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Torres v. Oakland Scavenger Co.: What's in a Name--Everything in a Federal Appeal

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CASENOTES

TORRES V. OAKLAND SCAVENGER CO.: WHAT'S IN A NAME? — EVERYTHING IN A FEDERAL APPEAL

AFTER RECEIVING notice pursuant to a settlement agreement, Jose Torres and fifteen other plaintiffs intervened in an employment discrimination suit against Oakland Scavenger Company.[1] "On August 31, 1981, the District Court for the Northern District of California dismissed the complaint . . . for failure to state a claim warranting relief."[2] About a month later, a notice of appeal was filed in the Ninth Circuit Court of Appeals. The Ninth Circuit reversed the district court's dismissal and remanded the case for further proceedings. Torres' name, however, was omitted from both the notice of appeal and the order of the court of appeals. The omission in the notice of appeal was the result of a clerical error by his attorney's secretary.[3]

On remand, Oakland Scavenger "moved for partial summary judgment on the ground that the prior judgment of dismissal was final as to [Torres] by virtue of his failure to appeal."[4] Oakland Scavenger's motion was granted by the district court and affirmed by the court of appeals. Certiorari was granted by the United States Supreme Court in order to resolve the "conflict in the Circuits over whether a failure to file a notice of appeal in accordance with the specificity requirement of Federal Rule of Appellate Procedure 3(c) presents a jurisdictional bar to the appeal."[5] The Supreme Court affirmed the court of appeals' decision, holding that the Federal Rules of Appellate Procedure bar courts of appeals from exercising jurisdiction over unnamed parties after the time for filing a notice of appeal has passed.[6]

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1. Torres v. Oakland Scavenger Co., 108 S. Ct. 2405, 2407 (1988).
2. *Id.*
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.* at 2408.

This Note will discuss some of the cases that have attempted to interpret Federal Rule of Appellate Procedure 3(c). Then it will examine the *Torres* decision and the manner in which the justices reached their results. Finally, this Note will analyze the opinions in the *Torres* case, concluding that, while the holding of that case may be correct, the majority fails to adequately justify the result.

I. BACKGROUND

A. The Rule

Federal Rule of Appellate Procedure 3(c) provides that "[t]he notice of appeal shall specify the party or parties taking the appeal . . . ."[7] A 1979 amendment to the Rule states that "[a]n appeal shall not be dismissed for informality of form or title of the notice of appeal."[8] Although most of the federal appellate courts have agreed that the failure to specify the parties to the appeal is more than an "informality of form or title," the courts have disagreed as to whether there can be exceptions to the requirement that the parties be specified.[9]

B. *Foman v. Davis*:[10] The Supreme Court Interprets Another Provision of Rule 3(c)

The Supreme Court, prior to *Torres*, had not addressed the requirement that parties to an appeal be specified. In *Foman v. Davis*, however, the Court did address a separate provision of Rule 3(c) which requires that a notice of appeal "shall designate the judgment, order or part thereof appealed from . . . ."[11] In *Foman*, a plaintiff whose complaint was dismissed by the district court filed motions to vacate the judgment and to amend his complaint.[12] Before the court ruled on these motions, he filed a notice of appeal from the dismissal. When the district court finally denied his motions, he filed a second notice of appeal from the denial. The court of appeals held that his first appeal was premature, and the second notice of appeal failed to specify that the

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7. FED. R. APP. P. 3(c).
8. *Id.*
9. *See infra* notes 17-38 and accompanying text.
10. 371 U.S. 178 (1962).
11. FED. R. APP. P. 3(c).
12. *Foman*, 371 U.S. at 179.

appeal was being taken from the dismissal of the complaint "as well as the orders denying the motions."[13]

The Supreme Court, however, held that the second appeal was improperly denied because it is "entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities."[14] The Court noted that the "defect in the second notice of appeal did not mislead or prejudice the respondent,"[15] and stated that the Federal Rules " 'reject the approach that pleading is a game of skill . . . .' "[16]

C. The Liberal Construction of Rule 3(c) in the Federal Appellate Courts

Although the Supreme Court had never before considered the issue presented in *Torres*, a number of federal appellate courts had addressed the issue and held that failure to meet the specificity requirement of Rule 3(c) does not necessarily bar an appeal. In *Williams v. Frey*,[17] the Third Circuit Court of Appeals considered whether two parties who were not named in the notices of appeal should be considered as appellants. The court, with little discussion, included the parties as appellants, "since there would be no prejudice to the defendants in doing so."[18] The court merely explained that "appellees have . . . considered them [as appellants] at all stages of this appeal . . . [and] appellees' brief encompasses the issues of substance decided here."[19]

