IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
JULY 16, 2008 Session

JOSEPH AND KIMBERLI DAVIS v. PATRICK J. MCGUIGAN, ET AL.

Appeal from the Circuit Court for Davidson County
No. 05C-1155 Hamilton V. Gayden, Jr., Judge

No. M2007-02242-COA-R3-CV - Filed September 10, 2008

Homeowners filed suit against Appraiser for intentional and negligent misrepresentation and violation of the Tennessee Consumer Protection Act. Appraiser moved for summary judgment on all claims. The trial court denied Appraiser's motion on the negligent misrepresentation claim, but dismissed the intentional misrepresentation claim and the Tennessee Consumer Act claim. During the course of the proceedings, the trial court also excluded certain witnesses who were tendered as experts. Both parties appeal. We affirm the trial court's grant of summary judgment on both claims, and decline to address the remaining issues for lack of justiciability.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Circuit Court Affirmed

J. STEVEN STAFFORD, J., delivered the opinion of the court, in which HOLLY M. KIRBY, J., and WALTER C. KURTZ S.J., joined.

C. Bennett Harrison, Jr., Nashville, TN, for Appellants
Brian W. Holmes, Nashville, TN, for Appellants

Christopher J. Oliver, Nashville, TN, for Appellee
Michael G. Hoskins, Nashville, TN, for Appellee

OPINION

Facts and Procedural History

This case involves an appraisal of a proposed construction of a custom-built home. On April 20, 2005, the Plaintiffs/Appellants, Joseph and Kimberli Davis (hereinafter, the "Homeowners") filed suit against real estate appraiser Patrick J. McGuigan, individually, and d/b/a McGuigan & Associates (hereinafter, "the Appraiser") for intentional and negligent misrepresentation and

violation of the Tennessee Consumer Protection Act (hereinafter, "TCPA") pursuant to Tenn. Code Ann §§ 47-18-101, *et seq*.

On September 8, 2000, Homeowners purchased a vacant lot in Williamson County. The Homeowners purchased the parcel for $135,000.00 in the Horseshoe Bend subdivision. Thereafter, Homeowners hired an architect to draft blueprints and develop a design plan for their custom home (hereinafter, the "Home"). Homeowners hired general contractor, William Frasch, to build their house, and he developed the plans and specifications for the Home. His estimated cost for the Home's construction totaled $595,394.50. The Homeowners approved the cost analysis and building plans, and contacted SunTrust Bank (hereinafter, SunTrust) with the intent to secure financing.

On May 15, 2002, the Homeowners signed a Uniform Residential Loan Application and submitted it to SunTrust. The Homeowners also signed a document entitled, "Disclosure Notices - Right to Receive A Copy of Appraisal" (hereinafter, the "Disclosure Notice"). In part, the Disclosure Notice provides:

> You have a right to a copy of the appraisal report used in connection with your application for credit. If you wish a copy, please write to: SunTrust Bank, 201 Fourth Avenue N/7th Floor, Nashville, TN 37219. We must hear from you no later than 90 days after we notify you about the action taken on your credit application or you withdraw your application.

SunTrust hired the Appraiser to appraise the value of Homeowners' proposed Home, but the Homeowners paid for the appraisal. SunTrust faxed an appraisal request to the Appraiser, which indicated that the sales price of the proposed construction was $735,000.00. SunTrust also provided the Appraiser with the plans and specifications of the Home. On June 21, 2002 the Appraiser informed SunTrust that the established market value of the Home when completed would be $735.000.00. An employee of SunTrust, Alene Gnyp, called the Homeowners, and informed them that the house had appraised for $735,000.00, and that their loan request for $580,000.00 had been approved.

The Homeowners closed on the SunTrust loan, and construction of the Home began. The cost of construction totaled $735,894.50. The Homeowners funded their downpayment through a separate line of home equity credit. In August of 2003, the Homeowners moved into their completed home. In September of 2004, the Homeowners sought to obtain a home equity loan using their newly constructed Home as collateral. On September 22, 2004, another appraisal was conducted in connection with Homeowners' home equity loan application. This appraisal estimated the value of the Home to be only $510,000.00.

