

FILED

05/08/2023

Clerk of the  
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
April 2023

**AUTOMOTIVE PERFORMANCE TECHNOLOGIES, LLC v. STATE OF  
TENNESSEE**

**Appeal from the Tennessee Claims Commission  
No. K20202164-1**

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**No. W2023-00186-COA-R3-CV**

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The notice of appeal in this case was not timely filed. Therefore, this Court lacks jurisdiction to consider this appeal.

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

J. STEVEN STAFFORD, P.J., W.S.; ARNOLD B. GOLDIN, J.; CARMA DENNIS MCGEE, J.

Darrell J. O’Neal, Memphis, Tennessee, for the appellant, Automotive Performance Technologies, LLC.

Jonathan Skrmetti, Attorney General and Reporter; Andrée Sophia Blumstein, Solicitor General; Melissa Brodhag; Senior Assistant Attorney General; and Toni-Ann M. Dolan, for the appellee, State of Tennessee - Civil.

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

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 When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

On February 8, 2023, Appellant, Automotive Performance Technologies, LLC, filed a Notice of Appeal in this Court. The Notice of Appeal related to an order of the Tennessee Claims Commission that was entered on January 6, 2023. Within the Notice of Appeal, Appellant stated: “*This Notice of Appeal was originally filed with the TN Claims Commission on February 6, 2023. Appellant prays that the Court of Appeals notices that Appellant met the required filing deadline.*”

On March 16, 2023, Appellee, State of Tennessee, filed a Motion to Dismiss this “untimely appeal.” Therein, Appellee asserts that this Court does not have subject matter jurisdiction over the appeal because Appellant filed its Notice of Appeal on February 8, 2023, which was untimely pursuant to Rules 3(e) and 4(a) of the Tennessee Rules of Appellate Procedure.

On March 23, 2023, Appellant appeared to concede that the Notice of Appeal was untimely in this Court, and “request[ed] this Court to enter an order extending the time for Appellant to file its notice of Appeal from February 6, 2023, to two-days later, February 8, 2023, when the Appellant received proper notice that the rules listed were out-of-date.”

Based on our review of the foregoing, we determine that this Court does not have subject matter jurisdiction over this matter because Appellant’s Notice of Appeal was not timely filed. A notice of appeal must be filed within thirty (30) days after the date of entry of the final judgment. *See* Tenn. R. App. P. 4. Despite Appellant’s Motion requesting that the Court apply a two-day grace period to his Notice of Appeal, this thirty-day requirement may not be waived. *American Steinwinter Investor Group v. American Steinwinter, Inc.*, 964 S.W.2d 569 (Tenn. Ct. App. 1997). An appellate court cannot extend the time for filing a notice of appeal. Tenn. R. App. P. 2. “In civil cases, the failure to timely file a notice of appeal deprives the appellate court of jurisdiction to hear the appeal.” *Arfken & Associates, P.A. v. Simpson Bridge Co., Inc.*, 85 S.W.3d 789, 791 (Tenn. Ct. App. 2002) (citations omitted). In fact, “[i]f the notice of appeal is not timely filed, the appellate court is required to dismiss the appeal.” *Id.*

In light of the foregoing, this appeal is hereby DISMISSED. Costs of this matter are assessed to Appellant, Automotive Performance Technologies, LLC, for which execution may issue, if necessary.

PER CURIAM