

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 1, 2011 Session

SANTIAGO TOSCANI v. NADER RAHBE

**Appeal from the Circuit Court for Hamilton County
No. 10C999 L. Marie Williams, Judge**

No. E2011-00294-COA-R3-CV-FILED-JULY 1, 2011

The order from which the appellant Nader Rahbe seeks to appeal was entered on Wednesday, January 5, 2011. A notice of appeal was filed by the appellant on Tuesday, February 8, 2011, the 34th day following the entry of the trial court's order. Because the notice of appeal was not timely filed, we have no jurisdiction to consider this appeal. Accordingly, the motion of the appellee to dismiss is granted. This appeal is dismissed.

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

CHARLES D. SUSANO, JR., D. MICHAEL SWINEY, AND JOHN W. MCCLARTY, JJ.

Curtis L. Bowe, III, Chattanooga, Tennessee, for the appellant, Nader Rahbe.

Robin Ruben Flores, Chattanooga, Tennessee, for the appellee, Santiago Toscani.

MEMORANDUM OPINION¹

Our jurisdiction of this Tenn. R. App. P. 3 appeal as of right is dependent upon the timely filing of a notice of appeal. *Albert v. Frye*, 145 S.W.3d 526, 528 (Tenn. 2004). In the instant case, the day of the relevant order, *i.e.*, January 5, 2011, is not counted in determining the last day of the 30-day period of time for the filing of a notice of appeal. *See* Tenn. R. App. P. 21(a). Therefore, there were 26 days left in January and 4 days in February

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 When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

within which the appellant could file his notice of appeal. Hence, the last day the notice could be timely filed was Friday, February 4, 2011. It follows that the notice of appeal filed February 8, 2011, was not timely filed. We have no jurisdiction to hear the appellant's appeal.

The appeal of Nader Rahbe is dismissed with costs on appeal taxed to him.

PER CURIAM