Approximately fifteen (15) months after the Homeowners moved into the Home, they listed the Home for sale with an asking price of $676,900.00. After the house was on the market for approximately four months, the Homeowners accepted an offer of $660,000.00.

On April 20, 2005, the Homeowners filed suit against the Appraiser, claiming intentional and negligent misrepresentation and violation of the TCPA, in connection with the appraisal performed for SunTrust. The Homeowners claimed that they relied to their financial detriment upon the appraisal value of the home, $735,000.00, in deciding to proceed with construction. The Appraiser filed an Answer denying all material allegations. The trial court subsequently entered an Agreed Scheduling Order setting forth deadlines for discovery, fact witness depositions, and expert disclosures. The Homeowners deposed the Appraiser, David Sanchez, a former employee of the Appraiser who assisted in performing the Home's appraisal, and three SunTrust employees who had worked with the Homeowners during the SunTrust loan application process. The Appraiser deposed both Homeowners. On October 16, 2006, the parties exchanged expert witness disclosures. The Homeowners disclosed as their expert witnesses Kevin O'Connell, president of the Nashville School of Real Estate, J. Donald Turner, an appraiser, and Bob Downing, a realtor**.** The Appraiser disclosed himself, David Sanchez, William Frasch, the general contractor who built the Home, and Joseph Rebiero, a real estate agent.

On December 12, 2006, the Appraiser moved for summary judgment on all claims. The Homeowners filed their Response to the Motion for Summary Judgment on January 26, 2007. Their Response included affidavits of Homeowners' three purported expert witnesses. On February 20, 2007, the Homeowners' filed a supplemental authority in support of their opposition to the motion for summary judgment. On February 23, 2007, the trial court heard argument on the Appraiser's Motion for Summary Judgment and Motion to Strike Affidavits of Plaintiff's Expert Witnesses. At that hearing, the trial court struck the affidavits of Robert Downing and Kevin O'Connell, took the summary judgment motion under advisement, and instructed the Appraiser to file a supplemental brief responding to Homeowners' supplemental filing. The Appraiser filed his brief on March 9, 2007, and on April 27, 2007, the trial court heard and decided the summary judgment motion.

On May 7, 2007, the trial court entered an Order granting Appraiser's motion for summary judgment on Homeowners' intentional misrepresentation and TCPA claims. The trial court denied summary judgment on the negligent misrepresentation claim. No legal grounds for the granting of the motion were stated in the Order.

The parties continued their discovery, and on June 4, 2007, The Homeowners deposed Appraiser, who testified in his capacity as an expert witness. During the deposition, it became clear that the Appraiser was unprepared to testify as an expert and would need to research and investigate more before testifying as an expert. When asked for an additional opportunity to depose the Appraiser, the Appraiser's counsel would not agree to the request.

On June 29, 2007, the Homeowners filed a Motion to Exclude Expert Testimony and for Appropriate Sanctions, alleging that the Appraiser had been disclosed as an expert who had reviewed multiple documents and would express certain opinions relevant to the Appraiser's case. Homeowners argued that the Appraiser had failed to perform any research necessary to formulate such opinions, and asked the trial court to award them a default judgment on liability, attorneys and court reporter's fees, and sanctions, based on the premise that the Appraiser had knowingly filed

erroneous expert witness disclosures, in contravention of Rule 26. The trial court denied Homeowners' motion to exclude the testimony, ordered the Appraiser to be available to be deposed for one additional hour, and held the motion for sanctions in abeyance.

On August 31, 2007, the Homeowners filed a Motion *In Limine*, requesting a clarification from the trial court regarding both parties' experts and the admissibility of each expert's testimony. The trial court ruled that the Homeowners' experts, Mr. O'Connell and Mr. Downing, were incompetent to testify at trial. As for the Appraiser's experts, the trial court ruled that Mr. Sanchez could testify as a fact witness, but was incompetent to testify as an expert, that Mr. Frasch could testify as an expert on the quality of construction of custom homes in Middle Tennessee, and that Mr. Rebeiro could testify as an expert as to the value of real property.

