

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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AMERICAN PAYTEL CORPORATION and  
PAYTEL STOCKHOLDERS,

UNPUBLISHED  
November 30, 2001

Plaintiffs-Appellees,

v

No. 231594  
Ingham Circuit Court  
LC No. 99-089545-CZ

ROBERT MILLER, GLORIA MILLER, STACEY  
MILLER, GLEN GEBAUER, G & M  
COMMUNICATIONS, L.L.C., STEVE  
AKRIGHT, and RICHARD MAKENS,

Defendants,

and

NATIONWIDE COMMUNICATIONS, INC.,

Defendant-Appellant,

and

INTERNATIONAL FIDELITY INSURANCE  
COMPANY,

Appellee.

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Before: O'Connell, P.J., and White and Smolenski, JJ.

PER CURIAM.

Defendant Nationwide Communications, Inc. (NCI), appeals by leave granted from the trial court's December 6, 2000 order authorizing judgment on an appeal bond. We granted leave "limited to the issue whether the trial court should have entered judgment on the bond prior to resolution of the remaining issues on the merits."<sup>1</sup> We affirm.

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<sup>1</sup> *American Paytel Corp v Miller*, unpublished order of the Court of Appeals, entered February 26, 2001 (Docket No. 231594).

A review of this case's storied procedural history spanning this Court, the Supreme Court, and the trial court provides a useful starting point for our analysis of this appeal. Plaintiff American Paytel Corporation and defendant NCI are pay telephone service providers. Plaintiff<sup>2</sup> instituted the present action against defendants in 1999.<sup>3</sup> As relevant to this appeal, plaintiff sought a temporary restraining order against defendants in January 1999. Plaintiff sought to enjoin defendants from taking over its site locations, removing its telephones from the locations, and using its proprietary information and site provider lists. The trial court entered the temporary restraining order on January 27, 1999. On February 4, 1999, plaintiff filed a motion requesting that defendants be held in contempt of court, arguing that defendants violated the temporary restraining order by improperly removing plaintiff's telephones from site provider locations.

Following a contempt of court hearing on April 12, 1999, the trial court found that NCI violated the temporary restraining order by improperly removing seventy-one of plaintiff's pay telephones from site provider locations. On June 10, 1999, the trial court entered an order holding NCI in contempt of court and directing NCI to pay \$284,000 in damages as well as plaintiff's attorney fees. The trial court's order followed NCI's June 1, 1999 motion seeking (1) modification of the contempt order, or (2), entry of an order staying execution of the contempt judgment.

On June 30, 1999, the trial court entered an order denying NCI's motion to modify the contempt order. The trial court also denied NCI's motion to stay collection on the judgment. However, on July 2, 1999, the trial court entered an order accepting NCI's filing of an appeal bond in the amount of \$426,000, and granting NCI's request for a stay of collection proceedings on the contempt judgment. Appellee International Fidelity Insurance Company was named surety on the bond.

After NCI appealed, this Court dismissed for lack of jurisdiction "because the June 1999 order [was] not a final order." *American Paytel Corp v Miller*, unpublished order of the Court of Appeals, entered September 21, 1999 (Docket No. 220782). This Court later denied NCI's delayed application for leave to appeal. *American Paytel Corp v Miller*, unpublished order of the Court of Appeals, entered October 14, 1999 (Docket No. 220741). In addition, this Court denied NCI's motion for rehearing. *American Paytel Corp v Miller*, unpublished order of the Court of Appeals, entered December 13, 1999 (Docket No. 220741). The Supreme Court denied NCI's application for leave to appeal on June 26, 2000, as well as NCI's motion for reconsideration on September 26, 2000. See 462 Mich 902 (2000).<sup>4</sup>

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<sup>2</sup> Plaintiffs Paytel stockholders were dismissed from this action in the lower court in an order entered September 7, 2000.

<sup>3</sup> Defendants Robert and Gloria Miller, Stacey Miller, Glen Gebauer, G & M Communications, LLC, Steve Akright and Richard Makens are not parties to this appeal.

