

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 3, 2015

RANDY L. FIELDER v. SOUTHERN HEALTH PARTNERS ET AL.

**Appeal from the Circuit Court for Robertson County
No. 74CC1-2014-CV-251 Ross H. Hicks, Judge**

No. M2014-01819-COA-R3-CV – Filed February 1, 2016

The plaintiff filed the instant action regarding injuries he allegedly received while in the custody of the Robertson County Detention Center. The trial court dismissed the action *sua sponte* based on multiple grounds, including untimeliness pursuant to the applicable statute of limitations. The plaintiff filed a motion seeking alteration of the order of dismissal. The trial court denied the request by a handwritten notation supplied on the face of the motion. The plaintiff appealed. Having determined that there is no valid, final order in this matter, we conclude that the appeal must be dismissed due to this Court's lack of subject matter jurisdiction.

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

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and ANDY D. BENNETT, J., joined.

Randy L. Fielder, Nashville, Tennessee, Pro Se.

Kelley M. Telfeyan, Nashville, Tennessee, for the appellees, Robertson County Detention Center, Robertson County, William Holt, and Tony Crawford.

Daniel F. Beasley, Huntsville, Alabama, for the appellees, Southern Health Partners and Brandon Smith.

OPINION

1. Factual and Procedural Background

This appeal was filed by a self-represented litigant, Randy L. Fielder, who was formerly incarcerated at the Robertson County Detention Center (“the Detention Center”). On June 27, 2013, during his incarceration at the Detention Center, Mr. Fielder allegedly was attacked and beaten by fellow inmates. Mr. Fielder claimed to have suffered a broken jaw as a result of the attack.

On June 30, 2014, Mr. Fielder filed a complaint in the Robertson County Circuit Court against the Detention Center, as well as Southern Health Partners, Robertson County, William Holt, Tony Crawford, and Brandon Smith (collectively, “Defendants”). Mr. Fielder alleged, *inter alia*, that following the attack, the Detention Center medical personnel performed x-rays of his jaw and discovered that it was broken. They did not, however, render medical aid for approximately seven days. Mr. Fielder asserted that he was eventually transported to the hospital, where his jaw was wired shut. According to Mr. Fielder, upon his return to the Detention Center, the wiring became loose, causing him great pain. He again claimed that Defendants did not render timely medical care, resulting in his continued suffering. Mr. Fielder asserted claims of cruel and unusual punishment, medical malpractice, “intentional and reckless negligence,” and infliction of pain and suffering.

In his complaint, Mr. Fielder indicated that copies of the complaint had been sent to Defendants. Mr. Fielder did not, however, request that summonses be issued or served. Contemporaneous with the filing of his complaint, Mr. Fielder filed a “Motion for Order to Preserve Evidence,” wherein he sought the preservation of various items of documentary and photographic evidence.

On July 7, 2014, the trial court entered an order, dismissing Mr. Fielder’s complaint *sua sponte*. The trial court based its dismissal on four grounds: (1) the claims were time-barred by the applicable one-year statute of limitations; (2) Mr. Fielder failed to file an affidavit of indigency or pay court costs; (3) Mr. Fielder did not comply with Tennessee Code Annotated §§ 41-21-801, *et seq.*, regarding the filing of an inmate affidavit; and (4) Mr. Fielder did not comply with the requirements of Tennessee Code Annotated §§ 29-26-101, *et seq.*, regarding health care liability actions.

On July 25, 2014, Mr. Fielder filed a “Motion to Reconsider Dismissal,” seeking alteration of the trial court’s order of dismissal. Mr. Fielder asserted various grounds in support of his motion, including (1) that the complaint was timely filed due to the fact that he deposited it for mailing in the prison mailroom before the one-year deadline and

(2) that he had attached an *in forma pauperis* affidavit. Mr. Fielder also argued that he should be granted leave to cure any deficiencies related to Tennessee Code Annotated §§ 41-21-801 and 29-26-101 because, as a federal prisoner incarcerated in South Carolina, he did not have access to information concerning Tennessee law. The court appears to have ruled upon and denied Mr. Fielder's motion by handwritten notation, dated July 29, 2014, on page one of the motion. The ruling was signed by the trial judge. Mr. Fielder's notice of appeal was filed August 14, 2014.

II. Issues Presented

Mr. Fielder presents the following issues for our review, which we have restated slightly:

1. Whether the trial court erred in dismissing Mr. Fielder's complaint as time-barred based on the one-year statute of limitations.
2. Whether the trial court erred in dismissing Mr. Fielder's complaint due to the absence of an affidavit of indigency.
3. Whether the trial court erred in dismissing Mr. Fielder's complaint due to the lack of an accompanying inmate affidavit pursuant to Tennessee Code Annotated §§ 41-21-801, *et seq.*
4. Whether the trial court erred in dismissing Mr. Fielder's complaint for failure to comply with the requirements of Tennessee Code Annotated §§ 29-26-101, *et seq.*, regarding health care liability actions.

Defendants raise the following additional issue:

5. Whether this Court lacks subject matter jurisdiction to consider this appeal because Mr. Fielder's notice of appeal was untimely.

