

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

KENNETH A. PARIGIN, ET AL. v. M. SHANE MILLS, ET AL.

Appeal from the Chancery Court for Knox County
No. 180867-2 Daryl R. Fansler, Chancellor

No. E2012-00418-COA-R3-CV - Filed July 13, 2012

On February 23, 2012, M. Shane Mills (“Defendant”) filed a notice of appeal of an order entered by the Trial Court on January 24, 2012. On June 12, 2012, this Court entered an order directing Defendant to show cause why this appeal should not be dismissed as premature. Defendant did not respond to the show cause order. We dismiss this appeal for lack of a final judgment.

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

D. MICHAEL SWINEY, J., HERSCHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J.

William Pendleton Price, III, Knoxville, Tennessee, for the Appellant, M. Shane Mills.

John Thomas Jones, Knoxville, Tennessee, for the Appellees, Kenneth A. Parigin, and Kimberly A. Wheatley.

Ronald A. Rayson, Knoxville, Tennessee, for the Appellee, The Zone, LLC.

MEMORANDUM OPINION¹

Defendant admits in his notice of appeal that the order appealed from is not final because it does not dispose of all claims, defenses, and issues of all of the parties, and further admits that the order was not certified as final pursuant to Tenn. R. Civ. P. 54.02. This Court entered an order on June 12, 2012 directing Defendant to show cause why this appeal should not be dismissed. Defendant failed to respond to this show cause order.

The Tennessee Rules of Appellate Procedure define an appeal as of right from a final judgment as follows:

In civil actions every final judgment entered by a trial court from which an appeal lies to the Supreme Court or Court of Appeals is appealable as of right. Except as otherwise permitted in Rule 9 and in Rule 54.02 Tennessee Rules of Civil Procedure, if multiple parties or multiple claims for relief are involved in an action, any order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not enforceable or appealable and is subject to revision at any time before entry of a final judgment adjudicating all the claims, rights, and liabilities of all parties.

Tenn. R. App. P. 3(a).

No party to this appeal has filed an application for an interlocutory appeal pursuant to Rules 9 or 10 of the Rules of Appellate Procedure, and the order appealed from the trial court was not made final pursuant to Tenn. R. Civ. P. 54.02.²

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

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 “Rule 54.02 requires, as a prerequisite to an appeal as of right of an interlocutory order, the certification by the trial judge that the judge has directed the entry of a final judgment as to one or more but fewer than all of the issues of the parties, and that the court has made an express determination that there is no just reason for delay.” *In re Estate of Henderson*, 121 S.W.3d 643, 646 (Tenn. 2003).

(Tenn. 2003) (quoting *State ex rel. McAllister v. Goode*, 968 S.W.2d 834, 840 (Tenn. Ct. App. 1997)). “[A]ny trial court order that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties is not final or appealable as of right.” *State ex rel. Garrison v. Scobey*, No. W2007-02367-C0A-R3-JV, 2008 WL 4648359, at *5 (Tenn. Ct. App. Oct. 22, 2008). This Court does not have subject matter jurisdiction to adjudicate an appeal if there is no final judgment. The Tennessee Supreme Court has recognized that “[u]nless an appeal from an interlocutory order is provided by the rules or by statute, appellate courts have jurisdiction over final judgments only.” *Bayberry Assocs. v. Jones*, 783 S.W.2d 553, 559 (Tenn. 1990). *See also Ruff v. Raleigh Assembly of God Church, Inc.*, 241 S.W.3d 876, 877 at n.1 (Tenn. Ct. App. 2007).

In the present case, the order appealed from is not a final judgment. Accordingly, this Court does not have subject matter jurisdiction, and this appeal must be dismissed.

Costs on appeal are taxed to the Appellant, M. Shane Mills, and his surety, for which execution may issue, if necessary.

PER CURIAM