

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
April 23, 2015

**MARY DUFFER v. DAVID J. WAYNICK, ET AL.**

**Appeal from the Circuit Court for Wilson County  
No. 2011CV535 Clara W. Byrd, Judge**

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**No. M2014-01823-COA-R3-CV – Filed April 24, 2015**

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This is an appeal from a summary judgment order dismissing the plaintiff's complaint. Because the order does not dispose of the defendants' claim for damages under Tenn. Code Ann. § 47-18-109(e)(2), we dismiss the appeal for lack of a final judgment.

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

Frank G. Clement, Jr., P. J., M. S., Richard H. Dinkins and W. Neal McBrayer, JJ.

William L. Moore, Jr., Gallatin, Tennessee, for the appellant, Mary Duffer.

Michael W. Ferrell, Mt. Juliet, Tennessee, for the appellees, David J. Waynick and Thomas B. Luck.

**MEMORANDUM OPINION<sup>1</sup>**

This appeal arises out of a complaint filed by Mary Duffer seeking damages for violation of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101, *et seq.* The defendants, David J. Waynick and Thomas B. Luck, filed a counter-claim

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<sup>1</sup> Tenn. R. Ct. App. 10 states:

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 When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

seeking a declaratory judgment and their attorney's fees and costs under Tenn. Code Ann. § 47-18-109(e)(2). On October 18, 2013, the trial court entered a declaratory judgment as requested by the defendants. On August 19, 2014, the trial court granted the defendants' motion for summary judgment and dismissed the plaintiff's complaint. The plaintiff filed her notice of appeal on September 17, 2014. On September 18, 2014, the defendants filed a motion to recover damages pursuant to Tenn. Code Ann. § 47-18-109(e)(2). The record does not contain an order disposing the defendants' claim for damages under Tenn. Code Ann. § 47-18-109(e)(2).

A party is entitled to an appeal as of right only after the trial court has entered a final judgment. Tenn. R. App. P. 3(a); *In re Estate of Henderson*, 121 S.W.3d 643, 645 (Tenn.2003); *King v. Spain*, No. M2006-02178-COA-R3-CV, 2007 WL 3202757 at \*8 (Tenn. Ct. App. October 31, 2007). A final judgment is a judgment that resolves all the claims between all the parties, "leaving nothing else for the trial court to do." *State ex rel. McAllister v. Goode*, 968 S.W.2d 834, 840 (Tenn. Ct. App. 1997). An order that adjudicates fewer than all the claims between all the parties is subject to revision at any time before the entry of a final judgment and is not appealable as of right. Tenn. R. App. P. 3(a); *In re Estate of Henderson*, 121 S.W.3d at 645.

The record on appeal was filed with the clerk of this court on February 5, 2015. Upon review of the record, this court determined that the order appealed was not final because the trial court had not disposed of the defendants' claim for damages under Tenn. Code Ann. § 47-18-109(e)(2). Accordingly, the court ordered the parties either to obtain a final order from the trial court within sixty days or else to show cause why the appeal should not be dismissed. Although more than sixty days have now passed, the parties have neither obtained a final order nor otherwise responded to this court's show cause order.

The appeal is hereby dismissed for lack of a final judgment without prejudice to the filing of a new appeal once a final judgment has been entered. The case is remanded to the trial court for further proceedings consistent with this opinion. The costs of the appeal are taxed to Mary Duffer and her surety for which execution may issue.

PER CURIAM