

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 29, 2015

**EILEEN F. CARMAN EX REL. RODNEY M. CARMAN
v. TRACY L. CARMAN-THACKER**

**Appeal from the Circuit Court for Coffee County
No. 40016 L. Craig Johnson, Judge**

No. M2015-01089-COA-R3-CV – Filed September 30, 2015

The defendant appealed from a judgment entered on May 12, 2014, and a post-judgment order entered on October 2, 2014. Because the defendant did not file her notice of appeal within the thirty day time period required by Tenn. R. App. P. 4, we dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

FRANK G. CLEMENT, JR., P.J., M.S., ANDY D. BENNETT and RICHARD H. DINKINS, JJ.

Tracy L. Carman-Thacker, Beech Grove, Tennessee, Pro se.

John Stanley Rogers, Manchester, Tennessee, for the appellees, Eileen F. Carman and Rodney Carman.

MEMORANDUM OPINION¹

This appeal arises out of a complaint for assault and battery, false imprisonment, and intentional infliction of emotional distress. On April 17, 2014, the parties announced in open court that they had reached an agreement awarding the plaintiff \$25,000 in compensatory damages and \$50,000 in punitive damages. The trial court entered a final judgment reflecting the parties' agreement on May 12, 2014.

¹ Tenn. Ct. App. R. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

On May 7, 2014, the defendant filed a claim of exempt property. The plaintiff objected to the claim of exempt property and, on September 12, 2014, filed a motion to sell the defendant's real property. The plaintiff's objections and motion to sell were heard on September 22, 2014. At the hearing, the parties announced an agreement to sell certain tracts of the defendant's real property, and the trial court entered an order in accordance with the parties' agreement on October 2, 2014. However, on October 1, 2014, the defendant filed a motion to stop the sale of the real property pending her appeal in a related criminal case. The trial court treated the October 1, 2014 motion as a motion to alter or amend or, in the alternative, for a new trial and denied the motion on November 5, 2014.

On October 9, 2014, the defendant filed a motion for relief from the May 12, 2014 judgment pursuant to Tenn. R. Civ. P. 59 and 60. She also requested permission to file a late appeal on the grounds she was not advised of the time limit for filing a notice of appeal. On April 22, 2015, the defendant filed another motion to stay the sale of the real property and to set aside the May 12, 2014 order, pursuant to Tenn. R. Civ. P. 60. On May 4, 2015, the trial court determined that the defendant was not entitled to any relief under Tenn. R. Civ. P. 60, denied the motion to stay, and ordered the sale to proceed on May 9, 2015. On May 29, 2015, the defendant filed a notice of appeal from both the May 12, 2014 judgment and the October 2, 2014 order.²

Tenn. R. App. P. 4(a) requires that a notice of appeal be filed with and received by the trial court clerk within thirty days after entry of the judgment appealed. If one of the post-judgment motions listed in Tenn. R. App. P. 4(b) and Tenn. R. Civ. P. 59.01 is timely filed, the time for filing the notice of appeal will run from the date of entry of the order granting or denying the motion. However, the Tenn. R. Civ. P. 59 motion must be filed within thirty days after entry of the judgment, and an untimely Tenn. R. Civ. P. 59 motion will not extend the time for filing a notice of appeal. Moreover, motions to reconsider such post-judgment motions are not authorized and filing post-judgment motions in serial fashion will not extend the time for filing the notice of appeal. Tenn. R. Civ. P. 59.01; *Southern Co-op Development Fund Inv. Corp. v. Gilliam*, No. 01A01-9112-CV-000302, 1992 WL 104752 (Tenn. Ct. App. May 19, 1992) *perm. app. denied* (Tenn. Aug. 24, 1992).

The May 12, 2014 judgment was a final judgment subject to an appeal as of right pursuant to Tenn. R. App. P. 3. Pursuant to Tenn. R. App. P. 4, the appellant was required to file a notice of appeal or a Tenn. R. Civ. P. 59 motion within thirty days after entry of the May 12, 2014 judgment, or by June 11, 2014. The ongoing dispute over the

² The notice of appeal refers to an order purportedly entered on September 22, 2014. No order was entered on September 22, 2014, and we presume the defendant is appealing from the order entered on October 2, 2014, following the September 22, 2014 hearing.

defendant's claim of exempt property and the sale of the defendant's real property did not affect the finality of the May 12, 2014 judgment, or extend the time for filing a notice of appeal. The appellant did not file a Tenn. R. Civ. P. 59 motion seeking to alter or amend the May 12, 2014 judgment until October 9, 2014, nearly five months after the judgment was entered. The Tenn. R. Civ. P. 59 motion was thus untimely and did not extend the time for filing a notice of appeal from the May 12, 2014 judgment. Because the appellant did not file a notice of appeal or a Tenn. R. Civ. P. 59 motion within thirty days after entry of the May 12, 2014 judgment, the May 12, 2014 judgment has become final and cannot be appealed.

With respect to the October 2, 2014 order, the appellant arguably filed a timely Tenn. R. Civ. P. 59 motion on October 1, 2015. However, the trial court denied the motion on November 5, 2014, and the appellant did not file a notice of appeal within thirty days of that order. Even if the appellant had filed a timely notice of appeal from the October 2, 2014 order, the only issue addressed in the October 2, 2014 order that could be raised on appeal involved the sale of the real property. The appellant could not have challenged the underlying May 12, 2015 judgment which had already become final.

On September 17, 2015, this court ordered the appellant to show cause why her appeal should not be dismissed for failure to file a timely notice of appeal. The appellant has filed a response that merely asserts the merits of her appeal; however, the response did not dispute the dates listed above or otherwise address the timeliness of the appeal.

The thirty day time limit for filing a notice of appeal is mandatory and jurisdictional. *Albert v. Frye*, 145 S.W.3d 526, 528 (Tenn. 2004); *Binkley v. Medling*, 117 S.W.3d 252, 255 (Tenn. 2003). This court can neither waive nor extend the time period. Tenn. R. App. P. 2 and 21(b); *Flautt & Mann v. Council of City of Memphis*, 285 S.W.3d 856, 869 (Tenn. Ct. App. 2008); *Jefferson v. Pneumo Serv. Corp.*, 699 S.W.2d 181, 184 (Tenn. Ct. App. 1985). The failure to file a timely notice of appeal deprives this court of jurisdiction to hear the matter. *Flautt & Mann*, 285 S.W.3d at 869.

The appeal is hereby dismissed for failure to file a timely notice of appeal. The costs are taxed to the defendant, Tracy L. Carman-Thacker, for which execution may issue.

PER CURIAM