

FILED

01/17/2019

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 16, 2019

MICHAEL W. TIBBS v. VALERIE E. LOWE

**Appeal from the Circuit Court for Davidson County
No. 18X-760 Phillip R. Robinson, Judge**

No. M2018-02252-COA-R3-CV

This is an appeal from an order denying a motion to set aside an order of protection. Because the appellant did not file his notice of appeal within thirty days after entry of the order as required by Tenn. R. App. P. 4(a), we dismiss the appeal.

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

ANDY D. BENNETT, RICHARD H. DINKINS, AND W. NEAL MCBRAYER, JJ.

Michael W. Tibbs, Nashville, Tennessee, pro se.

Michael A Colavecchio, Nashville, Tennessee, for the appellee, Valerie Lowe.

MEMORANDUM OPINION¹

On December 19, 2018, Michael W. Tibbs filed a notice of appeal from an order entered by the Circuit Court for Davidson County on October 12, 2018, denying his motion to set aside an order or protection. The appellee, Valerie E. Lowe, has filed a motion to dismiss the appeal as untimely. Mr. Tibbs has not filed a response.

Tenn. R. App. P. 4(a) requires that a notice of appeal be filed with the clerk of the appellate court within thirty days after entry of the judgment appealed. Mr. Tibbs filed

¹Tenn. 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 When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

his notice of appeal sixty-eight days after entry of the judgment appealed. The thirty day time limit for filing a notice of appeal is mandatory and jurisdictional. *Albert v. Frye*, 145 S.W.3d 526, 528 (Tenn.2004); *Binkley v. Medling*, 117 S.W.3d 252, 255 (Tenn. 2003). This court can neither waive nor extend the time period. Tenn. R. App. P. 2 and 21(b); *Flautt & Mann v. Council of City of Memphis*, 285 S.W.3d 856, 869 (Tenn. Ct. App. 2008); *Jefferson v. Pneumo Serv. Corp.* 699 S.W.2d 181, 184 (Tenn. Ct. App. 1985). The failure to file a timely notice of appeal deprives this court of jurisdiction to hear the matter. *Flautt & Mann v. Council of City of Memphis*, 285 S.W.3d at 869.

The appeal is hereby dismissed for failure to file a timely notice of appeal. The case is remanded to the trial court for further proceedings consistent with this opinion. Michael W. Tibbs is taxed with the costs for which execution may issue.

PER CURIAM