On September 21, 2007, the Homeowners filed a notice of voluntary dismissal of their remaining negligent misrepresentation claim. On September 26, 2007, the trial court entered an order allowing Homeowners to voluntarily dismiss their action.

Issues

As stated in the Homeowners' brief:

> 1. Whether the trial court erred, in this case of appraiser liability, in granting Defendant's Motion for Summary Judgment on the plaintiff's claim of intentional misrepresentation, when there was overwhelmingly sufficient evidence upon which a jury could conclude that his appraised value was simply an attempt to reach the "sales price" necessary for the bank to approve the plaintiffs' construction loan, rather than his best estimate of the market value of the property.
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> 2. Whether the trial court erred in granting Defendant's Motion for Summary Judgment on the plaintiff's Tennessee Consumer Protection Act claim, when they had both a viable intentional misrepresentation claim, a viable negligent misrepresentation claim, as the trial court even found, and when otherwise there was a genuine issue of material fact as to whether the defendant's conduct amounted to an unfair or deceptive act or practice resulting in an ascertainable loss of money to the plaintiffs.
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> 3. Whether the trial court committed reversible error in granting the defendant's Motion to Strike Affidavits of Plaintiffs' Expert Witnesses as it relates to the plaintiffs' expert Kevin O'Connell, and thus refusing to consider Mr. O'Connell's affidavit in ruling on the defendant's Motion for Summary Judgment, and in excluding Mr. O'Connell from testifying at trial, when the evidence presented demonstrated that Mr. O'Connell had specialized knowledge of the appraisal industry and appraisal practices.

4. Whether the trial court committed reversible error in granting the defendant's Motion to Strike Affidavits of Plaintiffs' Expert Witnesses as it relates to the plaintiffs' expert Robert Downing, a licensed real estate broker, and thus refusing to consider Mr. Downing's affidavit in ruling on the defendant's Motion for Summary Judgment, and in excluding Mr. Downing from testifying at trial, when Mr. Downing was offered as an expert only on the value of property and thus was specifically authorized to testify as an expert by statute.

5. Whether the trial court erred in refusing to grant the plaintiffs' Motion to Exclude Expert Testimony and for Appropriate Sanctions, relating to the defendant's own proffered expert testimony, when the defendant served a misleading expert disclosure, and, several months later, agreed to appear for a discovery deposition in which he testified that he had not yet developed the opinions he was disclosed as having.

The Appraiser raises two (2) additional issues:

1. Whether the trial court abused its discretion in denying Defendant's motion to strike the affidavit of Plaintiffs' expert, J. Donald Turner, and to exclude him as a witness?

2. Whether the trial court erred in denying Defendants' motion for summary judgment on Plaintiffs' cause of action for negligent misrepresentation?

Standard of Review

The standard of review for a grant of summary judgment is well-established:

> The standard for review of a grant of summary judgment by the trial court is, of course, de novo. ***See Blair v. W. Town Mall,*** 130 S.W.3d 761, 763 (Tenn. 2004). Because the question is one of law, no presumption of correctness attaches to the grant of a summary judgment. ***Hembree v. State,*** 925 S.W.2d 513, 515 (Tenn. 1996). A summary judgment, when based upon a statement of undisputed facts, pleadings, depositions, answers to interrogatories, admissions, and affidavits, is appropriate only when (1) there is no genuine issue with regard to the material facts relevant to the claim or defense contained in the motion, and (2) based on the undisputed facts, the moving party is entitled to a judgment as a matter of law. Tenn. R. Civ. P. 56.04; ***Blair,*** 130 S.W.3d at 764. Further, the appellate courts "must take the strongest legitimate view of the evidence in favor of the non-moving party, allow all reasonable inferences in favor of that party, and

discard all countervailing evidence." ***Byrd v. Hall,*** 847 S.W.2d 208, 210-11 (Tenn. 1993).

Chattanooga-Hamilton County Hosp. Auth. v. Bradley County, 249 S.W.3d 361, 364-65 (Tenn. 2008).

