

Summary of SC95465, Kyle Sanford v. CenturyTel of Missouri, LLC d/b/a CenturyLink
Appeal from the Circuit Court of Boone County, the Honorable Christine Carpenter, Judge
Argued and submitted May 3, 2016; opinion issued June 28, 2016

Attorneys: CenturyLink was represented by Steve J. Perfrement of Bryan Cave LLP in Denver, Colorado, (303) 861-7000; Mark B. Leadlove and Jonathan B. Potts of Bryan Cave LLP in St. Louis, (314) 259-2000; and Stephen P. Clark of Runnymede Law Group in St. Louis, (314) 332-2990. Sanford was represented by Kenneth B. McClain and Jonathan M. Soper of Humphrey, Farrington & McClain PC in Independence, (816) 836-5050.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: A telecommunications company filed this interlocutory appeal (appeal before the whole case reaches final determination) of the trial court's order sustaining a customer's motion for partial summary judgment and overruling the company's motion to compel arbitration in the customer's underlying lawsuit against the company. In a unanimous decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri dismisses the appeal as untimely. The relevant statute gives a litigant the right to seek interlocutory appeal of the denial of a motion for arbitration. The 30-day period set out in the rules of procedure before a judgment becomes final does not apply when the appeal is of an interlocutory order rather than a final judgment. Rather, the rules give a party 10 days from the date the order denying arbitration is entered to file a notice of appeal. Here, the company did not file its notice of appeal for 39 days.

Facts: Kyle Sanford filed a class action lawsuit alleging that CenturyLink violated the state's merchandising practices act. CenturyLink responded by moving to dismiss or stay trial court proceedings and to compel arbitration, and Sanford filed a motion for partial summary judgment. The trial court entered its order July 10, 2014, sustaining Sanford's motion for partial summary judgment and denying CenturyLink's motion to compel arbitration. Section 435.440.1, RSMo, makes any order denying arbitration immediately appealable. Pursuant to this statute, on August 18, 2014, CenturyLink filed its notice of appeal of the trial court's order denying its motion to compel arbitration.

APPEAL DISMISSED.

Court en banc holds: CenturyLink's appeal was not timely filed. Under Rule 81.04(a), a notice of appeal must be filed "not later than 10 days after the judgment or order appealed from becomes final." The order denying arbitration became "final" under Rule 81.04(a) immediately upon entry – July 10, 2014. CenturyLink was incorrect in believing that, under Rule 81.05(a)(1), the 10-day period to appeal did not begin to run until 30 days after the trial court entered its order. The purpose of the 30-day rule is to delay the effective date of a judgment so that the trial court has continuing jurisdiction to modify or amend its ruling before it becomes final and appealable. An interlocutory order such as one denying arbitration is made appealable immediately, but it remains interlocutory pursuant to Rule 74.01(b) and the 30-day post-judgment period set out in Rule 81.05 has no application to it. As such, CenturyLink was required to file its notice of appeal within 10 days after the July 10 entry of the order, but it did not file its notice of appeal until August 18, 2014 – 39 days after entry.