

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON

**KENNETH E. DIGGS V. GENETIC PROFILES CORPORATION**

**Direct Appeal from the Circuit Court for Shelby County  
No. CT00419810      Robert L. Childers, Judge**

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**No. W2011-01270-COA-R3-CV - Filed October 21, 2011**

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Appellant failed to timely file his Notice of Appeal. Thus, we dismiss this appeal for lack of jurisdiction.

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

J. STEVEN STAFFORD, J., ALAN E. HIGHERS, P.J., W.S, AND DAVID R. FARMER, J.

Kenneth E. Diggs, Memphis, Tennessee, *pro se* appellant.

Michael Jason Martin, Memphis, Tennessee, for the appellee, Genetic Profiles Corporation.

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

On July 15, 2011, Appellee Genetic Profiles Corporation filed a motion requesting that the Court dismiss this appeal for the failure of Appellant Kenneth E. Diggs to timely file the Notice of Appeal. Appellant filed a response to the motion on July 25, 2011. By Order entered on August 1, 2011, the Court determined that, because the appellate record in this matter had not yet been filed, the Court was unable to ascertain whether the Notice of Appeal was timely filed. Consequently, the motion to dismiss was denied at that time.

The appellate record was then received by the Clerk of this Court on August 29, 2011.

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<sup>1</sup>Rule 10 of the Rules of the Court of Appeals of Tennessee 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 When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

Pursuant to the mandates of Rule 13(b) of the Tennessee Rules of Appellate Procedure, we reviewed the appellate record to determine if the Court has subject matter jurisdiction to hear this matter. After this review, it appeared to the Court that it may not have jurisdiction. Specifically, it appeared that the order appealed in this matter was entered by the trial court on April 29, 2011, and the *pro se* appellant, Kenneth E. Diggs, filed his Notice of Appeal on June 3, 2011, i.e., more than thirty (30) days past April 29, 2011. Thus, by Order entered on August 31, 2011, the Court directed Appellant to show cause within ten (10) days of the entry of that Order why this appeal should not be dismissed for failure to timely file the Notice of Appeal.

Appellant filed a response to our Order on September 6, 2011, wherein he does not dispute that his Notice of Appeal was not timely filed. Instead, Appellant explains that he was unable to post an appellate bond and pay the trial court clerk's appellate record fee until June 3, 2011, due to his limited income and the occurrence of some extraordinary expenses related to the medical and physical needs of his father. Appellee Genetic Profiles Corporation filed a renewed motion to dismiss this appeal on September 26, 2011.

The thirty-day time limit for filing a notice of appeal set forth in Rule 4 of the Tennessee Rules of Appellate Procedure is mandatory and jurisdictional in civil matters. *Albert v. Frye*, 145 S.W.3d 526, 528 (Tenn. 2004); *Binkley v. Medling*, 117 S.W.3d 252, 255 (Tenn. 2003). The Tennessee Rules of Appellate Procedure expressly prohibit this Court from either waiving or extending that time period. *See* T.R.A.P. 2 and 21(b). Thus, the failure to timely file a notice of appeal deprives this court of jurisdiction to hear the matter and therefore, this appeal must be dismissed.

### **Conclusion**

For the foregoing reasons, we grant Appellee's motion and dismiss this appeal for failure to timely file the notice of appeal. Any other outstanding motions in this matter are hereby denied. Costs of this appeal are taxed to the appellant, Kenneth E. Diggs, for which execution may issue if necessary.

**PER CURIAM**