

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
August 20, 2024

**FILED**  
08/22/2024  
Clerk of the  
Appellate Courts

**WELFT, LLC v. LARRY ELROD ET AL.**

**Appeal from the Chancery Court for Rutherford County  
No. 18-CV-1260 J. B. Cox, Chancellor**

---

**No. M2024-00489-COA-R3-CV**

---

This appeal arises out of a dispute over commercial real property. The appellees have moved to dismiss the appeal as untimely. Because the appellants did not file their notice of appeal within the time permitted by Tennessee Rule of Appellate Procedure 4, we dismiss the appeal.

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

FRANK G. CLEMENT, JR., P.J., M.S., ANDY D. BENNETT, and W. NEAL MCBRAYER, JJ.

Rocky Victory and Shelly Victory, Murfreesboro, Tennessee, pro se.

Bennett James Wills, Brentwood, Tennessee, for the appellees, Klaudia Elrod and Larry Elrod.

Percipio Partners Nashville, LLC, Nashville, Tennessee.

WELFT, LLC, Murfreesboro, Tennessee.<sup>1</sup>

**MEMORANDUM OPINION<sup>2</sup>**

Larry Elrod and Klaudia Elrod d/b/a Lakeway Development (“Lakeway”) own commercial real property located at 310 W. Castle Street, Murfreesboro, Tennessee. Lakeway entered into an agreement to sell the property to Percipio Partners Nashville, LLC (“Percipio”). Percipio later assigned the agreement to WELFT, LLC. However, the lessees, Rocky Victory and Shelly Victory d/b/a Value Transmissions and Auto Repair, claim to

---

<sup>1</sup> Percipio, LLC, and WELFT, LLC, were listed as parties in the underlying action, but no attorney has made an appearance on their behalf in this court.

<sup>2</sup>A case designated as a memorandum opinion “shall not be published, and shall not be cited or relied on for any reason in any unrelated case.” Tenn. Ct. App. R. 10.

have an option to purchase the property. When Lakeway failed to close on the sale, WELFT filed a complaint against Lakeway and Mr. and Mrs. Victory seeking a declaratory judgment and specific performance.

Mr. and Mrs. Victory filed a cross complaint against Lakeway, a counter complaint against Welft, and a third-party complaint against Percipio. While the case involves other claims, because the trial court directed the entry of a final judgment under Tennessee Rule of Civil Procedure 54.02 as to all the claims asserted by Mr. and Mrs. Victory, only those claims are relevant to the timeliness of the appeal.

Lakeway, WELFT, and Percipio all moved for summary judgment as to Mr. and Mrs. Victory's claims against them. On May 19, 2023, the trial court entered an order granting Lakeway's motion for summary judgment and dismissing all claims asserted by Mr. and Mrs. Victory against Lakeway. The trial court also determined that there was no just reason for delay and directed the entry of a final judgment under Tennessee Rule of Civil Procedure 54.02. On September 12, 2023, the trial court entered an order granting WELFT and Percipio's motion for summary judgment and dismissing all the remaining claims asserted by Mr. and Mrs. Victory. The trial court again determined there was no just reason for delay and directed the entry of a final judgment under Rule 54.02.

On October 13, 2023, Mr. and Mrs. Victory filed a motion to set aside the May 19, 2023 summary judgment order in favor of Lakeway. On October 24, 2023, Mr. and Mrs. Victory filed a motion for reconsideration of the September 12, 2023 summary judgment order in favor of WELFT and Percipio. The trial court denied both motions on February 16, 2024. Mr. and Mrs. Victory filed their notice of appeal with the clerk of this Court on April 1, 2024.<sup>3</sup>

On August 8, 2024, Lakeway filed a motion to dismiss the appeal for failure to file a timely notice of appeal. Lakeway also requests an award of attorney's fees and costs for filing a frivolous appeal under Tennessee Code Annotated § 27-1-122. Mr. and Mrs. Victory have not filed a timely response to the motion to dismiss.

Tennessee Rule of Appellate Procedure 4(a) requires that a notice of appeal be filed with the clerk of the appellate court within thirty days after entry of the judgment appealed. If one of the post-judgment motions listed in Tennessee Rule of Appellate Procedure 4(b) and Tennessee Rule of Civil Procedure 59.01 is timely filed, the time for filing the notice of appeal will run from the date of entry of the order granting or denying the motion. However, the post-judgment motions must be filed within thirty days after entry of the

---

<sup>3</sup> The notice of appeal mistakenly states that Mr. and Mrs. Victory are appealing from a judgment entered on March 16, 2024. The record contains no order entered after February 16, 2024.

judgment, Tenn. R. Civ. P. 59, and an untimely post-judgment motion will not extend the time for filing a notice of appeal.

The trial court entered its final judgments under Rule 54.02 on May 19, 2023, and September 12, 2023. Mr. and Mrs. Victory did not file a notice of appeal or one of the listed post-judgment motions within thirty days after entry of either final judgment. Thus, both judgments have become final and not subject to appeal. Even if Mr. and Mrs. Victory had timely filed their post-judgment motions, they did not file their notice of appeal within thirty days after entry of the February 16, 2024 order denying the post-judgment motions.

The time limit for filing a notice of appeal is mandatory and jurisdictional. *Albert v. Frye*, 145 S.W.3d 526, 528 (Tenn. 2004); *Binkley v. Medling*, 117 S.W.3d 252, 255 (Tenn. 2003). This Court can neither waive nor extend the time period. Tenn. R. App. P. 2 and 21(b); *Flautt & Mann v. Council of City of Memphis*, 285 S.W.3d 856, 868 at n.1 (Tenn. Ct. App. 2008); *Jefferson v. Pneumo Servs. Corp.*, 699 S.W.2d 181, 184 (Tenn. Ct. App. 1985). The failure to file a timely notice of appeal deprives this Court of jurisdiction to hear the matter. *Flautt & Mann v. Council of City of Memphis*, 285 S.W.3d at 869 at n.1.

Having determined that the appeal must be dismissed, we next address Lakeway's request for damages under Tennessee Code Annotated § 27-1-122. Tennessee Code Annotated § 27-1-122 permits this Court to award damages, including attorney's fees, when it appears an appeal is frivolous or taken solely for delay. This appeal was filed well beyond the time permitted by Rule 4, and Mr. and Mrs. Victory did not even respond to the motion to dismiss. We also note that Mr. and Mrs. Victory have failed to file a brief within the time permitted by Tennessee Rule of Appellate Procedure 29. Thus, we find the appeal to be frivolous or taken solely for the purpose of delay.

The appeal is dismissed for failure to file a timely notice of appeal. The case is remanded to the trial court for further proceedings consistent with this opinion, including a determination of damages for a frivolous appeal under Tennessee Code Annotated § 27-1-122 and for entry of an appropriate judgment. Mr. and Mrs. Victory are taxed with the costs for which execution may issue.

PER CURIAM