

FILED

07/23/2019

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 18, 2019

**DONNA M. SABELLA F/K/A DONNA FRAZIER F/K/A DONNA SABELLA
FRAZIER v. NAOMI FOREMAN, ET AL.**

**Appeal from the Chancery Court for Wilson County
No. 2016-CV-273 Charles K. Smith, Chancellor**

No. M2019-01067-COA-R3-CV

This is an appeal from a final judgment entered on May 14, 2019. Because the defendants did not file their notice of appeal within thirty (30) days after entry of the final judgment as required by Tenn. R. App. P. 4(a), we dismiss the appeal.

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

FRANK G. CLEMENT, JR., P.J., M.S., RICHARD H. DINKINS, and W. NEAL MCBRAYER, JJ.

Andrew Harrison Maloney, Nashville, Tennessee, for the appellants, Naomi Foreman Aitchison and Ronald Aitchison.

Robert D. MacPherson, Lebanon, Tennessee, for the appellee, Donna Sabella.

MEMORANDUM OPINION¹

On June 14, 2019, Naomi Foreman Aitchison and Ronald Aitchison filed a notice of appeal from a final judgment entered by the Chancery Court for Wilson County on May 14, 2019. The appellee, Donna Sabella, has filed a motion to dismiss the appeal as

¹ Tenn. R. Ct. App. 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 When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

untimely. Tenn. R. App. P. 4(a) requires that a notice of appeal be filed with the clerk of the appellate court within thirty (30) days after entry of the judgment appealed. The Aitchisons filed their notice of appeal thirty-one (31) days after entry of the judgment appealed.

In response to the motion to dismiss, the Aitchisons concede that their notice of appeal was not timely filed but request that the court grant them an extension of time under Tenn. R. App. P. 21(b). Tenn. R. App. P. 21(b) specifically prohibits this court from extending the time limit for filing a notice of appeal. The thirty (30) 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 Aitchisons also request relief under Tenn. R. Civ. P. 60. However, Tenn. R. Civ. P. 60 does not apply in this court. Tenn. R. Civ. P. 1. While a trial court may, under unusual and compelling circumstances, grant an appellant relief under Tenn. R. Civ. P. 60 from the failure to file a timely notice of appeal, Tenn. R. App. P. 4(a), *Advisory Commission Comments; McCracken v. Brentwood United Methodist Church*, 958 S.W.2d 792 (Tenn. Ct. App. 1997), such relief must be sought in the trial court.

Finally, the Aitchisons contend that we should deny the appellee's motion to dismiss because it fails to comply with Tenn. R. App. P. 22. However, the failure to file a timely notice of appeal deprives this court of jurisdiction to hear the appeal. *Flautt & Mann v. Council of City of Memphis*, 285 S.W.3d at 869. Regardless of the motion's deficiencies, this court may always consider whether we have jurisdiction over an appeal. Tenn. R. App. P. 13(b). Even if no motion had been filed, this court would have reviewed the record to determine whether the notice of appeal was timely filed and, upon discovery of the untimely notice, dismissed the appeal.

The appeal is hereby dismissed for failure to file a timely notice of appeal. The case is remanded to the trial court for further proceedings consistent with this opinion. Naomi Foreman Aitchison and Ronald Aitchison are taxed with the costs for which execution may issue.

PER CURIAM