



This case originated as a boundary line dispute. Suit was filed in 1979. After a trial on the merits, the judgment was set aside on the grounds of newly discovered evidence. The case was eventually referred to a Special Master. The Special Master's report was ratified by the Chancery Court for Monroe County and incorporated into a judgment. The judgment was filed with the clerk and master on November 13, 1995. The appellant's brief states that in early December, 1995, the Appellant mailed a Motion for a New Trial or in the Alternative to Alter or Amend the Judgment to the clerk and master. The clerk and master, however, never received the motion, and the judgment became final. These facts are not disputed.

On January 16, 1996, the Appellant filed a Motion for Relief from Judgment seeking to amend the entry date of the November 13, 1995 decree under Tennessee Rule of Civil Procedure 60.02 so that a timely appeal could be pursued. After a hearing consisting of statements of counsel, the chancellor declined to grant the Rule 60 Motion. This appeal followed.

The sole issue presented by the Appellant for our consideration is as follows: "Whether the Court erred in failing to grant the Rule 60 Motion filed by the Appellant citing that the Motion for New Trial was not received by the Clerk and Master and would

have been denied by the Court if properly filed." We resolve the issue against the appellant and affirm the judgment of the trial court.

Rule 3 of the Tennessee Rules of Appellate Procedure requires that a timely notice of appeal be filed with the clerk of the trial court as provided in Rule 4. Rule 4 requires that the notice of appeal required by Rule 3 shall be filed with and received by the clerk of the trial court within 30 days after the date of the entry of the judgment appealed from (Emphasis added). The time limit set out in Rule 4 is jurisdictional in a civil case. See Jefferson v. Pneum Serv. Corp., 699 S.W2d 181 (Tenn. App. 1985). Further, this Court has no discretion to expand the time limit set out in Rule 4. See Rule 2, Tennessee Rules of Appellate Procedure and First Nat'l Bank of Polk County v. Goss, 912 S.W2d 147 (Tenn. App. 1995).

The Advisory Commission Comments to Rule 4 do state "[n]othing in this rule or any other rule permits the time for filing notice of appeal to be extended beyond the specified 30 days, although in appropriate circumstances an otherwise untimely appeal may be taken by first securing relief under Tennessee Rule of Civil Procedure 60.02." Thus it has become incumbent upon the courts to determine

what constitutes appropriate circumstances. First Nat's Bank,  
supra, at 148.

It is undisputed that a notice of appeal was not timely filed because appellant's post trial motions were not received by the Clerk and Master. The Appellant argues that the chancellor abused his discretion in denying the Rule 60 motion because the appellant has no control over the U. S. Postal Service to deliver the motion to the trial court. We agree that the appellant has no control over the U. S. Postal Service and the appellant must be chargeable with that knowledge. The appellant is not entitled to rely on the failure of the U. S. Mails for delivery of documents necessary to protect against the expiration of time limitations.

In a case remarkably similar to the one at hand, this Court stated:

We are of the opinion that the mailing of a notice of appeal to the office of the clerk and master within two days of the deadline for so doing is not excusable neglect as that term is used in Rule 60. We are further of the opinion that under such circumstances, prudence would dictate at least a call to the office of the clerk and master to insure receipt before the time to appeal had elapsed. Then, if the clerk and master had erroneously advised appellant that it had been received, we would be confronted with a situation in which the spirit

and intent of the rules and the cases addressing their interpretations and applications would be more harmonious.

First Nat'l Bank of Polk County at 151.

Placing the Motion for a New Trial in the U.S. mail without following up to insure proper delivery does not constitute excusable neglect that can be cured under Rule 60.02. We hold that the chancellor did not abuse his discretion in denying the Rule 60 motion. Accordingly, the judgment of the trial court is affirmed. Costs are taxed to the appellant and this cause is remanded to the trial court for the collection thereof.

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Don T. McMurray, J.

CONCUR:

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Houston M. Goddard, Presiding Judge

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Charles D. Susano, Jr., Judge

IN THE COURT OF APPEALS

BEE STRICKLAND,	)	MONROE CHANCERY
	)	C. A. NO. 03A01-9606-CH-214
	)	
Plaintiff - Appellant	)	
	)	
	)	
	)	
	)	
vs.	)	HON. EARL H. HENLEY
	)	CHANCELLOR
	)	
	)	
	)	
ANDERSON DYE and ISAAC McLEMDRE,	)	AFFIRMED AND REMANDED
	)	
Defendant - Appellee	)	

**ORDER**

This appeal came on to be heard upon the record from the Chancery Court of Monroe County and briefs filed on behalf of the respective parties. Upon consideration thereof, this Court is of opinion that there was no reversible error in the trial court.

Accordingly, the judgment of the trial court is affirmed. Costs are taxed to the appellant and this cause is remanded to the trial court for the collection thereof.

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