In *Ayres v. Sears, Roebuck & Co.*,[20] the Fifth Circuit addressed whether Takashi Namiki, an original plaintiff, had abandoned his appeal because he was not named in the notice of appeal which read: "Joanne Ayres, et al., Plaintiffs above named . . . from the Final Judgment entered in this action . . . ."[21] The court stated that it joined other circuits which permit, "in limited instances, appeals by parties not named in the notice of appeal."[22]

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13. *Id.* at 180-81.
14. *Id.* at 181.
15. *Id.*
16. *Id.* (quoting Conley v. Gibson, 355 U.S. 41, 48 (1957)).
17. 551 F.2d 932 (3d Cir. 1977).
18. *Id.* at 934 n.1.
19. *Id.*
20. 789 F.2d 1173 (5th Cir. 1986).
21. *Id.* at 1177.
22. *Id.*

The court noted:

> Those circuits giving a broader application to Rule 3(c) have done so when satisfied that there was no surprise, detrimental reliance, or prejudice to appellees because one or more parties had not been listed by name in the notice of appeal. Typically, the cases involved an identity of issues in the appeals of the named and unnamed appellants.[23]

The court held that the use of "et al." in the notice of appeal provided "no basis for surprise, detrimental reliance, or prejudice to appellees."[24] Therefore, Namiki's appeal was not barred.

Less than one month before *Torres* was decided, the Seventh Circuit Court of Appeals applied a liberal construction of Rule 3(c) in *Hays v. Sony Corp. of America*.[25] In *Hays*, the plaintiffs sued Sony Corp. for copyright infringement. The plaintiffs lost, and the district judge awarded Sony close to $15,000 in sanctions against the plaintiffs' attorney. A notice of appeal was filed, specifying only the plaintiffs as appellants. The plaintiffs could not appeal the award of sanctions, however, because it only granted relief against the attorney, not the plaintiffs themselves. The attorney argued that the notice of appeal was adequate as to his appeal of the sanctions. The appeals court held that "[w]here there is no possibility that the appellant's violation of Rule 3(c) misled the appellee, . . . the violation is harmless and forfeiture of the appeal an excessive sanction."[26] Since Sony admitted it knew that plaintiffs' counsel was attempting to appeal the sanctions as well as the dismissal of the copyright suit, the court held that the appeal was properly before it.[27]

In *Harrison v. United States*,[28] a joint notice of appeal from a decision against eleven plaintiffs in eight consolidated personal injury and wrongful death actions failed to specify Billy Harrison as an appellant. After noting that "[s]everal courts have held that a party not specifically named in the notice of appeal may not be deemed an appellant,"[29] the Eighth Circuit Court of Appeals stated that "in certain extreme cases, [Rule] 3 has been construed more liberally, to allow a party not named as an appellant in a

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23. *Id.*
24. *Id.*
25. 847 F.2d 412 (7th Cir. 1988).
26. *Id.* at 414.
27. *Id.*
28. 715 F.2d 1311 (8th Cir. 1983).
29. *Id.* at 1312.

notice of appeal to appeal."[30] The court, analogizing the facts to *Williams v. Frey*, held that this situation was one of those "certain extreme cases."[31] The court noted that Harrison's name was omitted by mistake, the notice of appeal was timely for the consolidated cases, the issues were common to all plaintiffs, and the United States did not allege prejudice.[32]

D. The Strict Construction of Rule 3(c) in the Federal Appellate Courts

Not all of the federal appellate courts have adopted a liberal construction of Rule 3(c). One of the leading cases which adopted a strict construction of the rule is *Van Hoose v. Eidson*.[33] *Van Hoose* involved an appeal from a district court decision denying relief to four plaintiffs who had been suspended from school for violating a "hair code." The notice of appeal named only Floyd Van Hoose as an appellant, along with the phrase "et al." [34] In a short opinion, the Sixth Circuit Court of Appeals held that under Rule 3(c), Floyd Van Hoose was the only appellant recognized in the case because he was the only party specified. The court stated that "[t]he term 'et al.' does not inform any other party or any court as to which of the plaintiffs desire to appeal in this case. This is more than a clerical error."[35]

