

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

FILED
10/17/2022
Clerk of the
Appellate Courts

MARK T. CROSS v. SHARAE PATTERSON, ET AL.

**Circuit Court for Knox County
No. 2-386-16**

No. E2022-01172-COA-R3-CV

ORDER

The appellees, Sharae Patterson, Bruce Sizemore, and Brent Sizemore, filed a joint motion to dismiss this appeal for appellant’s failure to timely serve his notice of appeal in compliance with Tenn. R. App. P. 5(a). The appellant, Mark T. Cross, failed to respond to the motion.

Rule 5(a) of the Tennessee Rules of Appellate Procedure provides: “Not later than 7 days after filing the notice of appeal, the appellant in a civil action shall serve a copy of the notice of appeal on counsel of record for each party or, if a party is not represented by counsel, on the party.” Tenn. R. App. P. 5(a). Appellant filed his notice of appeal on August 24, 2022. Appellant, thus, was required to serve his notice of appeal upon the appellees on or before August 31, 2022.

Appellant’s notice of appeal contains a certificate of service stating that appellant’s counsel certified that a copy was served upon counsel for the appellees “via U.S. Mail, this 22nd day of August, 2021,¹ with sufficient postage thereon to ensure delivery.” In support of their motion to dismiss, however, the appellees produced as exhibits copies of the envelopes sent to their respective counsel, which contained appellant’s notice of appeal. The envelope sent to counsel for the appellees, Bruce Sizemore and Brent Sizemore, is stamped with a postmark dated September 2, 2022 in Greenville, SC. The envelope addressed to counsel for the appellee, Sharae Patterson, is devoid of any postmark. The notice of appeal was received in counsel for Sharae Patterson’s office on September 7,

¹ This is not a typographical error in this Order. The certificate reads “August, 2021.” Even assuming that the “August, 2021” date is a typographical error, the copies of the notice of appeal received by the appellees contain the Appellate Court Clerk’s stamp dated August 24, 2022, which shows that the envelopes could not have been deposited in the U.S. mail on August 22, 2022, two days prior to the filing of the notice of appeal with the Appellate Court Clerk.

2022, and was believed to have been hand-delivered. Furthermore, the copies of the notice of appeal received by counsel for the appellees both contain the Appellate Court Clerk filing stamp showing the date the notice of appeal was filed in this Court, *i.e.*, August 24, 2022.

This Court has explained:

[I]n order for an appellant to satisfy the requirements of Rule 3(e) and take an appeal as of right before this Court, the appellant must satisfy the requirements of both (1) filing a timely notice of appeal pursuant to Rule 4 and (2) serving each party or counsel for each party with a copy of the notice of appeal pursuant to Rule 5.

Hicks v. Seitz, No. E2014-02225-COA-R3-CV, 2015 WL 5602285, at *8 (Tenn. Ct. App. Sept. 23, 2015), *no appl. perm. appeal filed* (finding that because appellant had “failed to comply with the service requirement of Rule 5(a) [as to one appellee], we conclude that this Court lacks subject matter jurisdiction over the controversy involving [that appellee’s] dismissal from this action.”). “However, the operation of Rule 5(a) may be suspended for good cause.” *Costner v. Maryville-Alcoa-Blount County Parks & Recreation Comm’n*, No. E2021-00189-COA-R3-CV, 2022 WL 3092906, at *4 (Tenn. Ct. App. Aug. 3, 2022), *no appl. perm. appeal filed* (finding no good cause to suspend the operation of Rule 5(a) and that appellant’s failure to serve several parties with the notice of appeal deprived this Court of jurisdiction with regard to the unserved parties).

In this case, appellant failed to respond to the motion to dismiss. As such, appellant has shown no cause whatsoever, much less good cause, for suspending the operation of Rule 5(a). This appeal is hereby DISMISSED. Costs on appeal are taxed to the appellant, Mark T. Cross, for which execution may issue.

PER CURIAM