

ARKANSAS COURT OF APPEALS

No. CA 10-1276

JENNIFER ERWIN

APPELLANT

V.

JON CHRISTOPHER ERWIN

APPELLEE

Opinion Delivered May 4, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
SEVENTEENTH DIVISION
[NO. DR-06-223]

HONORABLE MACKIE M. PIERCE,
JUDGE

DISMISSED

PER CURIAM

In this appeal from the denial of Jennifer Erwin's motion to relocate with her children, Jon Erwin has filed this motion to dismiss for failure to file a timely notice of appeal. We agree, though not for the reasons stated in Mr. Erwin's motion. Therefore, we dismiss.

In March 2010, Ms. Erwin filed a motion to move to Florida. The court denied the motion by letter opinion on July 2 and by order entered July 16. (The court entered an identical order on July 22, but we find this order to be of no consequence.) Ms. Erwin filed a motion for reconsideration on July 20. The circuit court entered an order denying this motion on August 24, and Ms. Erwin filed her notice of appeal on September 22.

A timely notice of appeal is essential to this court obtaining jurisdiction.¹ Our rules of

¹ *E.g., Stacks v. Marks*, 354 Ark. 594, 127 S.W.3d 483 (2003); *Hausman v. Throesch*, 104 Ark. App. 113, 289 S.W.3d 493 (2008).

appellate procedure generally require that a notice of appeal be filed no less than thirty days from the entry of judgment.² But if a party files a motion to vacate, alter, or amend the judgment within ten days after the entry of the judgment, the time for filing the notice of appeal is extended to thirty days after the entry of the order disposing of the last motion outstanding.³ If the circuit court neither grants nor denies the motion within thirty days of its filing, the motion is deemed denied by operation of law as of the thirtieth day, and the notice of appeal is due within thirty days of that date.⁴

Here, Ms. Erwin filed a motion for reconsideration on July 20, 2010. Because this motion was one to vacate, alter, or amend the judgment and was filed within ten days of the entry of the circuit court's final order, it extended the time for filing the notice of appeal. Mrs. Erwin's motion was deemed denied by operation of law on August 19. The circuit court formally denied the motion five days later, but because the order was entered after the thirty-day period prescribed by the rule, it was of no consequence.⁵ Ms. Erwin had until September 20 (September 18 was a Saturday) to file her notice of appeal. She did not file her notice of appeal until September 22, two days too late.

In short, Ms. Erwin filed an untimely notice of appeal. We dismiss her appeal.

² Ark. R. App. P.—Civ. 4(a).

³ Ark. R. App. P.—Civ. 4(b)(1).

⁴ *Id.*

⁵ See *Farm Bureau Mut. Ins. Co. v. Sudrick*, 49 Ark. App. 84, 896 S.W.2d 452 (1995) (stating that once a motion is deemed denied by operation of law, the circuit court loses jurisdiction to decide the motion, and any order that purports to grant the posttrial motion is void and of no effect). See also *Murchison v. Safeco Ins. Co. of Ill.*, 367 Ark. 166, 238 S.W.3d 11 (2006) (applying the “deemed denied” rule to a motion to modify judgment under Ark. R. Civ. P. 60).