

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE

November 1, 2001, Session

KENNETH TRIVETT, v. NORMAN LITCHFIELD,

**Direct Appeal from the Chancery Court for Washington County
No. 32580 G. Richard Johnson, Chancellor**

Filed May 1, 2002

No. E2000-01307-WC-R3-CV

Although the appellant argues that he was unfairly forced to trial and that the decision of the trial court was improper, no timely notice of appeal was filed. Although this issue was neither briefed nor argued, failure to file a timely appeal is jurisdictional. Consequently, the appeal will be dismissed.

Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Appeal dismissed.

W. NEIL THOMAS, III, delivered the opinion of the court, in which WILLIAM M. BARKER, JUSTICE, and JOHN K. BYERS, JUDGE, joined.

Tony Seaton, Johnson City, for the appellant, Kenneth Trivett

Donald Spurrell, Johnson City, for the appellee, Norman Litchfield

MEMORANDUM OPINION

This workers' compensation action was commenced on January 12, 1999, and the complaint alleges that Kenneth Trivett ("Trivett") was injured on October 23, 1998, while employed either by Norman Litchfield, individually and d/b/a Norman Litchfield Realty ("Litchfield"), or by Ralph Harp, individually and d/b/a Ralph Harp Construction. An answer was filed by Litchfield on March 17, 1999, denying the allegations of the complaint and averring that Trivett was an independent contractor. A hearing was held on October 18, 1999, and the trial court held that Trivett was an independent contractor. An Order on that hearing was entered December 9, 1999, dismissing the complaint. Prior to the entry of the judgment Trivett filed a motion on December 2, 1999 pursuant to Rule 60.02 of the Tennessee Rules of Civil Procedure. On February 25, 2000, more than thirty days after the entry of the order, a Notice of Appeal and a Motion for Permission to Appeal were filed by Trivett.

Inexplicably, another Order was entered on March 2, 2000, dismissing the complaint, reciting the same hearing date of October 18, 1999. An appeal bond, but no notice of appeal, was filed on May 5, 2000, again more than thirty days after the entry of the March 2, 2000, order. On June 7, 2000, an Order was entered denying Trivett's motion under Rule 60.02. No notice of appeal was filed thereafter.

Rule 4(a) of the Rules of Appellate Procedure provide that a notice of appeal must be filed within thirty days after the entry of the judgment or order appealed from. The filing of a timely notice of appeal is jurisdictional. American Steinwenter v. Amer. Steinwenter, 964 S.W. 2d 569, 571 (Tenn. App. 1997). The first notice of appeal filed with the court was more than thirty days after the December 9, 1999, order, and although an appeal bond was filed after the March 2, 2000, order, it was filed more than thirty days after that order, and no notice of appeal was filed. No notice of appeal was filed after the entry of the June 7, 2000, order. Accordingly, Trivett's appeal must be dismissed.

CONCLUSION

For the foregoing reasons, the appeal of Kenneth Trivett is dismissed, and costs are taxed to the appellant.

W. NEIL THOMAS, III

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

KENNETH TRIVETT v. NORMAN LITCHFIELD, ET AL.

Filed May 1, 2002

No. E2000-01307-SC-WCM-CV

ORDER

It appears from the record in this case that Kenneth Trivett's motion for full court review was not timely filed, and this Court is therefore without jurisdiction to consider the merits of the motion. See Tenn. Code Ann. § 50-6-225(e)(5)(B). The motion for full court review is dismissed. Costs are taxed to the appellant.

PER CURIAM

BARKER, J., NOT PARTICIPATING