The Ninth Circuit Court of Appeals cited *Van Hoose* while adopting a strict construction of Rule 3(c) in *Farley Transportation Co. v. Santa Fe Trail Transportation Co.*[36] In *Farley*, an antitrust case, the court held that it did not have jurisdiction to hear the appeal of Farley Terminal, because the company was not named in the notice of appeal.[37] The court stated that Rule 3(c) creates a jurisdictional requirement and that *Foman v. Davis* does not apply in situations where a jurisdictional bar is raised to an appeal. The court reasoned that:

> Adopting a purely "equitable" approach to applying the [Federal Rules of Appellate Procedure] would result in unpredictability and defeat the purpose of the rules, which is to promote

30. *Id.*
31. *Id.*
32. *Id.*
33. 450 F.2d 746 (6th Cir. 1971).
34. *Id.* at 747.
35. *Id.*
36. 778 F.2d 1365 (9th Cir. 1985).
37. *Id.* at 1368.

> the orderly resolution of disputes and to discourage dilatory practices . . . . Furthermore, in multiparty litigation it is important that the notice specify which of the parties is taking an appeal.[38]

II. *Torres v. Oakland Scavenger Company*

A. Majority Opinion

In *Torres v. Oakland Scavenger Co.*, Justice Marshall wrote the opinion for the majority in an eight to one decision.[39] In interpreting Rule 3(c), Justice Marshall stated that "[t]he failure to name a party in a notice of appeal is more than excusable 'informality;' it constitutes a failure of that party to appeal."[40]

Marshall noted that Federal Rule of Appellate Procedure 2 gives courts of appeals the power, "for 'good cause shown,' to 'suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion.' "[41] Marshall, however, pointed out that Rule 26(b) contains specific exceptions to that grant of equitable discretion. One such exception forbids a court from " 'enlarg[ing]' the time limits for filing a notice of appeal."[42] Marshall reasoned that allowing "courts to exercise jurisdiction over unnamed parties after the time for filing a notice of appeal has passed is equivalent to permitting courts to extend the time for filing a notice of appeal."[43] Therefore, he argued, the Rules do not grant the courts power to exercise jurisdiction over parties not named in the notice of appeal.

Marshall also looked at the Advisory Committee Note following Rule 3, which states that " '[b]ecause the timely filing of a notice of appeal is "mandatory and jurisdictional," compliance

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38. *Id.* at 1369. *See also* Covington v. Allsbrook, 636 F.2d 63 (4th Cir. 1980). In *Covington*, the Fourth Circuit Court of Appeals dismissed the appeals of two prison inmates who had initially brought a 42 U.S.C. § 1983 claim, "because they did not sign the notice of appeal and therefore did not comply with the provisions of Federal Rule of Appellate Procedure 3(c)." *Id.* at 63. This court also cited *Van Hoose* and interpreted that case to "limit appellate jurisdiction to those parties who are actually named in the notice of appeal." *Id.*

39. 108 S. Ct. 2405 (1988). Justice Scalia filed a concurring opinion, while Justice Brennan filed a dissenting opinion.

40. *Id.* at 2407.

41. *Id.* (quoting FED. R. APP. P. 2).

42. *Id.*

43. *Id.* at 2408.

with the provisions of those rules is of the utmost importance.' "[44] Marshall concluded that weight should be given to the fact that the "Advisory Committee viewed the requirements of Rule 3 as jurisdictional in nature . . . ."[45]

Marshall also distinguished *Foman v. Davis* from *Torres*:

> *Foman* did not address whether the requirement of Rule 3(c) at issue in that case was jurisdictional in nature; rather, the Court simply concluded that in light of all the circumstances, the rule had been complied with. We do not dispute the important principle . . . that the requirements of the rules of procedure should be liberally construed and that 'mere technicalities' should not stand in the way of consideration of a case on its merits . . . . But although a court may construe the rules liberally in determining whether they have been complied with, it may not waive the jurisdictional requirements of Rules 3 and 4 . . . if it finds that they have not been met.[46]

Marshall claimed that the petitioner in *Torres* would fail to comply with the Rule 3(c) specificity requirement even if it were liberally construed.[47] Marshall also concluded that the use of the phrase "et al." in the notice of appeal was not sufficient to indicate Torres' intention to appeal. "The specificity requirement of Rule 3(c) is met only by some designation that gives fair notice of the specific individual or entity seeking to appeal."[48]

