

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on July 2, 2014

PATRICIA MULHAIRE-BREEDEN
v. NASHVILLE MIDNIGHT OIL, LLC ET AL.

Appeal from the Circuit Court for Davidson County
No. 12C5023 Carol Soloman, Judge

No. M2014-00480-COA-R3-CV - Filed July 8, 2014

This is an appeal from an order setting aside a default judgment. Because the order appealed does not resolve all the claims between 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, J., W. NEAL MCBRAYER, J.

James Allen Frazier, Jr., Thompson Station, Tennessee, for the appellant, Patricia Mulhaire-Breedon.

David Anthony, Nashville, Tennessee, for the appellee, Nashville Midnight Oil, LLC d/b/a Tequila Cowboy.

MEMORANDUM OPINION¹

This appeal arises out of an order setting aside a default judgment against the defendant, Nashville Midnight Oil, LLC, d/b/a Tequila Cowboy (“Nashville Midnight Oil”). The trial court entered a “Default Against Nashville Midnight Oil, LLC, d/b/a Tequila Cowboy” on March 12, 2013, and a “Final Judgment” on November 13, 2013. On December

¹Tenn. Ct. App. R. 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 When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

27, 2014, Nashville Midnight Oil filed a motion to set aside the default judgment pursuant to Tenn. R. Civ. P. 60. Following a hearing, the trial court granted Nashville Midnight Oil's Tenn. R. Civ. P.60 motion and set aside the default judgment on February 27, 2014. The plaintiff, Patricia Mulhaire-Breeden, filed a Tenn. R. App. P. 3 notice of appeal as of right on March 13, 2014.

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); *King v. Spain*, No. M2006-02178-COA-R3-CV, 2007 WL 3202757, at *8 (Tenn. Ct. App. Oct. 31, 2007). A final judgment is a judgment that resolves all the claims between all the parties, "leaving nothing else for the trial court to do." *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).

On June 11, 2014, the trial court clerk notified this court that the final judgment had been set aside and the case was still pending in the trial court. Accordingly, this court ordered Ms. Mulhaire-Breeden to show cause why the appeal should not be dismissed for lack of a final judgment. In response, Ms. Mulhaire-Breeden does not dispute the current state of the case but asserts the appeal should not be dismissed because the trial court entered a final judgment on November 13, 2013, and erred in setting aside that judgment. In the alternative, Ms. Mulhaire-Breeden asserts that she has filed a motion in the trial court for permission to appeal pursuant to Tenn. R. App. P. 9 and requests that this court stay her appeal until the trial court has ruled on her Tenn. R. App. P. 9 motion.

The default judgment, which presumably did resolve all the claims between the parties, has been set aside and is not appealable. The February 27, 2014 order does not dispose of any claims between the parties but rather leaves all the parties' claims pending before the trial court for future adjudication. Ms. Mulhaire-Breeden's assertions regarding the correctness of the February 27, 2014 order, and the merits of her appeal do not alter the fact that the order appealed is not a final appealable judgment. Furthermore, the fact that Ms. Mulhaire-Breeden is seeking an interlocutory appeal pursuant to Tenn. R. App. P. 9 has no bearing on whether she is entitled to a Tenn. R. App. P. 3 appeal as of right, other than as a further indication that the order appealed is in fact an interlocutory order.

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 Patricia Mulhaire-Breeden and her surety for which execution may issue.

PER CURIAM