Discussion

At the time of the summary judgment hearing, Rule 56.04 of the Tennessee Rules of Civil Procedure provided, in pertinent part:

> Subject to the moving party's compliance with Rule 56.03, the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Upon request, the trial court shall state the legal grounds upon which the court grants the motion, which shall be included in the order reflecting the court's ruling.[1]

Since our inquiry involves purely a question of law, no presumption of correctness attaches to the lower court's judgment, and our task is confined to reviewing the record to determine whether the requirements of Tenn. R. Civ. P. 56 have been met**.** ***Staples v. CBL & Assocs., Inc.,*** 15 S.W.3d 83, 88 (Tenn. 2000). At the time of the hearing, Tenn. R. Civ. P. 56.04 required a trial court, "upon request," to state the legal grounds for its grant of summary judgment and to include those grounds in its order. While it would have been prudent for the parties to request such a statement, the record does not indicate that either party made such a request.[2] Although the trial court's order complies

[1] Tenn. R. Civ. P. 56.04 was amended, effective July 1, 2007. The rule now provides, in pertinent part, that, "The trial court shall state the legal grounds upon which the court denies or grants the motion, which shall be included in the order reflecting the court's ruling."

[2] We note that "[a]n appellant is responsible for preparing the record and providing to the appellate court a "fair, accurate and complete account" of what transpired at the trial level. ***State v. Ballard,*** 855 S.W.2d 557, 560 (Tenn. 1993) (citing ***State v. Bunch,*** 646 S.W.2d 158, 160 (Tenn. 1983); ***Jennings v. Sewell-Allen Piggly Wiggly***, 173 S.W.3d 710, 712 -713 (Tenn. 2005)).
Further, "[t]he appellee [also] shares the responsibility for ensuring the appellate court has a complete record. *See* Tenn. R. App. P. 24(a), (b), (d) (providing that after the appellant has designated portions of the record or transcript for appeal, the appellee may designate any other part of the record it deems necessary or may prepare a transcript or a statement of the evidence.)." ***Id.***

with the rule, it provides us with little assistance.[3] In summary, the record is silent as to the basis of the trial court's order granting summary judgment.

Although we have encouraged trial courts to state the legal basis for awarding summary judgment, it was not required to do so under the then prevailing law. In cases such as the instant case, appellate courts will often "soldier on without guidance from the trial court." ***Range v. Baese***, No. 2007-CA-00206, 2008 WL 186656, at *3 (Tenn. Ct. App. Jan. 22, 2008) (quoting ***Church v. Perales,*** 39 S.W.3d 149, 158 (Tenn. Ct. App. 2000)).

We initially address the granting of summary judgment on the Homeowners' claim of intentional misrepresentation. To succeed on a motion for summary judgment, the moving party must either "affirmatively negate an essential element of the nonmoving party's claim" or "conclusively establish an affirmative defense that defeats the nonmoving party's claim." ***Byrd v. Hall***, 847 S.W.2d 208, 215 n.5 (Tenn. 1993). To sustain a cause of action for fraudulent misrepresentation, the Homeowners must show:

> 1) the Appraiser made a representation of an existing or past fact;
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> 2) the representation was false when made;
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> 3) the representation was in regard to a material fact;
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> 4) the false representation was made either knowingly or without belief in its truth or recklessly;
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> 5) the Homeowners reasonably relied on the misrepresented material fact; and
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> 6) Homeowners suffered damage as a result of the misrepresentation.

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[3] In its Order Granting In Part and Denying In Part Defendant's Motion for Summary Judgment, the trial court stated, in part:

It is, therefore, ORDERED, that pursuant to Rule 56 of the Tennessee Rules of Civil Procedure, Defendant's Motion for Summary Judgment on the Plaintiffs' claim for damages and attorneys' fees under the Tennessee Consumer Protection Act is GRANTED in favor of Defendant on grounds that there are no genuine issues as to any material facts related to Plaintiffs' claims under the Tennessee Consumer Protection Act, and therefore, Defendant is entitled to judgment as a matter of law on those claims.

