

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 13, 2026 Session

FILED

08/17/2026

Clerk of the
Appellate Courts

IN RE SEVIER COUNTY GRAND JURY

Appeal from the Circuit Court for Sevier County
No. 23-CV-775-III D. Kelly Thomas, Jr., Senior Judge

No. E2025-00522-COA-R3-CV

This appeal stems from a trial court’s order in a declaratory judgment action. However, because the appellant’s notice of appeal is untimely, this Court lacks subject matter jurisdiction, and the appeal must be dismissed.

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

KRISTI M. DAVIS, J., delivered the opinion of the Court, in which JOHN W. MCCLARTY, P.J., E.S., and WILLIAM E. PHILLIPS II, J., joined.

Erik Cooper, Gatlinburg, Tennessee, pro se appellant.

Jonathan Skrmetti, Attorney General and Reporter, and Jacobs M. Gilbert, Assistant Attorney General, for the appellees, James B. Dunn and Ronald Crockett Newcomb.

OPINION

BACKGROUND

On multiple occasions, Appellant Erik Cooper (“Mr. Cooper” or “Petitioner”) has sought to testify before a Sevier County grand jury panel pursuant to Tennessee Code Annotated section 40-12-104 (the “Witness Statute”). For many years, the District Attorney General’s Office (the “DAGO”) for the Fourth Judicial District, which includes Sevier County, required private individuals wishing to testify before a grand jury panel pursuant to the Witness Statute to submit a written application, provide a copy of their photo ID, and schedule their testimony. Mr. Cooper appeared before the grand jury many times between 2018 and 2023, always after meeting the DAGO’s application and scheduling requirements. The grand jury routinely asked the DAGO to attend its

proceedings to “question[] witnesses and advis[e the grand jurors] as to the law in the cases to be heard” during their term.

On July 13, 2023, Mr. Cooper filed a petition with the Sevier County Circuit Court (the “trial court”) asking that he be permitted to testify before the grand jury without meeting the application and scheduling requirements and that he be permitted to testify before a grand jury outside the Fourth Judicial District (the “July 2023 Petition”).¹ In the petition, Mr. Cooper asked

B. For declaratory relief declaring the rights of the Petitioner when appearing before the Sevier County Grand Jury to testify with knowledge of the commission of a public offense triable or indictable in Sevier County;

C. For declaratory relief relieving the Petitioner of any obligation to submit a written application to appear before the Grand Jury Panel under T.C.A. § 40-12-104;

D. For declaratory relief relieving the Petitioner of any obligation to apply by a deadline to appear before the Grand Jury Panel under T.C.A. § 40-12-104;

E. For declaratory relief relieving the Petitioner of any obligation to schedule his appearance before the Grand Jury Panel under T.C.A. § 40-12-104;

F. For declaratory relief permitting the Petitioner to appear before a Grand Jury Panel outside the jurisdiction of the Fourth Judicial Circuit when testimony or evidence intended for the Grand Jury Panel involves or pertains to the District Attorney General for the Fourth Judicial Circuit, his employee(s), or the Sevier County Grand Jury Foreperson; [and]

G. For declaratory relief permitting the Petitioner to appear before a Grand Jury Panel in accordance with T.C.A. § 40-12-104 before the statute of limitations for triable or indictable offenses alleged in Sevier County will toll [*sic*] on August 5, 2023[.]

The July 2023 Petition avers that Assistant District Attorney General Ronald Newcomb (“General Newcomb”) was advising the grand jury during its proceedings on March 27, 2023. Mr. Cooper claims that General Newcomb would not permit him to testify that day

¹ The record reveals that the July 2023 Petition is not the first, nor the last, petition that Mr. Cooper has filed seeking to have the trial court control the DAGO’s actions with respect to the grand jury, although it is the only such petition at issue in this case.

unless he executed a waiver of his constitutional right to remain silent and waiver of “any immunity [he] might otherwise receive by testifying before the Grand Jury.” Mr. Cooper refused to execute the waiver. Mr. Cooper alleges that General Newcomb advised the grand jury panel to deny Mr. Cooper’s application to testify unless he executed the waiver. Ultimately, Mr. Cooper continued refusing to sign the waiver, and the grand jury panel denied his application to testify.

