

FILED

07/28/2022

Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
July 27, 2022

**BB&T FINANCIAL FSB v. MAIKEL HOZAIEN**

**Appeal from the Circuit Court for Davidson County  
No. 21C1067 Hamilton V. Gayden, Jr., Judge**

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**No. M2022-00594-COA-R3-CV**

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This is an appeal from a circuit court order dismissing an appeal from a general sessions court judgment. Because the appellant did not file his notice of appeal to this Court within thirty days after entry of the circuit court's final order as required by Rule 4(a) of the Tennessee Rules of Appellate Procedure, we dismiss the appeal.

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

FRANK G. CLEMENT, JR., P.J., M.S., ANDY D. BENNETT, and W. NEAL MCBRAYER, JJ.

Maikel Reazkauah,<sup>1</sup> Smyrna, Tennessee, pro se.

Michael B. Menefee, Knoxville, Tennessee, for the appellee, BB&T Financial FSB.

**MEMORANDUM OPINION<sup>2</sup>**

This appeal involves an agreed judgment entered by the Davidson County General Sessions Court in 2013. On January 26, 2021, the defendant, Maikel Hozaien a/k/a Maikel Reazkauah, filed a motion in the general sessions court seeking relief from the judgment. After the general sessions court denied the motion, Mr. Hozaien filed a second motion for

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<sup>1</sup>The record indicates that the appellant is known by more than one name. This is the name the appellant used on the notice of appeal.

<sup>2</sup>Tenn. R. Ct. App. 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 When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

relief. The general sessions court denied the second motion on June 22, 2022, and Mr. Hozaien filed a notice of appeal to the Circuit Court for Davidson County on the same date.

The plaintiff, BB&T Financial FSB, moved to dismiss the appeal to the circuit court for lack of subject matter jurisdiction. Mr. Hozaien did not respond to the motion to dismiss or appear at the hearing on the motion. On March 15, 2022, the circuit court entered an order dismissing the appeal for lack of subject matter jurisdiction. Mr. Hozaien filed a notice of appeal to this Court on May 6, 2022.

Rule 4(a) of the Tennessee Rules of Appellate Procedure requires that a notice of appeal be filed with the clerk of the appellate court within thirty days after entry of the judgment appealed. Mr. Hozaien did not file his notice of appeal until May 6, 2022, fifty-two days after entry of the judgment appealed. The thirty day time limit for filing a notice of appeal is mandatory and jurisdictional. *Albert v. Frye*, 145 S.W.3d 526, 528 (Tenn.2004); *Binkley v. Medling*, 117 S.W.3d 252, 255 (Tenn. 2003). This Court can neither waive nor extend the time period. TENN. R. APP. P. 2 and 21(b); *Flautt & Mann v. Council of City of Memphis*, 285 S.W.3d 856, 869 (Tenn. Ct. App. 2008); *Jefferson v. Pneumo Serv. Corp.* 699 S.W.2d 181, 184 (Tenn. Ct. App. 1985). The failure to file a timely notice of appeal deprives this Court of jurisdiction to hear the matter. *Flautt & Mann v. Council of City of Memphis*, 285 S.W.3d at 869.

The appeal is dismissed for failure to file a timely notice of appeal. The case is remanded to the trial court for further proceedings consistent with this opinion. Maikel Hozaien a/k/a Maikel Reazkauah is taxed with the costs for which execution may issue.

PER CURIAM