

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
November 8, 2011 Session

BECKY COOPER v. JASON POWERS, et al.

**Interlocutory Appeal from the Circuit Court for Bradley County
No V-03-1118 Hon. J. Michael Sharp, Judge**

No. E2011-01065-COA-R9-CV-FILED-NOVEMBER 29, 2011

DISSENTING OPINION

This case was appealed pursuant to Tenn. R. App. P. 3. The appellee raised the issue that the appeal was not from a final judgment pursuant to any rules of the Court.

The majority engaged in the fiction that we had granted the appeal pursuant to Tenn. R. App. P. 9. On occasion we have done this in the past. I do not believe we should engage in that fiction to entertain this appeal under the circumstances of this case. Admittedly there are other issues to be decided by the Trial Court and the arguments that we have accepted in the past that to treat a premature appeal as a Rule 9 appeal without having granted it would preclude needless litigation does not obtain here. If either party is unhappy with the outcome of the remaining issues, the case will again be before this Court. Accordingly, I would dismiss the appeal as premature.

HERSCHEL PICKENS FRANKS, P.J.