The July 2023 Petition further explains that Mr. Cooper was also scheduled to appear before the grand jury on May 1, 2023. That same day, prior to his scheduled appearance, the grand jury returned a presentment charging him with making false reports to an officer, acts of civil rights intimidation, tampering with evidence, extortion, and aggravated perjury. Mr. Cooper later appeared as scheduled and testified before a panel of the grand jury foreman and two grand jurors, unaware that the same grand jury had indicted him earlier that day. He asked the panel to indict General Newcomb for purportedly interfering with his March 2023 grand jury appearance. The panel declined to indict General Newcomb. Mr. Cooper alleges that this is because General Newcomb and his boss, the elected Fourth Judicial District Attorney General James Dunn (“General Dunn”), “had essentially poisoned the well of jurors before [Mr.] Cooper’s scheduled appearance.” Mr. Cooper was arrested as a result of the presentment as he was exiting the grand jury room on May 1.

The trial court heard the July 2023 Petition on July 25, 2023. On July 26, 2023, the trial court entered an order (the “July 2023 Order”) finding, in relevant part

1. That T.C.A. § 40-12-104 does not require the Petitioner to submit a written application to appear before the Sevier County Grand Jury.

2. That T.C.A. § 40-12-104 does not require the Petitioner to apply by a certain deadline in order to invoke the procedure outlined in said statute.

3. That T.C.A. § 40-12-104 does not require the Petitioner to schedule his appearance before the Sevier County Grand Jury and the same may be accomplished by presenting himself to the Grand Jury Foreman on the date of July 31, 2023.

4. That there is no legal authority for this [c]ourt to allow the Petitioner to appear before a Grand Jury panel outside of the jurisdiction of the 4th Judicial District.

5. That it is the opinion of the [c]ourt that a Grand Jury panel has the inherent authority to prescribe reasonable rules and regulations pertaining to appearances by private citizens pursuant to T.C.A. § 40-12-104, and that

absent said rules, the above findings and conclusions of law are the Orders of this [c]ourt.

6. That as the Petitioner is not being compelled to testify in the Sevier County Grand Jury by Subpoena of the State of Tennessee, or otherwise, he does not have to execute a written Waiver of Immunity in order to invoke the provisions of T.C.A. § 40-12-104.

The July 2023 Order did not tax costs to any party. It is undisputed that no party appealed this order. The record is silent as to whether Mr. Cooper appeared before the grand jury on July 31, 2023.

On August 17, 2023, the Tennessee Attorney General, Jonathan Skrmetti (the “AG”), filed a motion to dismiss Mr. Cooper’s petition. In support of his motion, the AG argues that he is not a proper party but that he is instead “the appropriate legal representative of [the DAGO] and is exclusively authorized to file any responses on behalf of those officials.” However, he also asserts that he was not aware of the DAGO representing itself in these proceedings until after the July 25, 2023 hearing had occurred. On August 28, 2023, Mr. Cooper filed a “Notice and Opposition to Appearance of Tennessee Attorney General” in which he agreed that the AG is not a proper party to this action and asserted that this action was “already-concluded[.]” He also filed a response arguing, *inter alia*, that the motion to dismiss was untimely because the trial court “ha[d] already conducted a hearing on the [July 2023] Petition and issued its ruling.” The trial court heard the motion on September 8, 2023,² and entered an order that same day dismissing the AG as a party: “In light of the parties’ agreement that General Skrmetti is not a party to this litigation, this motion is GRANTED on the grounds that General Skrmetti is not a proper party and General Skrmetti is dismissed as a party to this action.” This order did not tax costs to any party.

The case then fell dormant. It was re-assigned to Senior Judge D. Kelly Thomas in August 2024 “to hear the . . . case to its conclusion, including any post-trial matters.” On March 13, 2025, Judge Thomas entered an order *sua sponte* (the “March 2025 Order”), which stated in its entirety: “The court has reviewed the record and pleadings in this action and has determined that there remains no present, justiciable controversy. The court therefore dismisses Petitioner’s petition as moot. Costs are assessed to the Petitioner, Erik Cooper.” On April 14, 2025, Mr. Cooper filed a motion to set aside the March 2025 Order, positing that it conflicts with the July 2023 Order, which did not dismiss Mr. Cooper’s petition or tax him with costs. Notably, Mr. Cooper argued in his motion to set aside that the July 2023 Order “resolved all issues in the [July 2023] Petition and became a final order

² On September 20, 2023, Mr. Cooper filed a notice with the trial court alleging that the AG failed to provide him timely notice of the September 8, 2023 hearing.

of the [trial court] thirty days after the order was entered.” Mr. Cooper also filed a notice of appeal with this Court on the same day.

