

RENDERED: APRIL 22, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000748-MR

WAAJID SABREE

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT
v. HONORABLE JUDITH E. MCDONALD-BURKMAN, JUDGE
ACTION NO. 99-CI-005316

YVONNE EMBRY AND GLENDALE EMBRY

APPELLEES

OPINION AND ORDER
DISMISSING

** ** *

BEFORE: BUCKINGHAM, KNOPF, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Waajid Sabree brings this pro se appeal from a March 1, 2004, judgment of the Jefferson Circuit Court. We dismiss.

On March 1, 2004, a final judgment was entered in favor of appellees which awarded damages of \$102,734.00 against appellant. Thereafter, appellant filed a Ky. R. Civ. P. (CR) 59.05 motion to alter, amend, or vacate the judgment on March 15, 2004. The certificate of service indicates that the CR 59.05 motion was also served on March 15. The motion was denied

by order entered March 16. Subsequently, appellant filed a notice of appeal on April 15.

A notice of appeal must be filed within 30 days from the date of notation of service of the judgment appealed. CR 73.02(1)(a). CR 73.02(1)(e) provides that the "running of the time for appeal is terminated by a timely motion . . . under Rules 50.02, 52.02, or 59" To be considered timely, a CR 59.05 motion must be served no later than 10 days after entry of the judgment.

In the instant case, the judgment was entered on March 1, 2004, and appellant's CR 59.05 motion was served on March 15, 2004. Thus, the CR 59.05 motion was untimely served and did not operate to suspend the running of time for appeal. The notice of appeal should have been filed no later than March 31, 2004; however, appellant filed the notice of appeal on April 15. The failure to timely file a notice of appeal deprives this Court of jurisdiction and results in dismissal of the appeal. See City of Devondale v. Stallings, 795 S.W.2d 954 (Ky. 1990).

NOW THEREFORE be it ORDERED that Appeal No. 2004-CA-000748-MR is DISMISSED.

ALL CONCUR.

ENTERED: April 22, 2005

/s/ Jeff S. Taylor
JUDGE, COURT OF APPEALS

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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