

FILED

06/13/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 8, 2023 Session

JOHN CLARK RITENOUR v. SARA D. BENNETT

**Appeal from the Circuit Court for Knox County
No. 148900 Gregory S. McMillan, Judge**

No. E2023-00540-COA-R3-CV

This is an appeal from a final order entered on March 9, 2023. The Notice of Appeal was not filed with the Appellate Court Clerk until April 12, 2023, more than thirty days from the date of entry of the order from which she 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

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

Cristine Knott, Knoxville, Tennessee, for the appellant, Sara C. Bennett.

John C. Ritenour, Knoxville, Tennessee, Pro Se Appellee.

MEMORANDUM OPINION¹

Counsel for the appellant was appointed in December 2022. The Knox County Circuit Court entered a final order on March 9, 2023, which does not reflect that Appellant's counsel had withdrawn or been relieved of further representation of Appellant

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 When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

in the proceedings. Following the court’s final order, the appellant, Sara C. Bennett (“Appellant”), filed a *pro se* notice of appeal with this Court on April 12, 2023, which is more than thirty days following entry of the trial court’s order. This Court subsequently entered an order, directing Appellant to show cause why this appeal should not be dismissed for lack of jurisdiction based upon the untimely filing of the Notice of Appeal. Counsel for Appellant subsequently filed a motion to withdraw, which was denied because the motion had not demonstrated that it had been served on Appellant. In that order, this Court also directed counsel to provide notice to Appellant of the show cause order. Counsel subsequently filed a second motion to withdraw. The appellant filed a *pro se* response to the show cause order, acknowledging that the notice of appeal was filed late and explaining that she mistakenly believed she had an attorney between the end of trial and the filing of the notice of appeal due to miscommunication.

In order to be timely, a notice of appeal must “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). 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. Costs on appeal are taxed to the appellant, Sara D. Bennett, for which execution may issue if necessary.² We grant counsel’s motion to withdraw from further representation of the appellant.

PER CURIAM

²We note that Ms. Bennett filed a Uniform Civil Affidavit of Indigency with her Notice of Appeal. However, Ms. Bennett’s alleged indigency does not relieve her 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”).