On May 7, 2025, the DAGO, represented by the AG, responded to Mr. Cooper’s motion to set aside, conceding that the July 2023 Order “is a valid judgment in compliance with Tennessee Rule of Civil Procedure 58(3)” and “appears to have disposed of all pending issues” before the trial court. The DAGO also stated that it did not oppose the continuing effect of the July 2023 order: “To the extent Petitioner wishes to have the findings of the earlier order to have continuing effect, Respondents are not in opposition and do not seek to relitigate issues previously adjudicated.” On May 12, 2025, Mr. Cooper filed a reply in support of his motion again positing that the July 2023 Order was not appealed by any party and became a final judgment pursuant to Rule 58(3). On May 27, 2025, the trial court entered an order (the “May 2025 Order”) denying Mr. Cooper’s motion to set aside the March 2025 Order pursuant to Tennessee Rule of Civil Procedure 59. The May 2025 Order states that the July 2023 Order was unaffected by the March 2025 Order and that the July 2023 Order “remains valid and in full effect.” By agreement of the parties, the May 2025 Order assessed costs to the State of Tennessee.

On May 29, 2025, Mr. Cooper moved to set aside the May 2025 Order arguing that his motion to set aside the March 2025 Order should have been analyzed pursuant to Tennessee Rule of Civil Procedure 60.02 instead of Rule 59. On June 13, 2025, the trial court once again denied Mr. Cooper’s motion and entered an order (the “June 2025 Order”) stating that “[t]o the extent that there may be any perceived inconsistency between” the July 2023 Order and the March 2025 Order, the July 2023 Order “controls, and reflects the judgment of the court.”

The trial court clerk transmitted a copy of the June 2025 Order to the clerk of this Court, and this appeal proceeded.

ISSUES

Mr. Cooper raises eight issues on appeal, which we consolidate and restate as follows:

1. Whether Mr. Cooper was unlawfully denied access to testify before the Sevier County Grand Jury on March 27, 2023 or May 1, 2023.

2. Whether the DAGO violated Mr. Cooper’s statutory rights on March 27, 2023, by requiring him to execute a waiver of his constitutional rights before the DAGO permitted him to testify to the grand jury.

3. Whether the grand jury foreman was conflicted and should have recused himself or been disqualified from serving as a member of the grand jury panel on May 1, 2023,

because of his purported relationship with the DAGO and/or because the foreman was purportedly a material witness to the alleged offense about which Mr. Cooper was testifying.

4. Whether the DAGO should have recused itself or been disqualified from providing “guidance [to the grand jury] in making its determination” during Mr. Cooper’s appearance before the grand jury panel on May 1, 2023;

5. Whether a person testifying before a grand jury panel pursuant to the statute is entitled to testify to a grand jury in a county other than one where the offense is alleged to have occurred when the person is alleging that an employee of the DAGO that otherwise would be providing guidance to the grand jury is the alleged offender.

In its capacity as Appellee, the DAGO raises two issues on appeal, which we restate as follows:

1. Whether this appeal is untimely.
2. If this appeal is timely, whether a justiciable controversy exists.

DISCUSSION

As a threshold issue, we must determine whether Mr. Cooper timely appealed to this Court. An appeal as of right to this Court is initiated by the filing of a notice of appeal with the clerk of this Court “within 30 days after the date of entry of the judgment appealed from[.]” Tenn. R. App. P. 4(a); *see* Tenn. R. App. P. 3(e). If a notice of appeal is not timely filed, this Court lacks subject matter jurisdiction over the appeal. *Ball v. McDowell*, 288 S.W.3d 833, 836 (Tenn. 2009) (citing *Binkley v. Medling*, 117 S.W.3d 252, 255 (Tenn. 2003); Tenn. R. App. P. 2). This Court is not authorized to suspend the requirements of Rule 4 to extend the time for filing a notice of appeal. *See* Tenn. R. App. P. 2. Consequently, “[i]f the notice of appeal is not timely filed, the appellate court is required to dismiss the appeal.” *Arfken & Assocs. v. Simpson Bridge Co.*, 85 S.W.3d 789, 791 (Tenn. Ct. App. 2002) (citing *McGaugh v. Galbreath*, 996 S.W.2d 186, 189 (Tenn. Ct. App. 1998); *Am. Steinwinter Inv. Grp. v. Am. Steinwinter, Inc.*, 964 S.W.2d 569, 571 (Tenn. Ct. App. 1997)).

