

**ARKANSAS COURT OF APPEALS**

DIVISION II  
No. CA10-1078

DONALD WAYNE EASTMAN  
APPELLANT

V.

CANAL INSURANCE CO.  
APPELLEE

**Opinion Delivered** May 11, 2011

APPEAL FROM THE OUACHITA  
COUNTY CIRCUIT COURT  
[NO. CV-2009-141-2]

HONORABLE MICHAEL R.  
LANDERS, JUDGE

APPEAL DISMISSED

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**JOHN MAUZY PITTMAN, Judge**

Appellant Donald Eastman appeals an order of the Ouachita County Circuit Court dismissing his complaint against appellee Canal Insurance Co. and a separate order awarding Canal attorney's fees. Eastman's appeal must be dismissed because he failed to timely file the record on appeal.

The circuit court's order granting Canal's motion to dismiss was entered on April 15, 2010. Eastman filed a pro se notice of appeal on May 12, 2010. Following subsequent requests for attorney's fees from Canal, the circuit court entered another order modifying the original order to include an award of attorney's fees on July 12, 2010. Eastman filed an amended notice of appeal on July 15, 2010, stating that he was appealing from the April 15, 2010 order.

On September 23, 2010—more than ninety days after the filing of his first notice of appeal—Eastman filed a motion for extension of time to file the record on appeal. He lodged the record with this court on October 12, 2010, and tendered his brief on November 17, 2010

Rule 5(a) of the Arkansas Rules of Appellate Procedure—Civil makes it clear that the record on appeal “shall be filed with the clerk of the Arkansas Supreme Court and docketed therein within 90 days from the filing of the first notice of appeal.” Any extension of time to lodge the record must be obtained before the expiration of that ninety-day period. Ark. R. App. P.—Civ. 5(b)(1). The ninety days contemplated by Rule 5 begins to run from the filing of the first notice of appeal. *Farris v. Merrill Lynch Bank & Trust Co.*, 372 Ark. 373, 276 S.W.3d 257 (2008); *Conlee v. Conlee*, 366 Ark. 342, 235 S.W.3d 515 (2006). If a party fails to file the record within the ninety-day period provided under Rule 5(a), the party’s appeal is dismissed. *Farris, supra*; *Dalton v. First State Bank of Warren*, 374 Ark. 142, 288 S.W.3d 89 (2008) (failure to lodge the record within ninety days from the first notice of appeal is fatal when no extension of time has been requested and granted).

Here, Eastman’s first notice of appeal was filed on May 12, 2010; ninety days from that date would have been August 10, 2010. Eastman did not file his record with the clerk of this court until October 12, 2010, more than two months after it was due. In addition, although he attempted to obtain an extension of time to lodge the record, that request was not filed with the circuit court until September 23, 2010, which was also outside the ninety-

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day period following the filing of his notice of appeal. Accordingly, Eastman's appeal is dismissed.

Appeal dismissed.

ABRAMSON and MARTIN, JJ., agree.