

FILED

10/18/2022

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
October 17, 2022

BENJAMIN MCCURRY v. AGNESS MCCURRY

**Appeal from the Circuit Court for Washington County
No. 38147 James E. Lauderback, Judge**

No. E2022-01387-COA-R3-CV

The appellant, Agness McCurry, has appealed the September 29, 2022 order of the Circuit Court for Washington County (“the Trial Court”). Because the September 29, 2022 order does not constitute a final appealable judgment, this Court lacks jurisdiction to consider this appeal.

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

JOHN W. MCCLARTY, J.; D. MICHAEL SWINEY, C.J.; AND THOMAS R. FRIERSON, II, J.

Agness McCurry, Johnson City, Tennessee, pro se appellant.

Sandy Phillips, Johnson City, Tennessee, for the appellee, Benjamin McCurry.

MEMORANDUM OPINION¹

The appellee, Benjamin McCurry, filed a motion to dismiss this appeal for lack of a final judgment.² Specifically, the Trial Court’s September 29, 2022 order, which is the

¹ Rule 10 of the Rules of the Court of Appeals provides:

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 When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

² As this Court is not addressing the merits of this appeal at this time, we decline to award

order appealed, granted an *ex parte* emergency motion and set the matter for hearing. To date, no hearing has been held. After it became clear that there was no final judgment from which an appeal as of right would lie, this Court directed the appellant, Agness McCurry, to show cause why this appeal should not be dismissed for lack of subject matter jurisdiction. “A final judgment is one that resolves all the issues in the case, ‘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)). This Court does not have subject matter jurisdiction to adjudicate an appeal as of right if there is no final judgment. *See Bayberry Assocs. v. Jones*, 783 S.W.2d 553, 559 (Tenn. 1990) (“Unless an appeal from an interlocutory order is provided by the rules or by statute, appellate courts have jurisdiction over final judgments only.”). Appellant responded to our show cause order, but failed to show that a final judgment has been entered.

“Except where otherwise provided, this Court only has subject matter jurisdiction over final orders.” *Foster-Henderson v. Memphis Health Center, Inc.*, 479 S.W.3d 214, 222 (Tenn. Ct. App. 2015). Because the September 29, 2022 order does not constitute a final appealable judgment, this Court lacks jurisdiction to consider this appeal. The appeal is hereby dismissed. Costs on appeal are taxed to the appellant, Agness McCurry, for which execution may issue.

PER CURIAM

damages for frivolous appeal pursuant to Tenn. Code Ann. § 27-1-122 at this time.