

**ARKANSAS COURT OF APPEALS**

DIVISION IV

No. CA12-781

ROBERT J. ALLEN

APPELLANT

V.

NADESHDA ALLEN

APPELLEE

Opinion Delivered May 1, 2013

APPEAL FROM THE SEBASTIAN  
COUNTY CIRCUIT COURT, FORT  
SMITH DISTRICT  
[NO. DR-11-490]

HONORABLE JIM D. SPEARS,  
JUDGE

APPEAL DISMISSED

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**PHILLIP T. WHITEAKER, Judge**

Appellant Robert Allen purports to appeal from an order of the Sebastian County Circuit Court, contending that the court erred in increasing his child-support obligation to his ex-wife, appellee Nadeshda “Nadea” Allen, and in modifying the terms of the parties’ prenuptial agreement. Because we lack a timely notice of appeal, we must dismiss Robert’s appeal.

Nadea filed a complaint for divorce against Robert seeking marital dissolution, custody, and child support. She also sought an award of property, alleging that the prenuptial agreement into which she and Robert had entered prior to the marriage was invalid because, as a native Russian speaker, she did not understand the document. Robert



answered, denying that the prenuptial agreement was invalid and asserting that an amendment to that agreement should be enforced as well.

The circuit court entered a decree of divorce on November 14, 2011, granting the divorce to Nadea and awarding child support in the amount of \$100 per week. In so doing, the court noted that it was deviating from the child-support chart set out in Administrative Order No. 10 and explained its reasons for doing so. Regarding the division of the marital property, the court found that, pursuant to the terms of the prenuptial agreement, the real property owned solely in Robert's name would belong to him, with the exception of two tracts of land.

Robert filed a motion for reconsideration on November 30, 2011, challenging the circuit court's deviation from the child-support chart and its interpretation of the amendment to the prenuptial agreement. Nadea filed a response to Robert's motion, and the circuit court held a hearing on the motion on February 13, 2012. In an order entered on April 4, 2012, the court not only denied Robert's motion for reconsideration but also increased his child-support obligation to \$150 a week. From that order, Robert filed a notice of appeal on April 18, 2012. He now argues that the circuit court erred in increasing the amount of child support he owed and in modifying the terms of the amendment to the prenuptial agreement.

We are unable to reach the merits of Robert's argument. His notice of appeal was untimely, thus depriving us of jurisdiction. Under Arkansas Rule of Appellate



Procedure—Civil 4(b)(1)(2012), Robert’s November 30, 2011 motion for reconsideration was a motion “to vacate, alter, or amend the judgment made no later than 10 days after entry of judgment.” Because the motion was timely,<sup>1</sup> it extended the time for filing the notice of appeal. Rule 4(b)(1) further states, however, that if the circuit court neither grants nor denies the motion within thirty days of its filing, the motion “shall be deemed denied by operation of law as of the thirtieth day, and the notice of appeal shall be filed within thirty (30) days from that date.”

In *Murchison v. Safeco Insurance Co.*, 367 Ark. 166, 177, 238 S.W.3d 11, 14 (2006), the supreme court held that the failure to act within the thirty-day period under Rule 4(b)(1) results in loss of jurisdiction in the circuit court to consider an appellant’s motion to set aside. In *Murchison*, the circuit court entered an order granting the appellee’s motion for summary judgment on December 16, 2004. The appellant filed a motion to set aside that order on December 20, 2004. The circuit court held a hearing on the motion to set aside on January 25, 2005, and entered an order granting the motion on February 1, 2005. The appellee then filed a motion to set aside the February 1 order, arguing that the circuit court lacked jurisdiction to enter it under Rule 4(b)(1). After a hearing, the circuit court entered a third order on April 8, 2005, in which it granted the appellee’s motion to set aside the February 1

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<sup>1</sup> Although the motion would appear on its face to be untimely, in that it was filed sixteen days after the divorce decree was entered, Arkansas Rule of Civil Procedure 6 provides that, when the period of time prescribed or allowed by the rules is less than fourteen days, “intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.” Therefore, excluding weekends and the Thanksgiving holiday that fell after the entry of the divorce decree, Robert’s motion was actually filed “within” ten days of the entry of the decree.



order and reinstated the December 16, 2004 order granting summary judgment. The appellant filed a notice of appeal on May 5, 2005. *Id.* at 168, 238 S.W.3d at 13.

On appeal, the supreme court noted that, although the appellant had timely filed his Rule 60 motion within ten days of the initial order granting summary judgment, the motion nonetheless fell within the deemed-denied provision of Rule 4(b)(1). By failing to act within thirty days, the circuit court

was without jurisdiction to hold the hearing on January 25, 2005, regarding appellant's motion to set aside, and to enter the order on February 1, 2005. The circuit court also lacked jurisdiction to enter the subsequent order filed on April 8, 2005, and the time for filing a notice of appeal from the December 16, 2004, order has long expired. The notice of appeal is therefore untimely. Accordingly, we lack jurisdiction to hear the appeal, and we dismiss the appeal. *See Seay v. C.A.R. Transp. Brokerage Co., Inc.*, 366 Ark. 527, 237 S.W.3d 48 (2006).

*Id.* at 171, 238 S.W.3d at 15; *see also Reimer v. Ragsdale*, 2011 Ark. App. 81 (circuit court lost jurisdiction to rule on appellant's timely Rule 60 motion when the court failed to act within thirty days; appellant's failure to file a timely notice of appeal after the deemed-denial date deprived this court of jurisdiction to consider his appeal).

The facts of the instant case fall squarely within the reasoning of *Murchison*. The circuit court entered its divorce decree on November 14, 2011. Although Robert filed a timely motion for reconsideration on November 30, 2011, the circuit court did not act on that motion within thirty days. The motion was therefore deemed denied on December 30, 2011, and the circuit court lost jurisdiction to act on the motion. Robert had thirty days, or until January 29, 2012, to file his notice of appeal. Because Robert did not file a notice of appeal until April 18, 2012, this court lacks jurisdiction, and Robert's appeal must be dismissed. *See*



*Reimer, supra* (citing *Ellis v. Ark. State Hwy. Comm'n*, 2010 Ark. 196, 238 S.W.3d 11) (lack of timely notice of appeal deprives this court of jurisdiction).

Appeal dismissed.

WALMSLEY and GLOVER, JJ., agree.

*Gean, Gean & Gean*, by: *Roy Gean, III*, for appellant.

*Michael Hamby*, for appellee.