B. Concurring Opinion

Justice Scalia authored the concurring opinion in *Torres*. He argued that the majority used too much language advocating a liberal construction of the Federal Rules of Appellate Procedure.[49]

> The principle that "mere technicalities" should not stand in the way of deciding a case on the merits is more a prescription for ignoring the Federal Rules than a useful guide to their construction and application. By definition all rules of procedure are technicalities; sanction for failure to comply with them always prevents the court from deciding where justice lies in the particular case, on the theory that securing a fair and orderly process enables more justice to be done in the totality of cases. It seems

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44. *Id.* (quoting FED. R. APP. P. 3 advisory commitee note (citation omitted)).
45. *Id.*
46. *Id.* at 2408-09.
47. *Id.* at 2409.
48. *Id.*
49. *Id.* at 2409-10 (Scalia, J., concurring).

> to me, moreover, that we should seek to interpret the Rules neither liberally nor stingily, but only, as best we can, according to their apparent intent.[50]

Scalia argued that Rule 3(c) was intended to be strictly applied. He pointed out that the Rule requires the appellant to "specify the . . . parties taking the appeal," which implies that more than a designation of "et al." is required.[51] He also argued that since the Rule specifies that "informality of form or title" would not require dismissal, it is likely "that a strict application was generally contemplated."[52]

C. Dissenting Opinion

In his dissenting opinion, Justice Brennan stated that "[n]othing in the Federal Rules . . . compels such a [strict] construction of Rule 3(c), which I believe to be wholly at odds with the liberal policies underlying those rules, as well as our own prior construction of them."[53] Brennan began his analysis with the "broad equitable discretion" granted by Federal Rule of Appellate Procedure 2, which permits appellate courts, upon a showing of good cause, to suspend the requirements of any rule except Rule 26(b).[54] Rule 26(b) only prohibits appellate courts from extending the time limits for filing a notice of appeal as set out in Rule 4, while permitting time extensions for any other act provided in the rules.[55] "Notably," Brennan commented that "neither [Rules 26(b) or 2] mentions Rule 3(c) as falling outside the purview of this broad equitable power."[56]

Next, Brennan attacked the majority's argument that "Rule 3(c)'s party-specification requirement must be deemed jurisdictional, for the 'mandatory nature of the time limits contained in Rule 4 would be vitiated if courts of appeals were permitted to exercise jurisdiction over parties not named in the notice of appeal.' "[57] Brennan argued that:

> This unsupported assertion, however, is only correct if we as-

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50. *Id.* at 2410.
51. *Id.* (quoting Rule 3(c)).
52. *Id.*
53. *Id.* at 2410 (Brennan, J., dissenting).
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.* at 2411 (quoting majority opinion in *Torres*, 108 S. Ct. at 2408).

> sume the answer to the question at issue here, *i.e.*, that "[t]he failure to name a party in a notice of appeal . . . constitutes a failure of that party to appeal." . . . If, on the other hand, we assume . . . that an unnamed party effectively appeals where a notice is timely filed and the unnamed party's intention to join in the appeal is clear to all and prejudicial to none, . . . then Rule 4's mandatory time limitations would remain inviolate.[58]

Therefore, Brennan claimed that the necessity of enlarging the time requirements of Rule 4 does not arise until a court determines that the failure to specify an appellant means that that appellant did not appeal.[59]

Brennan also criticized the majority's reliance on the Advisory Committee Notes, arguing that the provisions the Court cited did not necessarily deal with the part of Rule 3(c) that was at issue.[60] Further, he claimed that the Court's broad reading of the Notes was inconsistent with *Foman v. Davis*. Although the majority claimed that *Foman* dealt with a mere technical noncompliance, Brennan argued that "both the notice here and in *Foman* omitted precisely the information required by Rule 3(c)."[61] Brennan claimed that in *Foman*, however, the Court treated the second notice of appeal as effective because the petitioner's intent to appeal was clear.[62]

Finally, Brennan criticized the Court's "inflexible rule of convenience" on policy grounds:

> After today's ruling, appellees will be able to capitalize on mere clerical errors and secure the dismissal of unnamed appellants no matter how meritorious the appellant's claims and no matter how obvious the appellant's intention to seek appellate review, and courts of appeals will be powerless to correct even the most manifest of resulting injustices. The Court identifies no policy supporting, let alone requiring, this harsh rule, which I believe is patently inconsistent not only with the liberal spirit underlying the Federal Rules, but with Rule 2's express authorization permitting courts of appeals to forgive noncompliance where good cause for such forgiveness is shown.[63]

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58. *Id.* (quoting majority opinion in *Torres*, 108 S. Ct. at 2407).
59. *Id.* at 2411.
60. *Id.*
61. *Id.* at 2412.
62. *Id.*
63. *Id.* at 2412-13.