III. Standard of Review

The issues presented are questions of law. We review questions of law *de novo* with no presumption of correctness. Tenn. R. App. P. 13(d); *Bowden v. Ward*, 27 S.W.3d 913, 916 (Tenn. 2000).

We note also that pleadings "prepared by pro se litigants untrained in the law should be measured by less stringent standards than those applied to pleadings prepared

by lawyers.” *Stewart v. Schofield*, 368 S.W.3d 457, 463 (Tenn. 2012) (citing *Carter v. Bell*, 279 S.W.3d 560, 568 (Tenn. 2009); *Hessmer v. Hessmer*, 138 S.W.3d 901, 903 (Tenn. Ct. App. 2003); *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003)). Parties proceeding without benefit of counsel are “entitled to fair and equal treatment by the courts,” but we “must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe.” *Hessmer*, 138 S.W.3d at 903.

IV. Subject Matter Jurisdiction

We first address the fundamental issue raised by Defendants regarding whether this Court lacks subject matter jurisdiction based on the alleged lack of timeliness of Mr. Fielder’s notice of appeal. The trial court’s order of dismissal was entered on July 7, 2014. Thereafter, Mr. Fielder filed a “Motion to Reconsider Dismissal” on July 25, 2014. In his motion, Mr. Fielder asserted that the trial court’s order of dismissal was in error for various reasons, including: (1) his complaint was delivered to the prison mailroom on June 24, 2014, and was therefore filed within the one-year statute of limitations pursuant to Tennessee Rule of Civil Procedure 5.06; (2) Mr. Fielder, incarcerated in a federal prison in South Carolina, had been unaware of Tennessee’s requirement regarding the filing of an inmate affidavit and the pre-suit notice requirements associated with health care liability actions, but he now sought an extension of time within which to comply; (3) Mr. Fielder had attached to his Motion to Reconsider Dismissal an *in forma pauperis* affidavit; and (4) Mr. Fielder had sent copies of his complaint to Defendants via certified mail.

A handwritten notation appearing on the face of Mr. Fielder’s motion reads: “Denied, 7/29/14, Ross H. Hicks, Judge.” Mr. Fielder thereafter filed a notice of appeal on August 14, 2014. Defendants assert that Mr. Fielder’s notice of appeal was untimely because it was filed more than thirty days following the court’s order of dismissal, which was filed on July 7, 2014. Defendants further assert that a motion “to reconsider,” such as the one filed by Mr. Fielder, is not included among those motions that will toll the thirty-day period for filing a notice of appeal pursuant to Tennessee Rule of Appellate Procedure 4(b).

Tennessee Rule of Appellate Procedure 4(a) states, in pertinent part, that “the notice of appeal required by [Tennessee] Rule [of Appellate Procedure] 3 shall be filed with and received by the clerk of the trial court within 30 days after the date of entry of the judgment appealed from” Tennessee Rule of Appellate Procedure 4(b) provides:

[I]f a timely motion under the Tennessee Rules of Civil Procedure is filed in the trial court by any party: (1) under Rule 50.02 for judgment in

accordance with a motion for a directed verdict; (2) under Rule 52.02 to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) under Rule 59.07 for a new trial; (4) under Rule 59.04 to alter or amend the judgment; the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion.

This Court has previously recognized that “courts must consider the substance of a motion,” rather than just its title, “in determining whether it is in fact one of the specified post-trial motions which toll commencement of the time” for filing a notice of appeal. *See Tenn. Farmers Mut. Ins. Co. v. Farmer*, 970 S.W.2d 453, 455 (Tenn. 1998); *see also Hawkins v. Hawkins*, 883 S.W.2d 622, 624 (Tenn. Ct. App. 1994). In both *Farmer* and *Hawkins*, the plaintiffs filed post-judgment motions entitled “Motion to Reconsider.” *Farmer*, 970 S.W.2d at 455; *Hawkins*, 883 S.W.2d at 624. In each case, following an examination of the substance of the motion, the reviewing court determined the motion to actually be a Rule 59.04 motion to alter or amend. *Farmer*, 970 S.W.2d at 455; *Hawkins*, 883 S.W.2d at 624. Similarly, here we have reviewed the substance of the Motion to Reconsider Dismissal filed by Mr. Fielder and determine that it is, substantively, a motion to alter or amend filed pursuant to Tennessee Rule of Civil Procedure 59.04. As such, it properly tolled the thirty-day time limit for filing a notice of appeal. *See Tenn. R. App. P. 4(b)*.

An additional issue concerning this appeal, however, is the absence of a valid, final order from the trial court regarding the court’s ruling on the post-judgment motion. As previously explained, the court did not enter a separate, written order adjudicating Mr. Fielder’s motion. Rather, the trial judge appears to have simply noted a denial of the motion upon its face, by writing “Denied” and signing and dating the notation. We conclude that this does not comport with the requirements of Tennessee Rule of Civil Procedure 58 regarding proper entry of a judgment. Rule 58 provides in pertinent part:

Entry of a judgment or an order of final disposition is effective when a judgment containing one of the following is marked on the face by the clerk as filed for entry:

- (1) the signatures of the judge and all parties or counsel, or
- (2) the signatures of the judge and one party or counsel with a certificate of counsel that a copy of the proposed order has been served on all other parties or counsel, or

(3) the signature of the judge and a certificate of the clerk that a copy has been served on all other parties or counsel.

