

FILED

09/06/2019

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
September 3, 2019

DEBORAH ANNE DILLON ET AL. v. CRAIG MORRIS ET AL.

Appeal from the Chancery Court for Davidson County
No. 18-750-II Anne C. Martin, Chancellor

No. M2019-01181-COA-R3-CV

The plaintiffs/appellants filed a notice of appeal from the trial court's order dismissing one of the plaintiffs' claims as to all of the defendants and all of the claims as to one of the defendants. The defendants/appellees responded to the notice of appeal by filing a motion to dismiss this appeal as premature and not subject to a final appealable order of the trial court. Because the trial court has not yet resolved all the claims between all the parties, we dismiss the appeal for lack of a final judgment.

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.

John Robert Reynolds and Martha M. Gentry, Nashville, Tennessee, for the appellants, Deborah Anne Dillon, d/b/a V&E Associates and Personal Representative of the Estate of George A. Dillon, Sr.

J. Carson Stone, III, Nashville, Tennessee, for the appellees, Craig Morris, Scott John Morris, and Allegiant Entertainment Group, LLC.

MEMORANDUM OPINION¹

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 When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

On January 29, 2019, the trial court dismissed all the claims against one of the three defendants, Doyle E. Moore, and dismissed the claims for violation of the Tennessee Securities Act as to all defendants, Craig Morris, Scott John Morris, and Allegiant Entertainment Group, LLC. The trial court also granted the defendants leave to file further dispositive motions. The plaintiffs filed a timely motion to alter or amend which the trial court denied on May 29, 2019.

The plaintiffs filed their notice of appeal on June 28, 2019. The defendants filed a motion to dismiss the appeal for lack of a final judgment. The plaintiffs' response to the motion to dismiss confirms the relevant procedural history.

A party is entitled to an appeal as of right only after the trial court has entered a final judgment. Tenn. R. App. P. 3(a). A final judgment is a judgment that resolves all the claims between all the parties, "leaving nothing else for the trial court to do." *In re Estate of Henderson*, 121 S.W.3d 643, 645 (Tenn. 2003) (quoting *State ex rel. McAllister v. Goode*, 968 S.W.2d 834, 840 (Tenn. Ct. App. 1997)). An order that adjudicates fewer than all the claims between all the parties is subject to revision at any time before the entry of a final judgment and is not appealable as of right. Tenn. R. App. P. 3(a); *In re Estate of Henderson*, 121 S.W.3d at 645.

The January 29, 2019 order is not a final judgment because it disposes of only a portion of the plaintiffs' claims. The plaintiffs' own docketing statement concedes the order is not a final judgment.

While not specifically mentioned in the plaintiffs' response, the docketing statement indicates the plaintiffs may be relying on Tenn. R. Civ. P. 54.02. Under Tenn. R. Civ. P. 54.02, the trial court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties. However, the trial court may do so "only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment." Tenn. R. Civ. P. 54.02. The trial court's order does not contain the express determination and direction required by Tenn. R. Civ. P. 54.02.

Even if the order contained the requisite language, it would still have to actually adjudicate one or more of the claims or parties. *Bayberry Assocs. v. Jones*, 783 S.W.2d 553, 557 (Tenn. 1990). While the portion of the order resolving all the claims against Mr. Moore may be susceptible to certification under Tenn. R. Civ. P. 54.02, the portion of the order dismissing the claims for violation of the Tennessee Securities Act is not. *Carr v. Valinezhad*, No. M2009-00634-COA-R3-CV, 2010 WL 1633467 at *2 (Tenn. Ct. App. Apr. 22, 2010) (holding a "claim" for the purposes of Tenn. R. Civ. P. 54.02 is defined as the "aggregate of operative facts which give rise to a right enforceable in the courts"); *Paul v. Watson*, No. W2011-00687-COA-R3-CV, 2012 WL 344705, at *4 (Tenn. Ct.

App. Feb. 2, 2012) (holding alternate theories in pursuit of one recovery do not constitute separate claims).

The appeal is hereby dismissed without prejudice to the filing of a new appeal once a final judgment has been entered. The case is remanded to the trial court for further proceedings consistent with this opinion. The costs of the appeal are taxed to the plaintiffs.

PER CURIAM