

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on September 1, 2011

PAUL KOCZERA, et al., v. CHRISTI LENAY FIELDS STEELE, et al.

**Appeal from the Circuit Court for Anderson County
No. BOLA0425 Hon. John D. McAfee, Judge**

No. E2011-01600-COA-R3-CV-FILED-SEPTEMBER 15, 2011

Plaintiffs' action was dismissed by the Trial Court by summary judgment. Plaintiffs then appealed to this Court and defendants filed a Motion to Dismiss on the grounds that the Judgment entered by the Trial Court was not a final judgment. Plaintiffs responded to that Motion, acknowledging that the final judgment had not been entered in the case below, but sought a stay of the appeal. We grant the Motion to Dismiss the appeal on the grounds that the Judgment below is not final and this Court lacks jurisdiction to entertain the merits of the appeal.

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

HERSCHEL PICKENS FRANKS, P.J., CHARLES D. SUSANO, JR., J., and D. MICHAEL SWINEY, J.

Lawrence Revelle Dry, and Wanda McClure, Oak Ridge, Tennessee, for the appellants, Paul Koczera and Jolene Koczera.

Jeffery Scott Griswold and Joshua R. Walker, Knoxville, Tennessee, for the appellees, Christi Lenay Fields Steele, Oak Ridge Urology Associates, Randall E. Pearson, M.D., and Tennessee Urology Associates, PLLC.

MEMORANDUM OPINION¹

Plaintiffs brought this action on September 9, 2010, and ultimately the Trial Judge granted defendants summary judgment on June 29, 2011.

Plaintiffs appealed the Judgment to this Court and appellees filed a Motion to Dismiss the appeal on the grounds that the notice of appeal was prematurely filed as all claims against all parties had not yet been resolved. The Motion also requested alternatively, a stay of prosecution until a final judgment can be obtained. Appellants responded to the Motion and acknowledged there was no final judgment, but also asked for a stay of the appeal until judgment is final and is then "sorted out" by the Trial Court.

Upon reviewing the record, and with the admission of the parties, it is clear that the "judgment" is not a final judgment, nor did the Trial Court direct the entry of a final judgment in accordance with Tenn. R. Civ. P. Rule 64.02.

Because the Trial Court has not yet entered a final judgment, the appeal is dismissed without prejudice and the case remanded to the Trial Court for further proceedings consistent with this Opinion. Should a new appeal be filed, the clerk of this court shall, upon request of either party, consolidate the record in this appeal with the record filed in the new appeal. The costs of the appeal are taxed to Paul and Jolene Koczera.

PER CURIAM

¹The Court of Appeals' Rules provide:

Rule 10. Memorandum Opinion

(b) 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.