Mr. Cooper filed his notice of appeal with this Court on April 14, 2025. If the July 2023 Order is a final judgment, Mr. Cooper’s notice of appeal was untimely, and this Court lacks subject matter jurisdiction to consider the merits of this case. Often, the first question we must address when determining whether this Court has subject matter jurisdiction is whether the order appealed from is final or interlocutory. Whether an order is a final judgment is a question of law we review *de novo* with no presumption of correctness. *Ball*, 288 S.W.3d at 836 (citing *Lacy v. Cox*, 152 S.W.3d 480, 483 (Tenn. 2004)).

A final judgment “is one that resolves all of the parties’ claims and leaves the court with nothing to adjudicate.” *Id.* at 836–37 (citing *In re Est. of Henderson*, 121 S.W.3d 643, 645 (Tenn. 2003)). Generally, unless a party files a motion pursuant to Tennessee Rule of Civil Procedure 60, a trial court loses jurisdiction over a matter thirty days after the entry of a final judgment, and a *sua sponte* act of the trial court thereafter is void. *Christian v. Kennedy*, No. 03A01-9207-CH-00265, 1992 WL 387348, at *2 (Tenn. Ct. App. Dec. 31, 1992) (citing *Durham Coal & Iron Co. v. Bischel*, 4 Tenn. App. 233, 235 (1927); Tenn. R. Civ. P. 59.02; Tenn. R. App. P. 3); *see Hodge v. Hodge*, No. M2006-01742-COA-R3-CV, 2007 WL 3202769, at *4 (Tenn. Ct. App. Oct. 31, 2007) (“The jurisdiction and power of a court remain at rest until called into action by some suitor; it cannot by its own act institute a proceeding sua sponte.” (quoting *Levy v. Bd. of Zoning Appeals*, No. M1999-00126-COA-R3-CV, 2001 WL 1141351, at *4 (Tenn. Ct. App. Sept. 27, 2001))). “These rules were specially designed to promote the finality of a judgment.” *Christian*, 1992 WL 387348, at *2.

As Mr. Cooper repeatedly argued before the trial court and the DAGO argues on appeal, the July 2023 Order resolved all of the parties’ claims and left the trial court with nothing to adjudicate. Mr. Cooper abandons this argument on appeal and now argues that the July 2023 Order was not final because it “did not resolve all issues in the Petition” and instead “granted partial relief, denied other requested relief including the ability to appear before an alternative grand jury, and left the case active for nearly two years.” However, in so arguing, Mr. Cooper acknowledges that the July 2023 Order actually did resolve all of his requests for relief; it just did not resolve all of them in his favor. If Mr. Cooper wished to appeal the trial court’s denial of his request to appear before an alternative grand jury, he had thirty days to do so. He did not. The July 2023 Order was a final judgment, and neither party filed a Rule 60 motion to alter or amend it prior to the entry of the March 2025 Order. Consequently, the trial court lacked jurisdiction over this matter – other than with respect to the taxing of costs – when it entered the 2025 orders; those orders are, therefore, void except with regard to the taxing of costs.

Mr. Cooper also argues that the March 2025 Order became the final, operative judgment because it taxed him with costs, whereas the July 2023 Order did not tax any party with costs. However, the taxing of court costs is not a claim, right, or liability affecting an order’s finality. “In settling the question as to whether a given decree is final, the decision as to costs does not enter as an element; it is the decision as to the merits that determines. If the entire merits are disposed of, the decree is final; otherwise not.” *Brooks v. Woody*, 577 S.W.3d 529, 533–34 (Tenn. Ct. App. 2018) (quoting *Hitachi Cap. Am. Corp v. Cmty. Tr. & Banking Co.*, No. E2015-02121-COA-R3-CV, 2016 WL 5210860, at *4 (Tenn. Ct. App. Sept. 20, 2016)). Accordingly, this argument has no merit.

Because Mr. Cooper did not file his notice of appeal within thirty days of the entry of the July 2023 Order, this Court lacks subject matter jurisdiction over this appeal, and it must be dismissed.

CONCLUSION

This appeal is dismissed. Costs on appeal are assessed to the appellant, Erik Cooper, for which execution may issue if necessary.

KRISTI M. DAVIS, JUDGE