

FILED

09/14/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
September 14, 2023 Session

TIMOTHY HOPSON v. SMITH WHOLESALE, LLC

**Appeal from the Circuit Court for Washington County
No. 41776 Suzanne Cook, Judge**

No. E2023-01153-COA-R3-CV

This is an appeal from a final order entered on July 6, 2023. The Notice of Appeal was not filed with the Appellate Court Clerk until August 11, 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

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

Timothy Hopson, Hampton, Tennessee, Pro Se Appellant.

Samuel K. McPeak, Johnson City, Tennessee, for the appellee, Smith Wholesale LLC.

MEMORANDUM OPINION¹

The Washington County Circuit Court (“Trial Court”) entered its final judgment on July 6, 2023. The *pro se* appellant, Timothy Hopson (“Appellant”), filed a notice of appeal with this Court on August 11, 2023, more than thirty days after the final judgment was entered. In order to be timely, a notice of appeal must “be filed with the clerk of the

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 When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

appellate court within 30 days after the date of entry of the judgment appealed from.” Tenn. R. App. P. 4(a). Due to the weekend, the notice of appeal should have been filed with this Court on August 7, 2023 to be timely filed. *See* Tenn. R. App. P. 21(a) (“The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday . . . , in which event the period runs until the end of the next day which is not one of the aforementioned days.”).

This Court entered an order on August 18, 2023, directing Appellant to show cause why this appeal should not be dismissed as being untimely filed. Appellant filed a response to this Court’s show cause order, reasoning that the notice of appeal was filed late due to Appellant’s health problems; the cost for ink, postage, and envelopes having to come out of his disability check; his having to wait for his brother to take him to the post office, and Appellant’s having to conduct research regarding how to file an appeal. However, “[t]he 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).

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, Timothy Hopson, 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 him 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.