

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CV-12-594

LINDA SUE LEE

APPELLANT

V.

SHERLYN E. JONES, SUSAN M.  
SCROGGINS, and PETIT JEAN STATE  
BANK

APPELLEES

**Opinion Delivered** May 29, 2013

APPEAL FROM THE PERRY  
COUNTY CIRCUIT COURT  
[NO. CV2009-36]

HONORABLE RICHARD MOORE,  
JUDGE

AFFIRMED

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**ROBIN F. WYNNE, Judge**

Linda Sue Lee has filed this pro se appeal arguing that the circuit court erred in finding that there was a binding settlement agreement in this case. We affirm.

Franklin Eugene Lee died in July 2008. Appellee Sherlyn Jones, his daughter, filed a complaint against appellant, Mr. Lee's widow, and appellee Susan Scroggins, Jones's sister, in April 2009, alleging that she and Scroggins were entitled to certain real property that their father owned before his marriage and that should pass by intestacy; that appellant and Scroggins had converted scrap metal from the estate; and that appellant had converted a tractor and bushhog that her father had assisted her in purchasing before his death.<sup>1</sup>

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<sup>1</sup>Appellee Petit Jean State Bank, as holder of a promissory note secured by certain real property at issue, filed a motion to intervene in the probate case in Perry County Circuit Court, which the circuit court granted.



A settlement conference was held via telephone with the circuit court on November 3, 2011. On November 23, 2011, in case numbers CV2009-36<sup>2</sup> and PR2010-24,<sup>3</sup> the circuit court entered an order of settlement, which stated,

THIS ORDER is entered pursuant to a letter from Michael U. Sutterfield, counsel for Linda Sue Lee (hereinafter called Lee) and the Estate of Franklin Eugene Lee pending in Hempstead County, Arkansas as case number PRO9-58-2 (hereinafter called Estate) to Herby Branscum, Jr., counsel for Sherlyn E. Jones (hereinafter called Jones), and Dale Lipsmeyer, counsel for Susan M. Scroggins (hereinafter called Scroggins), dated October 19, 2011 setting forth a proposal of settlement which was accepted by the other two parties by a letter from Branscum to Sutterfield dated October 24, 2011 and by a letter from Lipsmeyer to Sutterfield dated October 31, 2011. This Order of Settlement is also pursuant to a conference with the Court by said counsel which was recorded on November 3, 2011.

The court set out the terms of the settlement and stated that the parties had

settled all issues regarding these causes and any cause that the estate of Franklin Eugene Lee pending in Hempstead County, Arkansas being probate number PR09-58-2 may have against any of these parties and that the parties agree that all of these issues have been agreed to and that these causes as they relate to each other and the Perry County, Arkansas causes will be dismissed with prejudice[.]

On December 19, 2011, appellant filed a motion to set aside the settlement order; on December 20, 2011, she filed a motion for new trial. The motions asserted that the order of settlement was not representative of the terms to which appellant had agreed. Without citing any applicable rule, she asked that the order be set aside and for a jury trial. Appellees responded in opposition.

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<sup>2</sup>*Sherlyn E. Jones v. Susan M. Scroggins, Linda Sue Lee, and the Estate of Franklin E. Lee.*

<sup>3</sup>*In the Matter of the Estate of Franklin Eugene Lee.*



The circuit court held a hearing on March 22, 2012, and denied the motion to set aside in an order entered on March 28, 2012. Appellant filed a notice of appeal from the March order on April 23, 2012, and an amended notice of appeal on April 25, 2012.

Appellant argues that the circuit court erred in holding that there was an enforceable settlement agreement. We address the order from which the appeal was taken—the order refusing to set aside the order of settlement. Arkansas Rule of Civil Procedure 60 (2012) provides in part:

(a) *Ninety-Day Limitation.* To correct errors or mistakes or to prevent the miscarriage of justice, the court may modify or vacate a judgment, order or decree on motion of the court or any party, with prior notice to all parties, within ninety days of its having been filed with the clerk.

Rule 60(c) provides seven grounds for setting aside a judgment, other than a default judgment, after the ninety-day period provided in Rule 60(a) has expired. Appellant did not assert that any of the grounds enumerated in Rule 60(c) applied in this case.

Here, the order of settlement was entered on November 23, 2011, and the order denying the motion to set that order aside was entered on March 28, 2012—well after the ninety-day period provided in Rule 60(a) expired. The trial court loses jurisdiction to set aside or modify an order under Rule 60 if it does not do so within ninety days of the entry of the original order, even though petitioner’s motion may have been filed prior to expiration of that period. *Henson v. Wyatt*, 373 Ark. 315, 317, 283 S.W.3d 593, 595 (2008) (per curiam) (citing *Jordan v. Cir. Ct. of Lee Cnty.*, 366 Ark. 326, 235 S.W.3d 487 (2006); *City of Little Rock v. Ragan*, 297 Ark. 525, 763 S.W.2d 87 (1989)). Accordingly, we affirm the denial of appellant’s motion to set aside. See *Farr v. Farr*, 101 Ark. App. 315, 318, 276 S.W.3d 734, 736



Cite as 2013 Ark. App. 358

(2008) (holding that the trial court did not err in refusing to set aside its order because it lacked the jurisdiction to modify or vacate the order).

Affirmed.

HARRISON and WHITEAKER, JJ., agree.

*Linda Lee*, pro se appellant.

*Herby Branscum, Jr.*, for appellee Sherlyn E. Jones.

*Dale Lipsmeyer*, for appellee Susan Scroggins.

*Gill Ragon Owen, P.A.*, by: *Matthew B. Finch*, for appellee Petit Jean State Bank.