

RENDERED: AUGUST 1, 2014; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2013-CA-000540-MR

DOUGLAS RANDALL BIGGS, SR.

APPELLANT

v. APPEAL FROM TAYLOR CIRCUIT COURT  
HONORABLE DAN KELLY, JUDGE  
ACTION NO. 05-CI-00255

MARY ELLEN BIGGS

APPELLEE

OPINION AND ORDER  
DISMISSING

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BEFORE: CAPERTON, COMBS, AND VANMETER, JUDGES.

CAPERTON, JUDGE: Douglas Randall Biggs, Sr. appeals from the February 1, 2013, order of the Taylor Circuit Court. Because we hold that appellant's appeal is untimely filed, we dismiss.

The parties were before the trial court on the issue of appellant's nonpayment of a maintenance obligation ordered in 2006. Appellant was held in

contempt for nonpayment and sentenced to 179 days incarceration or \$8,500 bond. Appellant paid the \$8,500, which was placed into escrow. Thereafter, appellee filed a motion to release the \$8,500 paid by appellant as partial satisfaction of appellant's maintenance arrearage. On February 1, 2013, the trial court entered an order granting appellee's motion. On February 13, 2013, appellant filed a motion to set aside and vacate the February 1, 2013, order. That motion was denied in an order entered on February 20, 2013. Appellant then filed a notice of appeal, from the trial court's February 1, 2013, order, on March 19, 2013.

Appellant's sole argument to this Court is that the trial court erred when it ordered the escrowed funds released to appellee. In particular, appellant argues he was entitled to a setoff against his maintenance obligation based on a judgment in an unrelated civil case. After careful review, we hold that appellant's appeal is untimely filed and therefore outside this Court's jurisdiction.

A properly filed notice of appeal transfers jurisdiction from circuit court to this Court. *City of Devondale v. Stallings*, 795 S.W.2d 954 (Ky. 1990). A notice of appeal must be filed within 30 days after the date of the circuit court judgment being appealed. Kentucky Rules of Civil Procedure (CR) 73.02(1)(a). The running of time for an appeal may be tolled by several timely filed motions, including a CR 59.05 motion to alter, amend, or vacate. CR 73.02(1)(e). A motion under CR 59.05 is timely filed when it is "served not later than 10 days after entry of the final judgment." CR 59.05 and see also CR 6.01. In the case before us, appellant's CR 59.05 motion was filed on February 13, 2013, with a notation of

service of February 12, 2013, one day after the 10-day window. Therefore, appellant's CR 59.05 motion was not timely filed, albeit by only one day. Because there was no timely filed motion which could toll the running of time for an appeal from the February 1, 2013, order, the final day on which appellant could have filed his notice of appeal was March 3, 2013, more than two weeks prior to the actual date of filing. The time for filing a notice of appeal is both mandatory and subject to strict compliance. CR 73.02(2); *Fox v. House*, 912 S.W.2d 450 (Ky. App.1995). And, "[w]hile the parties did not raise the issue of appellate jurisdiction in their briefs, we are the guardians of our jurisdiction and thus are *obligated* to raise a jurisdictional issue *sua sponte* if the underlying order appears to lack finality." [\*Padgett v. Steinbrecher\*, 355 S.W.3d 457, 459–60 \(Ky. App. 2011\)](#). Accordingly, we hold that this appeal is untimely filed and this Court is without the proper jurisdiction to address the merits therein.

For the foregoing reasons, appeal no. 20013-CA-000540-MR shall be, and is hereby ordered, DISMISSED.

ALL CONCUR.

DATE: August 1, 2014

/s/ Michael O. Caperton

JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Joseph R. Stewart  
Lebanon, Kentucky

BRIEF FOR APPELLEE:

George G. Seeling  
Lebanon, Kentucky