

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA11-789

ARKANSAS STATE HIGHWAY
COMMISSION

APPELLANT

V.

THOMAS EWELL BURROW FAMILY
TRUST

APPELLEE

Opinion Delivered May 9, 2012

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. CV-2009-37-II]

HONORABLE VICKI SHAW COOK,
JUDGE

APPEAL DISMISSED

JOHN MAUZY PITTMAN, Judge

The Arkansas State Highway Commission appeals from an order of March 29, 2011, compensating appellee landowner in the amount of \$403,924 for land taken by eminent domain. Appellant argues that the landowner's experts failed to employ the proper measure of damages to determine just compensation and that substantial evidence did not support the judgment. We dismiss for lack of a timely notice of appeal.

Two judgments were entered in this case. The first judgment, which had been faxed to the circuit clerk's office, was file-marked March 21, 2011. The second judgment, identical to the first, was filed on March 29, 2011. On April 8, 2011, more than ten days after the faxed judgment was entered, appellant filed a motion for judgment notwithstanding the verdict or for a new trial. *See* Ark. R. App. P.–Civ. 4(b)(1). No notice of appeal was filed within thirty days of the March 21 judgment. *See* Ark. R. App. P.–Civ. 4(a). Because a



timely notice of appeal is necessary to invoke this court's jurisdiction, appellant's appeal would be properly before us only if the March 29 judgment were controlling.

Our jurisdiction thus depends upon determining when the order was entered. A judgment or order is entered and becomes effective when it is filed in accordance with Administrative Order No. 2(b). *See* Ark. R. App. P.–Civ. 4(d); Ark. R. Civ. P. 58. Administrative Order Number 2(b)(2) provides that a judgment is entered when stamped and filed by the clerk. Administrative Order No. 3 allows the clerk to accept transmission of a judgment or order by facsimile machine. The Order also directs the clerk to stamp the facsimile copy as filed on the date and time that it is received on the clerk's facsimile machine if during office hours; otherwise, it is to be marked as filed at the time that the office opens the next business day. The Order further provides that the date stamped on the facsimile copy shall control all appeal-related deadlines pursuant to Ark. R. App. P.–Civ. 4.

Appellant argues that it did not know that the judgment was entered on March 21 and that it should therefore be bound only by the March 29 order. The supreme court, noting that lawyers and litigants must exercise reasonable diligence in keeping up with the progress of a case, rejected this argument in *Francis v. Protective Life Ins. Co.*, 371 Ark. 285, 265 S.W.3d 117 (2007). Under the authorities cited above, the judgment was entered when it was received by the clerk via facsimile and stamped on March 21. Because no timely notice of appeal was filed from that judgment, we lack jurisdiction to hear the merits of this appeal.

Appeal dismissed.

ABRAMSON and BROWN, JJ., agree.

Maria Schenetzke, Deputy Chief Counsel, and *Charles Dirden*, for appellant.

Robert S. Tschiemer, *Justin Hurst*, and *Q. Byrum Hurst*, for appellees.