It is, therefore, ORDERED, that pursuant to Rule 56 of the Tennessee Rules of Civil Procedure, Defendant's Motion for Summary Judgment on Plaintiffs' claim for damages under Plaintiffs' intentional misrepresentation is GRANTED in favor of Defendant on grounds that there are no genuine issues as to any material facts related to Plaintiffs' intentional misrepresentation claim, and, therefore, Defendant is entitled to judgment as a matter of law on that claim.

It is, therefore, ORDERED, that Defendant's Motion for Summary Judgment on Plaintiffs' claims for damages under Plaintiffs' negligent misrepresentation claim is DENIED. This remaining negligent misrepresentation claim is scheduled to be heard as a back-up trial on September 24-27, 2007, subject to subsequent order from the court.

See ***Metro. Gov't of Nashville and Davidson County,*** 852 S.W.2d 233, 237 (Tenn. Ct. App. 1992) (citing ***Graham v. First American Nat'l Bank,*** 594 S.W.2d 723, 725 (Tenn. Ct. App. 1979)).

In Tennessee, "the misrepresentation must consist of a statement of a material fact, past or present; statements of opinion or intention are not actionable and conjecture or representations concerning future events are not actionable even though they may later prove to be false." ***McElroy v. Boise Cascade Corp.***, 632 S.W.2d 127, 130 (Tenn. 1982). Generally, claims of value made during commercial transactions are considered statements of opinion and do not provide a basis for a fraud claim. ***Sunderhaus v. Perel & Lowenstein,*** 388 S.W.2d 140, 142 (Tenn. 1965).

The Tennessee legislature defines a real estate appraisal as "the act or process of developing an opinion of value of identified real estate." Tenn. Code Ann. § 62-39-102(3) (2008). Tennessee courts consider the appraisal of real estate as an opinion, and, generally, an appraisal does not provide a basis for a fraudulent misrepresentation claim. ***See First Tennessee Bank Nat'l Assoc. v. C.T. Resort Co., Inc.***, No. 03A01-9704-CH-00134, 1997 WL 67795, at *2 (Tenn. Ct. App. Nov. 3, 1997). The policy behind this rule is that "value is largely a matter of judgement and estimation" about which people may differ. ***First Tennessee***, 1997 WL 667945, at *2 (quoting 37 Am. Jur. 2d *Fraud and Deceit* § 113 (1968)).

In the instant case, the Appraisal states, "I (WE) ESTIMATE THE MARKET VALUE ... AS O[F] 06/19/2002 (WHICH IS THE DATE OF INSPECTION AND THE EFFECTIVE DATE OF THIS REPORT) TO BE $735,000." The Appraiser contends that the appraisal is an estimation or opinion, and is not a representation of an existing or past fact. Therefore, the Appraiser argues, an essential element of the Homeowners' claim for intentional misrepresentation is conclusively negated and summary judgment was proper on this claim. Homeowners argue that the appraisal value was not the opinion of the Appraiser, but rather an opinion he gave which the Appraiser did not have or knew to be false. Although Homeowners' argument applies to the fourth element for fraudulent misrepresentation, their contention does not change the requirement of the first element - that the defendant make a representation of an existing or past fact. In Tennessee, appraisals are not considered facts, but rather estimates or opinions.

Further, we note that when the Appraiser conducted the Appraisal, he was appraising a home that had not yet been constructed. The Appraiser used the "cost approach" analysis, and referred to, among other resources, the specifications and building plans provided by the Homeowners. At that point, the Appraiser only had plans for the future Home on which to base his appraisal; he could not verify that the materials planned for in the Home were actually used in the construction or examine the workmanship of the construction. In Tennessee, conjecture or representations concerning future events are not actionable even though they may later prove to be false. ***McElroy v. Boise Cascade Corp.***, 632 S.W.2d 127, 130 (Tenn. Ct. App. 1982) (citing ***Young v. Cooper***, 203 S.W.2d 376, 383 (Tenn. 1947)). For the reasons discussed above, we find that the trial court's award of summary judgment on this claim proper.

