

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
March 29, 2023

FILED
03/30/2023
Clerk of the
Appellate Courts

STATE EX REL. MISTI LEIGH HANEY O'DELL v ANDREW M. O'DELL

**Appeal from the Chancery Court for Washington County
No. 19-DM-0261 John C. Rambo, Chancellor**

No. E2023-00056-COA-R3-CV

Because the notice of appeal was not timely filed, this Court lacks jurisdiction to consider this appeal.

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

THOMAS R. FRIERSON, II, J.; JOHN W. MCCLARTY, J.; and KRISTI M. DAVIS, J.

Andrew M. O'Dell, Piney Flats, Tennessee, pro se appellant.

Caleb Caldwell McDaniel, Elizabethton, Tennessee, for the appellee, Misti Leigh Haney O'Dell.

Katherine Adams, Nashville, Tennessee, for the appellee, the State of Tennessee - Civil.

MEMORANDUM OPINION¹

Upon a review of the notice of appeal filed by the appellant, Andrew M. O'Dell ("Appellant"), and the Trial Court's final judgment provided by the Trial Court Clerk, this Court entered an Order on January 11, 2023 ordering Appellant to show cause why this

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 When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

appeal should not be dismissed as having been untimely filed. By Order entered January 27, 2023, this Court granted Appellant an extension up to and including February 27, 2023 within which to respond to our January 11, 2023 show cause Order.

Appellant filed additional notices of appeal in this case on January 26, 2023 and on February 3, 2023, but neither of these additional notices of appeal show that Appellant timely filed an appeal to this Court. Appellant filed no other response to our January 11, 2023 Order to show cause.

The Trial Court entered its final judgment on December 7, 2022. Appellant had up to and including January 6, 2023 within which to timely file an appeal of the Trial Court's final judgment. Appellant filed his first notice of appeal in this Court on January 10, 2023, which is thirty-four days after entry of the Trial Court's judgment.

A notice of appeal "shall be filed with the clerk of the appellate court within 30 days after the date of entry of the judgment appealed from . . ." Tenn. R. App. P. 4(a). "The 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); *see also Ball v. McDowell*, 288 S.W.3d 833, 836 (Tenn. 2009). If a notice of appeal is not timely filed, this Court is not at liberty to waive the procedural defect. Tenn. R. App. P. 2.; *see also Arfken & Assocs., P.A. v. Simpson Bridge Co.*, 85 S.W.3d 789, 791 (Tenn. Ct. App. 2002).

As Appellant failed to file his notice of appeal within thirty days of entry of the Trial Court's judgment, the notice of appeal was untimely filed, thus depriving this Court of jurisdiction. This appeal is hereby DISMISSED. Costs on appeal are taxed to Appellant, Andrew M. O'Dell, for which execution may issue.

PER CURIAM