<sup>4</sup> NCI also filed for leave to appeal from the trial court's order denying its motion to withdraw the appeal bond. This Court denied leave to appeal on April 20, 2000. *American Paytel Corp v Miller*, unpublished order of the Court of Appeals, entered April 20, 2000 (Docket No. 225899).

On October 2, 2000, plaintiff filed a motion seeking judgment on the bond pursuant to MCR 3.604(I). In an order entered December 6, 2000, the trial court ordered judgment on the bond in the amount of \$312,357.00. In a separate order entered December 6, 2000, the trial court declared that its June 10, 1999 contempt judgment was “a final judgment . . . on the contempt of court issue only.” In yet another separate order, the trial court denied NCI’s motion to stay collection proceedings.

NCI subsequently filed a claim of appeal to this Court. On January 11, 2001, this Court dismissed NCI’s claim for lack of jurisdiction, stating that the trial court’s December 6, 2000 order was not a final order. *American Paytel Corp v Miller*, unpublished order of the Court of Appeals, entered January 11, 2001 (Docket No. 231548). NCI then filed an application for leave to appeal to this Court on December 26, 2000. As previously noted, this Court granted leave on February 26, 2001 limited to the narrow issue whether the trial court erred in ordering judgment on the bond.

NCI’s primary argument on appeal is that the trial court erred in entering judgment on the bond because the conditions giving rise to its liability on the bond were not met. Whether the trial court erred in entering judgment on the bond presents a question of law. We review de novo questions of law. See *Cardinal Mooney High School v Michigan High School Athletic Ass’n*, 437 Mich 75, 80; 467 NW2d 21 (1991). Further, NCI’s claim requires us to interpret MCR 7.209, the court rule governing appeal bonds. The interpretation of court rules also presents a question of law that we review de novo. *Grzesick v Cepela*, 237 Mich App 554, 559; 603 NW2d 809 (1999).

When called on to construe a court rule, this Court applies the legal principles that govern the construction and application of statutes. *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998). Accordingly, we begin with the plain language of the court rule. When that language is unambiguous, we must enforce the meaning expressed, without further judicial construction or interpretation. See *Tryc v Michigan Veterans’ Facility*, 451 Mich 129, 135; 545 NW2d 642 (1996). Similarly, common words must be understood to have their everyday, plain meaning. See MCL 8.3a; see also *Perez v Keeler Brass Co*, 461 Mich 602, 609; 608 NW2d 45 (2000). [*Grievance Administrator v Underwood*, 462 Mich 188, 193-194; 612 NW2d 116 (2000).]

NCI posted an appeal bond on July 2, 1999, to stay proceedings on the trial court’s June 10, 1999 contempt order. “The purpose of a . . . stay bond is to protect the appellee from losses that may result from the inability to enforce the judgment while it is stayed pending appeal.” *Wright v Fields*, 412 Mich 227, 230; 313 NW2d 902 (1981). The appeal bond provided in pertinent part:

The principal and surety, if applicable, are bound jointly and severally to the appellee or the court in the sum stated *if the principal fails to perform any of the following obligations*:

1. diligently prosecute this appeal to decision.

2. if the reviewing court affirms the lower court judgment *or the appeal is dismissed or discontinued, perform or satisfy the judgment or order appealed including costs and interest.* [Emphasis supplied.]

As relevant to this appeal, MCR 7.209(F)(1)(c) provides:

In a bond filed for stay pending appeal in a civil action, the appellant shall promise in writing:

to perform or satisfy the judgment or order appealed from, *if the appeal is dismissed.* [Emphasis supplied.]

The trial court's authority to enter judgment on a bond is found in MCR 3.604(I)(1):

In an action in which a bond or other security has been posted, judgment may be entered directly against the surety or the security on motion without the necessity of an independent action *on a showing that the condition has occurred giving rise to the liability on the bond or to the forfeiture of the security.* [Emphasis supplied.]

