

FILED

10/25/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
October 19, 2023 Session

BENJAMIN MCCURRY v. AGNESS MCCURRY

**Appeal from the Circuit Court for Washington County
No. 38147 Thomas J. Wright, Senior Judge**

No. E2023-01071-COA-R3-CV

Because the circuit court orders from which the appellant has sought to appeal do not constitute a final appealable judgment, this Court lacks jurisdiction to consider this appeal.

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

JOHN W. MCCLARTY, J.; D. MICHAEL SWINEY, C.J.; and KRISTI M. DAVIS, J.

Agness Mccurry, Johnson City, Tennessee, Pro Se Appellant.

Benjamin Mccurry, Johnson City, Tennessee, Pro Se Appellee.

MEMORANDUM OPINION¹

The *pro se* appellant, Agness Mccurry² (“Appellant”), filed a notice of appeal with this Court on July 26, 2023, which states that Appellant is appealing the July 20, 2023 order of the Circuit Court and Criminal Court for Washington County. Appellant attached to the notice of appeal a combined court order from the Washington County Circuit Court

¹ Rule 10 of the Rules of the Court of Appeals provides:

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 When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

² We note that Appellant’s last name is often written as “McCurry” in the underlying trial court proceedings. However, Appellant has written her last name in filings with this Court as “Mccurry”; therefore, we will employ “Mccurry” throughout this Opinion.

(“Circuit Court”) and Washington County Criminal Court (“Criminal Court”) that was filed on July 20, 2023, which includes two docket numbers reflecting both the Circuit Court case and the Criminal Court case. In this notice of appeal, Appellant states that she is appealing the July 20, 2023 order to both the Tennessee Court of Appeals and the Tennessee Court of Criminal Appeals. The July 20, 2023 order states that the charging document providing the appellant notice of the criminal contempt charges against her should be filed in both the Circuit Court and the Criminal Court cases and directs that a copy of the June 27, 2023 Criminal Contempt Charges and Notice also be filed in the Criminal Court case. This order includes no disposition regarding the criminal contempt charges pending against Appellant. Also attached to the July 26, 2023 notice of appeal was the June 27, 2023 order referred to in the July 20, 2023 order.

Appellant subsequently filed a second notice of appeal in this appeal stating that she was appealing the earlier June 27, 2023 Criminal Contempt Charges and Notice order that was entered by the Circuit Court in case number 38147. This order provides Appellant notice of pending criminal contempt charges against her, describes in detail the contempt charges, directs Appellant to appear at a specific time and place for a trial on the charges, and informs Appellant of her rights with regard to the charges of criminal contempt. In detailing the criminal contempt charges against Appellant, the June 27, 2023 order provides that “Contempt Count 1” arose from trial court proceedings held in the Circuit Court courtroom with regard to Circuit Court case number 38147, *McCurry v. McCurry*. The order further states that “Contempt Count 2” stems from a separate hearing that occurred in the “Criminal Courtroom” related to the Criminal Court case number 2023-CR-49211, *State of Tennessee v. Agness McCurry*. No disposition was made regarding the criminal contempt charges in this court order. This second notice of appeal related solely to the civil action, in which Appellant stated that she was appealing this June 27, 2023 order only to the Tennessee Court of Appeals.

This Court has appellate jurisdiction over all contempt actions arising from civil cases, while the Tennessee Court of Criminal Appeals has appellate jurisdiction over any contempt actions arising from criminal cases. *See* Tenn. Code Ann. § 16-4-108(b) (“The court of appeals also has appellate jurisdiction over civil or criminal contempt arising out of a civil matter.”); Tenn. Code Ann. § 16-5-108(a) (“The jurisdiction of the court of criminal appeals shall be appellate only, and shall extend to review of the final judgments of trial courts in: . . . (3) Civil or criminal contempt arising out of a criminal matter; . . .”). Because we have jurisdiction only over criminal contempt actions arising from civil cases, we will address the appeal only as it relates to Contempt Count 1 arising from the Washington County Circuit Court civil action, docket number 38147.

On September 21, 2023, this Court entered an order directing Appellant to show cause why this appeal should not be dismissed for lack of subject matter jurisdiction due to lack of a final judgment in the underlying trial court proceedings. Appellant has not responded to this Court’s show cause order.

“A final judgment is one that resolves all the issues in the case, ‘leaving nothing else for the trial court to do.’” *In re Estate of Henderson*, 121 S.W.3d 643, 645 (Tenn. 2003) (quoting *State ex rel. McAllister v. Goode*, 968 S.W.2d 834, 840 (Tenn. Ct. App. 1997)). This Court does not have subject matter jurisdiction to adjudicate an appeal as of right if there is no final judgment. *See Bayberry Assocs. v. Jones*, 783 S.W.2d 553, 559 (Tenn. 1990) (“Unless an appeal from an interlocutory order is provided by the rules or by statute, appellate courts have jurisdiction over final judgments only.”).

The Circuit Court orders that Appellant is seeking to appeal do not reflect a disposition of Contempt Count 1 and do not constitute a final appealable judgment. Therefore, this Court lacks jurisdiction to consider this appeal from the Circuit Court’s orders. This appeal is hereby dismissed. Costs on appeal are taxed to the appellant, Agness McCurry, for which execution may issue.

PER CURIAM