Brennan concluded that the case should be reversed and remanded to find out if the court below or the respondents were apprised that the petitioner intended to join the appeal of the fifteen other plaintiffs.

III. ANALYSIS

All three opinions in *Torres* focus on the intent of the body which adopted the Federal Rules of Appellate Procedure to determine what sanction should apply when an appealing party fails to be named in the notice of appeal, without carefully considering the policy behind a strict application versus a liberal application. The thrust of the majority's argument is that Rule 26(b) bars a court from enlarging the time limits for filing a notice of appeal. The majority reasoned that allowing a party to be added to the notice of appeal would enlarge such time limits, and therefore, a strict reading of Rule 3(c) is required. As Brennan explained, the Court assumed that adding a party to an appeal extends the time limit for filing a notice of appeal. The purpose of Rule 26(b) appears to be to assure that notice is given to the respondent within a reasonable time that the opposing party is appealing. If a notice of appeal is filed, and the respondent assumes that all parties from the lower court are appealing and is not prejudiced, the purpose of Rule 26(b) is served. Therefore, the majority's assumption that adding a party to the appeal extends the time limits for filing a notice of appeal is weak. The majority should have explained the reasons behind such an assumption before basing its decision on it.

Also, the majority attempted to distinguish *Foman* from *Torres* by stating that *Foman* dealt with a different portion of Rule 3(c) than *Torres* and thus was not controlling. Although the Court correctly asserted that *Foman* did not control, such a distinction opens many questions. When will *Foman's* analysis that the Federal Rules "reject the approach that pleading is a game of skill"[64] be applied to a case, rather than *Torres'* analysis that a court "may not waive the jurisdictional requirements of Rule 3 and 4"?[65] Indeed, Scalia's concurring opinion criticized the *Torres* majority for simultaneously embracing and rejecting the *Foman* rationale. The majority provided little guidance as to what is and what is not a jurisdictional requirement. Scalia has a strong argu-

64. *See supra* note 16 and accompanying text.
65. *See supra* note 46 and accompanying text.

ment that since the actual language of the Rule requires the appellant to "specify the . . . parties," then more than the designation "et al." is required.[66] The Rule does appear to require the parties to be named, but that does not necessarily require one sanction over another.

Because the actual intent of Rule 3(c) appears to be somewhat ambiguous, the majority should have addressed some policy arguments to support its conclusion. As Brennan stated, "[t]he Court identifies no policy supporting, let alone requiring this harsh rule . . . ."[67] Brennan's policy arguments against a strict application of Rule 3(c) focused on the belief that courts of appeals should have the power to correct injustices. Also, he argued that one party should not be allowed to capitalize on clerical errors where the other party has a meritorious claim and an obvious intention to appeal.[68]

Although the majority did not give policy reasons for a strict construction, Justice Scalia provided some in his concurring opinion. "By definition all rules of procedure are technicalities; sanction for failure to comply with them always prevents the court from deciding where justice lies in the particular case, on the theory that securing a fair and orderly process enables more justice to be done in the totality of cases."[69] Scalia's policy argument is strong support for the majority holding. Rules are set up to provide fairness in the majority of cases and to prevent the chaos that would result if each situation were evaluated individually. The Court, however, failed to use this argument to support its decision. Instead, it based its decision on tenuous interpretations of Rule 3(c) and Rule 26(b). Finally, the Court failed to provide the means to predict when a *Torres* strict application of the Rules will be applied, and when a *Foman* liberal application will be applied. With no policy reasons behind its decision, the Court failed to give guidelines as to which Rules of Appellate Procedure will be interpreted to provide fairness in the individual case, and which Rules will be interpreted to aid the flow of the administration of justice.

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66. *See supra* note 51 and accompanying text.
67. *Torres*, 108 S. Ct. at 2412.
68. *Id.* at 2412-13 (Brennan, J., dissenting).
69. *Id.* at 2410 (Scalia, J., concurring).