

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned November 4, 2010

MICHAEL SZEMBORSKI, ET AL. V. ROGER SAYNER

**Appeal from the Chancery Court for Hamilton County
No. 08-0785 W. Frank Brown, III, Chancellor**

No. E2010-01950-COA-R3-CV - FILED NOVEMBER 4, 2010

The order from which the appellant Roger Sayner seeks to appeal was entered in the trial court on August 18, 2010. A notice of appeal was filed with and received by the trial court clerk on September 21, 2010. Because the notice of appeal was not timely filed, we lack jurisdiction of this appeal. Accordingly, this appeal is dismissed with costs taxed to the appellant.

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

CHARLES D. SUSANO, JR., D. MICHAEL SWINEY, AND JOHN W. MCCLARTY, JJ.

Whitney Durand, Chattanooga, Tennessee, for the appellant, Roger Sayner.

Adam U. Holland, Chattanooga, Tennessee, for the appellees, Michael Szemborski and Julie Szemborski.

MEMORANDUM OPINION¹

By order entered October 15, 2010, we directed the appellant Roger Sayner to show cause why this appeal should not be dismissed “as having been untimely filed.” On October

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 When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

20, 2010, the appellant filed with us a pleading styled “Motion for Waiver Pursuant to Rule 4.” The motion is supported by the affidavits of the appellant’s attorney, Whitney Durand, and the attorney’s assistant, Jillian Alexander. The affidavits do not attempt to refute the correctness of the respective dates of entry/filing of the order and the notice of appeal.

The appellees have filed a response in which they state that we do not have jurisdiction of this appeal because the notice of appeal was not “filed with and received by the clerk of the trial court within 30 days after the date of entry of the judgment appealed from.” Tenn. R. App. P. 4(a). They correctly point out that we are not at liberty to waive the strict application of Rule 4(a). *See American Steinwinter Investor Group ex rel. American Steinwinter, Inc. v. American Steinwinter, Inc.*, 964 S.W.2d 569, 571 (Tenn. Ct. App. 1997); *see also Jefferson v. Pneumo Services Corporation*, 699 S.W.2d 181, 184 (Tenn. Ct. App. 1985).

The appeal of the appellant Roger Sayner is dismissed. Costs on appeal are taxed to Roger Sayner. Case remanded, pursuant to applicable law, for enforcement of the trial court’s judgment and the collection of costs assessed by the trial court.

PER CURIAM