Next, we turn to the dismissal of the claim that the Appraiser's conduct violated the TCPA. The TCPA lists forty-three (43) specific acts or practices that are prohibited because they are deemed to be unfair or deceptive. *See* Tenn. Code Ann. § 47-18-104(b). An additional "catch-all" provision prohibits "engaging in any other act or practice which is deceptive to the consumer or to any other person." Tenn. Code Ann. § 47-18-104(b)(27).[4] Section 47-18-109 (a)(1) provides:

> Any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated, as a result of the use or employment by another person of an unfair or deceptive act or practice declared to be unlawful by this part, may bring an action individually to recover actual damages.

Tenn. Code Ann. § 47-18-109 (a)(1) (2008).

As stated above, the TCPA provides a cause of action for any person who suffers an *ascertainable loss* of money *as a result of* an unfair or deceptive act or practice declared unlawful by the TCPA. The phrase "as a result of" requires a showing by the Homeowners that the alleged violations caused their injury. *See* ***Land v. Dixon***, No. E2004-03019-C.A.-R3-CV, 2005 WL 1618743, at * 4 (Tenn. Ct. App. July 12, 2005).

The Homeowners voluntarily listed their house for sale for $679,900.00, an amount that is $55,100.00 less than the Appraisal. The Homeowners did not attempt to list the Home for the Appraisal amount. After listing the house, they accepted the first offer they received, an offer for $660,000.00. In his sworn affidavit, the Homeowners' realtor stated that the Homeowners did not tell him what they had spent on the Home and did not disclose the amount that the Home had been appraised for when the Homeowners closed on the SunTrust loan. Under the circumstances of this case, where the Homeowners voluntarily elected to list the Home for several thousand dollars less than the Appraisal with full knowledge of the Appraisal amount, the Homeowners cannot establish the required causative link between the alleged misrepresentation and their alleged injury. We affirm the trial court's dismissal of the Homeowners' cause of action alleging a violation of the TCPA.

Because we find that the trial court did not err in granting summary judgment on the claims of intentional misrepresentation and violation of the TCPA, we will not entertain any issues raised by the parties regarding the witnesses in this case, since the Homeowners voluntarily nonsuited their claim regarding the Appraiser's alleged negligent misrepresentation. A plaintiff is generally permitted to take a voluntary nonsuit of his case. *See* Tenn. R. Civ. P. 41.01. Upon doing so,

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[4]The complaint does not specifically allege that provision Homeowners base their claim upon, but rather generally claims that Appraiser is liable to Homeowners pursuant to Tenn. Code Ann. § 47-18-101 *et seq.* We assume Homeowners rely upon section 47-18-104(b)(27) for their claim.

however, there is no longer any existing controversy regarding those claims which the plaintiff voluntarily dismissed. Accordingly, this Court cannot entertain an appeal related to the claim of negligent misrepresentation which the Homeowners voluntarily dismissed. *See* ***City of Johnsonville v. Handley***, No. M2003-00549-COA-R3-CV, 2005 WL 1981810, at *11 (Tenn. Ct. App. Feb. 6, 2005) (citing to ***Payne v. Savell,*** No. 03A01-9708-CV-00352, 1998 WL 46454, at *2 (Tenn. Ct. App. Feb.5, 1998) (noting that, when a party takes a voluntary nonsuit, the parties cannot appeal the resulting order of dismissal without prejudice); ***Bickers v. Lake County Bd. of Educ.,*** No. 02A01-9307-CV-00163, 1994 WL 8157 (Tenn. Ct. App. Jan.13, 1994) ("A party is estopped or waives his right to appeal when judgment is entered at his request."); ***Oliver v. Hydro-Vac Services, Inc.,*** 873 S.W.2d 694, 696 (Tenn. Ct. App. 1993) (concluding that a party is ordinarily not aggrieved when no judgment is rendered against him); ***Martin v. Washmaster Auto Ctr., Inc.,*** No. 01-A-01-9305-CV-00224, 1993 WL 241315 (Tenn. Ct. App. July 2, 1993) ("No present controversy exists after the plaintiff takes a nonsuit."); ***Huggins v. Nichols,*** 440 S.W.2d 618, 620 (Tenn. Ct. App. 1968) ("Although there are some exceptions to the rule, the general rule is that a plaintiff or defendant cannot appeal or prosecute a writ of error from or to a judgment, order, or decree in his own favor, since he is not aggrieved thereby.")).

