The plaintiff-appellant, Cheikh Ahmed Elohim, has filed an appeal from a June 27, 2006, Superior Court jury verdict and from the Superior Court's December 18, 2006, denial of his application for a copy of the trial transcript at State expense. Because Elohim has failed to comply with Supreme Court Rule 9(aa) requiring payment of the record preparation fee and Supreme Court Rule 9(f) requiring payment of the trial transcript fee, his appeal must be DISMISSED.

(2) Elohim's underlying lawsuit sought payment of personal injury protection ("PIP") payments from the defendant-appellee, St. Paul Fire & Marine Insurance Company ("St. Paul") in connection with a June 11, 2004, accident in which Elohim alleges he was injured while a passenger on a Delaware DART bus. Following trial in the Superior Court, the jury found that Elohim had not sustained any compensable injuries in the accident.

(3) On July 27, 2006, Elohim filed a notice of appeal in this Court. On August 4, 2006, the Clerk directed Elohim to file directions to the court reporter and proof of service on or before August 18, 2006. On that date, Elohim filed directions to the court reporter designating the transcript of the June 27, 2006, jury trial. After being advised by the court reporter of the cost of the transcript, Elohim moved in this Court for the appointment of counsel and in the Superior Court for a copy of the trial transcript at State expense. Both motions were denied.

(4) On January 16, 2007, additional time was granted for Elohim to pay the record preparation fee. As of the date of this Order, Elohim still has not paid the record preparation fee and the record still has not been filed. On February 5, 2007, Elohim filed an opening brief in this Court on the ground that the trial judge's rulings at trial were erroneous and constituted an abuse

of discretion.¹ As of the date of this Order, Elohim still has not paid for a copy of the trial transcript and has provided no record support for the claims made in his opening brief.

(5) An appeal to the Delaware Supreme Court is considered on the basis of the trial record.² The appellant must pay the record preparation and transmittal fee within the time limit imposed by the trial court unless the trial court waives the fee or other arrangements are made.³ If the appellant fails to comply with the rule relating to payment of the record preparation fee, any other party may move to dismiss the appeal or the Court may *sua sponte* dismiss the appeal.⁴

(6) Likewise, the time periods for designating, ordering, and paying for a trial transcript are mandatory unless this Court orders otherwise for good cause shown.⁵ The burden is on the appellant to produce such portions of the trial transcript as are necessary to give this Court a fair and accurate account of the context in which the claim of error occurred.⁶ If the appellant fails to comply with the rules relating to designating, ordering or paying for

¹ In his response to St. Paul's motion to dismiss, Elohim also argues that the Superior Court improperly denied his motion for a copy of the trial transcript at State expense.

² Supr. Ct. R. 9(a).

³ Supr. Ct. R. 9(aa).

⁴ Id.

⁵ Supr. Ct. R. 9(f).

⁶ *Slater v. State*, 606 A.2d 1334, 1336-37 (Del. 1992); *Ingram v. Heiman, et al.*, Del. Supr., No. 472, 1999, Walsh, J. (Mar. 22, 2000).

a trial transcript, any other party may move to dismiss the appeal or the Court may *sua sponte* dismiss the appeal.⁷

(7) Elohim has failed to pay the record preparation fee as he was obligated to do. Moreover, once the Superior Court had denied Elohim's application for a copy of the trial transcript at State expense,⁸ it was Elohim's obligation to pay the transcript preparation fee, which he also has failed to do. We, therefore, have no choice but to dismiss Elohim's appeal.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 9, that the within appeal is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland
Justice

⁷ Supr. Ct. R. 9(f).

⁸ The record reflects that the Superior Court was within its discretion to deny Elohim's application.