

COURT OF APPEALS OF VIRGINIA

Present: Judges Kelsey, Petty and Senior Judge Bumgardner

WENDY ROANE

v. Record No. 2285-10-2

VIRGINIA RETIREMENT SYSTEM

MEMORANDUM OPINION\*  
PER CURIAM  
MARCH 8, 2011

FROM THE CIRCUIT COURT OF HANOVER COUNTY  
George F. Tidey, Judge Designate

(Jeffrey Rhodes; Marc Stanley Whitehead; Albo & Oblon, L.L.P.;  
Marc Whitehead & Associates, L.L.P., on brief), for appellant.

(Kenneth T. Cuccinelli, II, Attorney General; Brian J. Goodman,  
Legal Affairs & Compliance Coordinator, on brief), for appellee.

Wendy Roane appeals the trial court's opinion dismissing her petition for appeal. Roane argues that the trial court erred by concluding that it lacked jurisdiction over an untimely appeal when the reason for the delay in filing was the closing of the clerk's office due to inclement weather. Upon reviewing the record and briefs of the parties, we conclude that this appeal is without merit. Accordingly, we summarily affirm the decision of the trial court. See Rule 5A:27.

BACKGROUND

Roane appealed a decision from the Virginia Retirement System (VRS) denying her benefits from the Virginia Sickness and Disability Program. VRS issued its opinion on December 8, 2009, and VRS received Roane's notice of appeal on January 5, 2010. Pursuant to Rule 2A:4(a), Roane's petition for appeal was due by February 4, 2010, or within thirty days of

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\* Pursuant to Code § 17.1-413, this opinion is not designated for publication.

the filing of her notice of appeal. Roane did not file her petition for appeal until February 8, 2010. Citing Rule 2A:4, the trial court dismissed her petition for appeal. This appeal followed.

#### ANALYSIS

Roane argues that the trial court erred in dismissing her petition for appeal. She acknowledges that she did not timely file her petition for appeal; however, she contends that she did so because of inclement weather. The trial court was closed on February 1, 2010 and closed at 3:00 p.m. on February 5, 2010. Aside from these closures, the trial court was open. Roane asked the trial court for leniency in filing her petition for appeal because of the inclement weather. The trial court denied her request, holding that the trial court did not have the authority to extend the time limits of Rule 2A:4.

Rule 2A:4(a) states as follows: “Within 30 days after the filing of the notice of appeal, the appellant shall file a petition for appeal with the clerk of the circuit court named in the first notice of appeal to be filed.” “[T]he time limit of the rule is mandatory.” Mayo v. Dep’t of Commerce, 4 Va. App. 520, 523, 358 S.E.2d 759, 761 (1987). “Rule 2A:5 may not be used by the circuit court to extend the mandatory time limitation found in Rule 2A:4 and . . . there is no sufficient basis from which to infer that the circuit court has implied authority to extend the time limitation of Rule 2A:4.” Id. at 524, 358 S.E.2d at 762.

The trial court did not err in dismissing Roane’s petition for appeal, as Roane admittedly failed to timely file the petition for appeal, and the trial court had no authority to extend the filing deadline.

#### CONCLUSION

For the foregoing reasons, the trial court’s ruling is summarily affirmed. Rule 5A:27.

Affirmed.