

IN THE COURT OF APPEALS OF TENNESSEE
EASTERN SECTION

FILED

June 13, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

KYLE A. JUSTICE)	ANDERSON COUNTY
)	03A01-9601-CV-00014
Plaintiff - Appellant)	
)	
v.)	HON. JAMES B. SCOTT, JR.,
)	JUDGE
)	
BENNY GREEN, Agent)	
For K. B. Staves)	
)	
Defendant - Appellee)	DISMISSED AND REMANDED

VICTOR PRYOR OF JACKSBORO FOR APPELLANT

JOSEPH G. COKER OF JACKSBORO FOR APPELLEE

O P I N I O N

Goddard, P. J.

Kyle A. Justice, who appeared pro se in the Trial Court, appeals dismissal of his suit against Benny Green, seeking damages for breach of contract. The Trial Court, on motion of Mr. Green, dismissed the suit under the doctrine of former suit pending, there being a prior suit filed by Mr. Green against Mr. Justice in the Circuit Court for Campbell County, seeking a

declaration of rights as to the contract, as well as a recovery for its breach.

Mr. Justice purported to appeal, but his appeal is opposed by a motion by Mr. Green that it be dismissed on the ground, inter alia, that the notice of appeal was not timely filed with the Clerk of the Circuit Court of Anderson County.

The record discloses the following:

(1) June 22, 1995. Entry of order dismissing Mr. Justice's suit under the doctrine of former suit pending.

(2) June 26, 1995. Pleading filed by Mr. Justice, which is styled as follows:

OBJECTION TO DISMISSAL
MOTION TO CORRECT ERROR BEFORE APPEAL

(3) July 21, 1995. Order denying "the request to correct the judgment dismissing the cause of plaintiff."

(4) September 5, 1995. Notice of appeal filed with the Clerk of the Circuit Court by Mr. Justice, which refers to a final judgment entered on the "29th day of Aug. 1995." No order bearing that date was ever entered.

It is clear that even should we treat Mr. Justice's June 26 motion as a Rule 59 motion to alter or amend the June 22 order of dismissal, the latest Mr. Justice's notice of appeal would have been timely filed was August 21, 31 days subsequent to July 21. (The 30th day, August 20, was a Sunday.)

In reaching our conclusion, we are not unmindful of three intervening motions filed by Mr. Justice. The first was filed on July 19th, and is styled "MOTION EX PARTE FOR INTERLOCUTORY APPEAL BY PERMISSION FROM THE TRIAL COURT." The second was filed on August 2 and is styled "MOTION OF PLAINTIFF FOR PERMISSION TO APPEAL INTERLOCUTORY ORDER."

Both motions were not appropriate because the order sought to be appealed is not an interlocutory one, but a final one, which sustained Mr. Green's plea of former suit pending.

The third motion, which was filed on August 30, is styled "MOTION TO ALTER JUDGMENT." This motion is not timely in that the judgment of the Trial Court had become final.

In summary, we hold that a losing party may not indefinitely continue the period allowed for filing a notice

of appeal by the simple expediency of filing multiple inappropriate motions not contemplated by the Tennessee Rules of Civil or Appellate Procedure.

Exercising our discretion, we deny Mr. Green's motion to adjudge damages for a frivolous appeal pursuant to T. C. A. 27-1-122.

For the foregoing reasons the motion to dismiss is granted and the cause remanded for collection of costs below. Costs of appeal are adjudged against Mr. Justice.

Houston M. Goddard, P. J.

CONCUR:

Herschel P. Franks, J.

William H. Inman, Sr. J.