Tenn. R. App. P. 3(a) permits appeals of right in civil cases following the entry of a final judgment. While the rule is broad, it does not deprive appellate courts of their discretion to determine whether an appeal presents an appropriate occasion for judicial action. Even when Tenn. R. App. P. 3(a)'s requirements are satisfied, appellate courts may refuse to exercise their power to review cases that do not present justiciable issues. As stated in ***Martin v. Washmaster Auto Center, Inc***.:

> Justiciability is a judge-made doctrine developed to determine when courts should hear a case. It involves both the court's power to consider a dispute and the wisdom of their doing so. The central concepts of the doctrine have been separated into seven specific categories, including: advisory opinions, feigned or collusive cases, standing, ripeness, mootness, political questions, and administrative decisions.
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> Ripeness is the category of justiciability that questions whether the dispute has matured to a point that warrants a judicial decision. The central concern is whether the case involves uncertain or contingent future events that may or may not occur as anticipated or, indeed, may not occur at all.
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> Determining whether a controversy is ripe enough to be justiciable involves a two-part inquiry. The court must first determine whether the issues are of the type that would be appropriate for judicial determination. Then the court must consider the hardship that declining to consider the case will have on the parties. The courts will decline to act in cases where there is no need for the court to act or

> where the refusal to act will not prevent the parties from raising the issue at a more appropriate time.

Martin v. Washmaster Auto Center, Inc., No. 01-A-01-9305-CV-00224, 1993 WL 241315, at *1-2 (Tenn. Ct. App. July 2, 1993) (citations omitted).

Declining to review the exclusion of the parties' expert witnesses at this time will not prevent either party from appealing such possible exclusion in the future should the Homeowners recommence their lawsuit. Likewise, it will not prevent a party from seeking interlocutory appellate review of the trial court's decision should such experts be excluded again. Thus, declining to review the exclusion of the parties' expert witnesses at this juncture will not deprive either party of an opportunity to seek appellate review.

We also decline to address Appraiser's argument that the trial court erred in denying Appraiser's motion for summary judgment on the claim of negligent misrepresentation .“Cases must be justiciable not only when they are first filed but must also remain justiciable throughout the entire course of the litigation, including the appeal.” ***McIntyre v. Traughber,*** 884 S.W.2d 134, 137 (Tenn. Ct. App. 1994) (citations omitted). Accordingly, we will not render an opinion in an appeal which is dependent upon future events or involves a purely hypothetical set of facts. ***State v. Brown & Williamson Tobacco Corp.,*** 18 S.W.3d 186, 193 (Tenn. 2000); *see also* ***McIntyre,*** 884 S.W.2d at 137. “If the rule were otherwise, the ‘courts might well be projected into the limitless field of advisory opinions.’ ” ***Brown & Williamson Tobacco Corp.,*** 18 S.W.3d at 193 (citation omitted). Taking a voluntary nonsuit does not render the denial of a summary judgment any more suitable for appellate review. No present controversy exists after the plaintiff takes a nonsuit. The lawsuit is concluded and can only be resurrected if and when the plaintiff recommences the action. The plaintiff's refiling the suit is a contingent event that may not occur. Thus, determining whether the defendant is entitled to a summary judgment after the underlying suit has been voluntarily dismissed without prejudice would be unnecessary and premature.

Conclusion

For the aforementioned reasons, the trial court's dismissal of the Homeowners' causes of action based on intentional misrepresentation and violation of the Tennessee Consumer Protection Act is affirmed. All other issues are pretermitted due to the Homeowners' voluntary nonsuit. Costs on appeal are assessed to the Appellants, Joseph and Kimberli Davis, and their surety.

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J. STEVEN STAFFORD, J.