

FILED

08/28/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 24, 2023 Session

SARRAH WILLHITE v. JEREMY WILLHITE

**Appeal from the Circuit Court for Sevier County
No. 21-CV236-II James L. Gass, Judge**

No. E2023-01058-COA-R3-CV

This is an appeal from a final order entered on November 23, 2022. The Notice of Appeal was not filed with the Appellate Court Clerk until June 27, 2023, more than thirty days from the date of entry of the order from which the appellant is seeking to appeal. Because the Notice of Appeal was not timely filed, we have no jurisdiction to consider this appeal.

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

KRISTI M. DAVIS, J.; D. MICHAEL SWINEY, C.J.; AND THOMAS R. FRIERSON, II, J.

Sarrah Denton Willhite, Lexington, Kentucky, Pro Se Appellant.

Rebecca Denise Slone, Dandridge, Tennessee, for the appellee, Jeremy Denton Willhite.

MEMORANDUM OPINION¹

The Sevier County Circuit Court (“Trial Court”) entered a final divorce decree and a permanent parenting plan order on November 23, 2022. The *pro se* appellant, Sarrah Denton Willhite (“Appellant”), has filed what we construe as a notice of appeal in this case. The notice of appeal was mailed on June 27, 2023 from the detention facility where

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

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 When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Appellant was incarcerated. Although initially sent to the incorrect court, this Court ultimately received the notice. Appellant signed and dated her notice of appeal on May 31, 2023. In the cover letter sent along with her notice of appeal, Appellant states that she had been trying to send her notice of appeal to this Court since May 31, 2023. However, the Trial Court entered its final judgment on November 23, 2022, more than six months prior to the date when the appellant states that she began trying to file her notice of appeal.

This Court entered an order on July 31, 2023, directing Appellant to show cause why this appeal should not be dismissed as being untimely filed. Appellant responded to this Court's order, arguing, in relevant part, that she had not received a copy of the final divorce decree or permanent parenting plan order "within any length of time as being finalized" to timely file an appeal despite the appellee knowing her location and that she only received copies of the divorce paperwork after she requested the documents from the Trial Court. Appellant's response is unclear whether she is alleging she failed to receive finalized copies of the orders or copies of the proposed orders, but we note that it is not required that Appellant received signed and file-stamped copies of the orders to make the orders effective pursuant to Tennessee Rule of Civil Procedure 58. *See Thompson v. Chafetz*, 164 S.W.3d 571, 574 (Tenn. Ct. App. 2004) ("Nothing in Rule 58 indicates that any party is entitled to receive a copy of the judgment as it is filed (i.e. stamped, signed by the judge and counsel). Rather, Rule 58 is satisfied where . . . all parties receive a copy of the proposed order.").

Upon our review of the Trial Court's orders, the final divorce decree was signed by the Trial Court Judge, signed by counsel for the appellee, and included a certificate of service from the appellee's counsel, certifying that the order was served on Appellant on November 15, 2022. Additionally, the permanent parenting plan order approved by the Trial Court was signed by the Trial Court Judge and included a certificate of service from the Trial Court Clerk, certifying that a copy of the order was sent to the parties on November 30, 2022. Both orders were stamped as filed on November 23, 2022. Despite Appellant's assertion that she had not received copies of the Trial Court's final divorce decree or permanent parenting plan order, Appellant has not stated that she sought relief in the Trial Court pursuant to Tennessee Rule of Civil Procedure 60.

In order to be timely, a notice of appeal must "be filed with the clerk of the appellate court within 30 days after the date of entry of the judgment appealed from." Tenn. R. App. P. 4(a). "The thirty-day time limit for filing a notice of appeal is mandatory and jurisdictional in civil cases." *Albert v. Frye*, 145 S.W.3d 526, 528 (Tenn. 2004). If a notice of appeal is not filed in a civil case in a timely fashion from the date of entry of the final judgment, we are not at liberty to waive the procedural defect and must dismiss the appeal. *See Arfken & Assocs., P.A. v. Simpson Bridge Co., Inc.*, 85 S.W.3d 789, 791 (Tenn. Ct. App. 2002); *Am. Steinwinter Investor Group v. Am. Steinwinter, Inc.*, 964 S.W.2d 569, 571

(Tenn. Ct. App. 1997); *Jefferson v. Pneumo Services Corp.*, 699 S.W.2d 181, 184 (Tenn. Ct. App. 1985).

Even if we considered Appellant’s notice of appeal as filed on May 31, 2023, it would still be untimely. Because the Notice of Appeal in this case was filed more than thirty (30) days after the date of entry of the final order, we lack jurisdiction to consider the appeal. This appeal is dismissed.² Costs on appeal are taxed to the appellant, Sarrah Denton Willhite, for which execution may issue if necessary.

PER CURIAM

²We note that Appellant filed a motion to proceed as indigent in this appeal. However, Appellant’s alleged indigency does not relieve her from paying the court costs associated with this appeal. *See* Tenn. Code Ann. § 20-12-127(b) (stating that the filing of a civil action upon a pauper’s oath “does not relieve the person filing the action from responsibility for the costs or taxes but suspends their collection until taxed by the court”). Therefore, Appellant’s motion is DENIED as moot.