Pursuant to the appeal bond and the plain language of MCR 7.209(F)(1)(c), NCI, as principal on the bond, was obligated to satisfy the contempt judgment if its appeal was dismissed or discontinued. Once plaintiff made a showing that NCI did not satisfy the judgment once its appeal was dismissed or discontinued, the condition giving rise to liability on the bond was met, and the trial court was authorized to execute judgment directly against the surety. MCR 3.604(I)(1).

According to the record, NCI initially filed a claim of appeal from the trial court's June 10, 1999 order declaring it in contempt of court. On September 21, 1999, this Court dismissed NCI's claim. The relevant order provided as follows:

The Court, acting under MCR 7.216(A)(10), orders that:

The claim of appeal is DISMISSED for lack of jurisdiction because the June 1999 order is not a final order for the reason that the claims against defendants are still outstanding. See MCR 2.604(A) and 7.202(8)(a)(i). The contempt order itself did not entirely decide the contempt matter since the trial court reserved a decision on whether additional damages would be assessed. As a result, the order in question is appealable to this Court on leave granted under MCR 7.205. See MCR 7.203(B)(1).

NCI claims that its appeal was not dismissed as contemplated by the language of the appeal bond and MCR 7.209(F)(1)(c). In support of this argument, NCI notes that the June 10, 1999 contempt order was not a final order. See MCR 7.202(7)(a)(i). Specifically, NCI claims that because the order was not final, an appeal did not follow, and therefore this Court did not dismiss or discontinue NCI's appeal. We disagree.

The word “dismissed” is not defined in MCR 7.209(F)(1)(c). Because the word is not defined, it must be “understood to have [its] everyday, plain meaning.” *Underwood, supra* at 194. Where the court rule does not define a word, this Court may turn to the dictionary definition to ascertain its plain and ordinary meaning. See *FMB-First Michigan Bank v Bailey*, 232 Mich App 711, 725; 591 NW2d 676 (1998). As relevant to the instant case, Random House Webster’s College Dictionary (1992), defines dismiss as “to discard or reject.” Likewise, the court rules do not define the word “appeal.” This Court has previously defined an appeal as “a complaint to a higher tribunal of injustice or error committed by an inferior tribunal.” *In re 1987-88 Medical Doctor Provider Class Plan*, 203 Mich App 707, 726; 514 NW2d 471 (1994), citing *Black’s Law Dictionary* (rev, 4<sup>th</sup> ed).

The September 21, 1999 order of this Court dismissing NCI’s appeal stated that the panel was acting pursuant to MCR 7.216(A)(10). That court rule provides:

The Court of Appeals may, at any time, in addition to its general powers, in its discretion, and on the terms it deems just:

*dismiss an appeal . . . for lack of jurisdiction or failure of the appellant or the plaintiff to pursue the case in conformity with the rules.*

Thus, according to the plain and unambiguous language of MCR 7.216(A)(10), on September 21, 1999, this Court “dismiss[ed] an *appeal* for lack of jurisdiction.”<sup>5</sup> Further, NCI’s appeal of the contempt order was discontinued as required by the bond when this Court denied NCI’s delayed application for leave on October 14, 1999, and denied rehearing on December 13, 1999. The Supreme Court denied leave to appeal from this Court’s September 21, 1999 order on June 26, 2000. Accordingly, NCI’s argument that its appeal was not dismissed or discontinued as contemplated by MCR 7.209(F)(1)(c) and the language of the appeal bond is unavailing. Once plaintiff made a showing that NCI’s appeal was dismissed and discontinued and that NCI did not satisfy the June 10, 1999 contempt judgment, the trial court properly ordered judgment on the bond.

Affirmed.

/s/ Peter D. O’Connell  
/s/ Michael R. Smolenski

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<sup>5</sup> Similarly, acting pursuant to MCR 7.203(F)(1), Chief Judge Bandstra dismissed NCI’s appeal from the trial court’s December 6, 2000 order for lack of jurisdiction in an order entered January 11, 2001. MCR 7.203(F)(1) provides:

Except when a motion to dismiss has been filed, the chief judge or another designated judge may, acting alone, *dismiss an appeal* or original proceeding for lack of jurisdiction. [Emphasis supplied.]