

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
March 8, 2011 Session

**AMERICAN GENERAL FINANCIAL SERVICES, INC. v. MARTIN
GOSS/UNKNOWN TENANT OF FORECLOSED PROPERTY**

**Appeal from the Circuit Court for Knox County
No. 121,810 Dale C. Workman, Judge**

No. E2010-01710-COA-R3-CV - Filed April 7, 2011

CHARLES D. SUSANO, JR., Judge, concurring in part and dissenting in part.

I concur in the decision of the majority to affirm the trial court's judgment in favor of American General Financial Services, Inc. I respectfully dissent from the majority's conclusion that Mr. Goss's appeal is not so devoid of merit as to warrant a holding that his appeal is frivolous in nature. When an appellant seeks to reverse or modify a trial court's judgment based upon an alleged error grounded in the facts of the case, but fails to present us with a verbatim transcript or statement of the evidence, the appellant's appeal has no chance of success. An appeal is deemed frivolous if it is devoid of merit or if it has no reasonable chance of success. *Bursack v. Wilson*, 982 S.W.2d 341, 345 (Tenn. Ct. App. 1998); *Industrial Dev. Bd. v. Hancock*, 901 S.W.2d 382, 385 (Tenn. Ct. App. 1995). *See also Linn v. Howard*, E2006-00024-COA-R3-CV, 2007 WL 208442 at *5 (Tenn. Ct. App. E.S., filed on January 26, 2007). When the only issues on an appeal are factual ones – as opposed to legal questions – we must have a record that permits us to reach those issues. In my judgment, this appeal is – by definition – a frivolous appeal. I would remand for a hearing to determine “just damages” due the appellee pursuant to Tenn. Code Ann. § 27-1-122 (2000).

Accordingly, I concur in part and respectfully dissent in part.

CHARLES D. SUSANO, JR., JUDGE