(Emphasis added.) This Court has previously explained:

“The purpose of [Tenn. R. Civ. P. 58] is to insure that a party is aware of the existence of a final, appealable judgment in a lawsuit in which he [or she] is involved.” *Masters ex rel. Masters v. Rishton*, 863 S.W.2d 702, 705 (Tenn. Ct. App. 1992); *see also* Tenn. R. Civ. P. 58, advisory comm’n cmt. (stating that Rule 58 “is designed to make uniform across the State the procedure for the entry of judgment and to make certain the effective date of the judgment”). Compliance with Rule 58 is mandatory, *State ex rel. Taylor v. Taylor*, No. W2004-02589-COA-R3-JV, 2006 WL 618291, at *2 (Tenn. Ct. App. Mar.13, 2006) (quoting *Gordon v. Gordon*, No. 03A01-9702-CV-00054, 1997 WL 304114, at *1 (Tenn. Ct. App. June 5, 1997)), and “[t]he failure to adhere to the requirements set forth in Rule 58 prevents a court’s order or judgment from becoming effective.” *Blackburn v. Blackburn*, 270 S.W.3d 42, 49 (Tenn. 2008) (citing *DeLong v. Vanderbilt Univ.*, 186 S.W.3d 506, 509 (Tenn. Ct. App. 2005)). This means that an order that does not comply with Rule 58 “is not a final judgment and is ineffective as the basis for any action for which a final judgment is a condition precedent.” *Citizens Bank of Blount County v. Myers*, No. 03A01-9111-CH-422, 1992 WL 60883, at *3 (Tenn. Ct. App. Mar. 30, 1992) (holding that an execution and garnishment was improper when based on a judgment that did not comply with Rule 58); *see also State ex rel. Taylor*, No. W2004-02589-COA-R3-JV, 2006 WL 618291, *3 (Tenn. Ct. App. March 13, 2006) (dismissing the appeal for lack of a final order when the order appealed from did not comply with Rule 58). Accordingly, if the order appealed is not a final judgment, this Court does not have subject matter jurisdiction to adjudicate the appeal. *In re Estate of Henderson*, 121 S.W.3d 643, 645 (Tenn. 2003).

Steppach v. Thomas, No. W2008-02549-COA-R3-CV, 2009 WL 3832724 at *4 (Tenn. Ct. App. Nov. 17, 2009).

In other cases in which the mandates of Tennessee Rule of Civil Procedure 58 have not been followed, this Court has concluded that it had no jurisdiction to hear the appeal due to the lack of a valid, final order. For example, in *State ex rel. Taylor v. Taylor*, No. W2004-02589-COA-R3-JV, 2006 WL 618291 at *3 (Tenn. Ct. App. March 13, 2006), this Court determined that a final order had not been effectively entered because although it was signed by the trial judge, it lacked the signatures of counsel for

either party or a certificate by counsel or the court clerk demonstrating that it had been served on the parties. *Id.* This Court accordingly dismissed the appeal. *Id.* Similarly, in *State ex rel. Townsend v. Williamson*, No. W2004-02980-COA-R3-JV, 2006 WL 1493632 at *4 (Tenn. Ct. App. June 1, 2006), this Court explained:

In the instant action, docket number P155 was initiated as a petition to establish parentage. Therefore, applying Rule 1(b) of the Rules of Juvenile Procedure, the Rules of Civil Procedure are applicable to the proceedings under docket number P155. Consequently, the fact that the October 20, 2004 order has not been marked on its face by the Clerk of the Juvenile Court as filed for entry means that the order is not considered a final judgment under Rule 58 of the Tennessee Rules of Civil Procedure. As such, Father's notice of appeal in November 2004 was filed prior to entry of an effective final judgment. Without a valid final judgment in docket number P155, this Court is without jurisdiction to entertain any appeal arising out of that case.

In the case at bar, the notation of a denial of the motion appearing on page one of Mr. Fielder's motion clearly does not satisfy the requirements of Tennessee Rule of Civil Procedure 58 regarding proper entry of a judgment. Although the trial judge's signature does appear, there is no signature of Mr. Fielder or of counsel for the other parties. Furthermore, there appears no certificate by counsel or the court clerk demonstrating that the "order" had been served on the parties. Finally, the "order" has not been marked on its face by the court clerk as filed for entry. Consequently, there is no valid, final order in this matter, and this Court is without subject matter jurisdiction to entertain the appeal. *See Steppach*, 2009 WL 3832724 at *4.

V. Conclusion

This appeal is dismissed. We remand this case to the trial court for further proceedings consistent with this opinion. The costs of this appeal are taxed one-half to the appellant, Randy L. Fielder, and one-half to the appellees, Southern Health Partners, Robertson County Detention Center, Robertson County, William Holt, Tony Crawford, and Brandon Smith.

THOMAS R. FRIERSON, II, JUDGE