

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
September 15, 2015 Session

**METROPOLITAN DEVELOPMENT AND HOUSING AGENCY v.  
HOWARD ALLEN, JR.**

**Appeal from the Circuit Court for Davidson County  
No. 14C2733 Amanda Jane McClendon, Judge**

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**No. M2015-00079-COA-R3-CV – November 20, 2015**

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W. NEAL MCBRAYER, J., dissenting.

I agree with the majority's conclusion that the circumstances in this case do not warrant dismissal for failure to prosecute. However, because I find other grounds for dismissal from the record, I respectfully dissent. *See Cont'l Cas. Co. v. Smith*, 720 S.W.2d 48, 50 (Tenn. 1986). (stating Court of Appeals may affirm a judgment on a different ground than that relied upon by the trial court when the correct result was reached).

Tennessee Code Annotated § 16-15-727(b) requires motions for relief from final general sessions judgments under Rule 60.02 of the Tennessee Rules of Civil Procedure to "be filed within ten (10) days of the date of judgment." Tenn. Code Ann. § 16-15-727(b) (2009). In this case, the general sessions court entered judgment against the Appellant on June 5, 2014, and the Appellant filed his Motion to Stay and Reopen Evidence fifteen days later, outside the statutorily mandated deadline.<sup>1</sup> As such, the general sessions court properly denied the motion, and the appeal should be dismissed. *First Cmty. Fin. Serv. v. Simmons*, No. M2010-01597-COA-R3-CV, 2011 WL 2416680, at \*3 (Tenn. Ct. App. June 10, 2011).

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W. NEAL MCBRAYER, JUDGE

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<sup>1</sup> If, as he claims, Appellant's delay in filing a motion was due to never being served with the general sessions court warrant, Appellant is not without recourse. In such a scenario, the judgment would be void and subject to collateral attack. *Turner v. Turner*, No. W2013-01833-SC-R11-CV, 2015 WL 6295546, at \*4, \*14 (Tenn. Oct. 21, 2015).