

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000171-MR

DONALD STANKOWSKI

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE MITCHELL PERRY, JUDGE
ACTION NO. 09-CI-011612

CABINET
FAMILY SERVICES

FOR

HEALTH

AND

APPELLEE

OPINION AND ORDER
DISMISSING

* * * * *

BEFORE: ACREE, STUMBO, AND WINE, JUDGES.

ACREE, JUDGE: This matter is before the Court on the appellee's motion to dismiss for failure to timely file the notice of appeal.

The circuit court clerk noted on the docket sheet that the final judgment was served on the parties on August 6, 2010; therefore, the notice of appeal was due to be filed by Tuesday, September 7, 2010. *See* Kentucky Rules of

Civil Procedure (CR) 77.04(2), CR 73.02(1)(a), and CR 6.01. Civil Rule 73.02(1)(d) provides the sole exception for extending the time for filing a notice of appeal. *AK Steel Corp. v. Carico*, 122 S.W.3d 585 (Ky. 2003). This rule states that upon a showing of excusable neglect for failing to learn of the entry of the final judgment or order, the trial court may extend the time for filing the notice for a period not exceeding 10 days from the original due date of the notice. The motion seeking the additional time must be filed with the circuit court clerk within 10 days of the initial due date of the notice along with a tendered notice of appeal. *Rodgers v. Henderson*, 612 S.W.2d 743 (Ky. App. 1980), *overruled on other grounds by James v. James*, 313 S.W.3d 17 (Ky. 2010).

In the case at bar, the circuit court granted the appellant additional time to file his notice on the basis that the appellant mailed his notice of appeal to the wrong address.¹ The circuit court was without authority to extend the time for filing the notice of appeal on grounds other than for failing to learn of the entry of the judgment or order.

Dismissal is mandated for the failure to timely file the notice of

¹ The circuit court stated in its January 14, 2011, order in pertinent part as follows:

[T]he plaintiff attempted to file a timely notice of appeal of this Court's Opinion and Order of August 6, 2010. However, through excusable neglect, the notice [of appeal] was directed to the wrong address and was therefore not docketed. . . . [W]ithin ten (10) days of the expiration of the running of the original time for filing notice, the Plaintiff filed proper notice of appeal with the Jefferson County Circuit Court Clerk. Pursuant to CR 73.02(1)(d), the Court hereby extends the time for filing Plaintiff's instant notice of appeal.

appeal. *Lassiter v. American Express Travel Related Services Co., Inc.*, 308 S.W.3d 714 (Ky. 2010); *Johnson v. Smith*, 885 S.W.2d 944 (Ky. 1994). Having considered the motion to dismiss and the response, and having been otherwise sufficiently advised, the Court ORDERS that the motion be GRANTED and that this appeal be DISMISSED. The documents filed by the appellant on March 14, 2011, are ORDERED STRICKEN.

ALL CONCUR.

ENTERED: July 29, 2011

/s/ Glenn E. Acree
JUDGE, COURT OF APPEALS

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