

IN THE COURT OF APPEALS OF TENNESSEE  
AT KNOXVILLE

**SHIRLEY J. ELLIOTT v. LIFE OF THE SOUTH INSURANCE COMPANY,  
INC.**

**Appeal from the Circuit Court for Rhea County  
No. 23672 Thomas W. Graham, Judge**

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**No. E2010-01638-COA-R3-CV - FILED AUGUST 27, 2010**

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The defendants in this matter have filed a motion to dismiss the appeal, alleging that the notice of appeal was not timely filed. The attachments to the motion support the allegation of the defendants that the only notice of appeal received by the trial court clerk was a facsimile filed notice of appeal. As such is insufficient to confer subject matter jurisdiction on this court, the appeal is dismissed.

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

M. Josiah Hoover, III, Knoxville, Tennessee, for the appellant, Shirley J. Elliott.

Christopher D. Heagerty, Knoxville, Tennessee, for the appellee, Life of the South Insurance Company.

**MEMORANDUM OPINION<sup>1</sup>**

**I. BACKGROUND**

On September 29, 2009, the trial court entered an order granting motions for summary

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<sup>1</sup>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 When a case is decided by memorandum opinion it shall be designated ‘MEMORANDUM OPINION,’ shall not be published, and shall not be cited or relied on for any reason in any unrelated case.”

judgment in favor of the defendants.<sup>2</sup> On October 30, 2009, the plaintiff filed a motion to alter or vacate. The trial court denied the plaintiff's motion on June 29, 2010. One month later, on July 29, 2010, the Clerk for the Circuit Court of Rhea County received by facsimile a notice of appeal filed by the plaintiff. No other document identified as a notice of appeal was received from the plaintiff.

The defendant subsequently moved this court to dismiss the appeal filed by the plaintiff, asserting that this court lacks jurisdiction over the appeal because the notice of appeal was improperly filed by facsimile transmission only.

## II. DISCUSSION

Rule 5A.02(4) provides, inter alia, as follows:

(4) The following documents *shall not be filed* in the trial court by facsimile transmission:

\* \* \*

(e) *A notice of appeal.*

Tenn. R. Civ. P. 5A.02(4) (emphasis added). Thus, we cannot consider the notice of appeal faxed on July 29, 2010, as it was not appropriately received and filed by the trial court clerk. Because a notice of appeal was not timely filed, this court has no subject matter jurisdiction over this appeal.

## III. CONCLUSION

This appeal is dismissed and this cause is remanded to the trial court for further proceedings consistent with this opinion and for collection of the costs below. Costs on appeal are taxed to the appellant, Shirley J. Elliott.

PER CURIAM

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<sup>2</sup>At the trial court level, other defendants were Amtrust Bank, Capital Management, East Tennessee Dodge, Chrysler and Jeep, and David Lawson.