

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-12-814

DON FULLER

APPELLANT

V.

CITY OF KENSETT

APPELLEE

Opinion Delivered JUNE 5, 2013

APPEAL FROM THE WHITE
COUNTY CIRCUIT COURT
[NO. CV-11-731-1]

HONORABLE CRAIG HANNAH,
JUDGE

AFFIRMED

BILL H. WALMSLEY, Judge

Don Fuller appeals from the White County Circuit Court’s order granting City of Kensett’s motion to dismiss Fuller’s complaint challenging an annexation on the basis that it was untimely filed.¹ Fuller argues that the City intentionally violated the law to accomplish an illegal annexation and, in doing so, acted in bad faith and ultra vires. We affirm.

The White County Court entered an annexation order on September 14, 2011. On October 18, 2011, the City Council of Kensett passed Ordinance No. 2011-8, accepting the annexation. On November 16, 2011, Fuller filed a “Complaint for Relief from and Appeal of Kensett City Ordinance 2011-8 & Petition for Declaratory Relief” in the circuit court seeking to vacate the annexation on the basis that the subject land was not contiguous to the existing city limits.

¹ The appeal was previously before this court; however, rebriefing was ordered due to deficiencies in Fuller’s addendum. *Fuller v. City of Kensett*, 2013 Ark. App. 199.



The City moved to dismiss Fuller’s complaint as untimely, and the circuit court granted the motion because Fuller failed to contest the annexation within thirty days from the order pursuant to Ark. Code Ann. § 14-40-604. Fuller filed a timely notice of appeal.

Arkansas Code Annotated section 14-40-604(a)(1) (Repl. 1998) provides that, after the order for annexation has been entered, any interested person may institute a proceeding in the circuit court within a period of thirty days to challenge the annexation. One method for obtaining review of a county-court order annexing territory to a municipality is through filing a complaint challenging the annexation in circuit court. *See Thompson v. City of Bauxite*, 2012 Ark. App. 580. A complaint in circuit court must be filed within thirty days of entry of the annexation order. *Id.*

Fuller filed a complaint in circuit court, directly challenging the annexation. While neither party cites *Thompson, supra*, it is directly on point. In *Thompson*, the final order of the county court granting annexation was entered on December 4, 2007, but Thompson’s complaint was not filed in circuit court until July 31, 2008, i.e., more than thirty days after entry of the annexation order by the county judge. The circuit court dismissed Thompson’s complaint, finding that it was barred by the statute limiting the time for filing jurisdictional claims challenging annexation. This court affirmed because Thompson’s complaint was filed beyond the time permitted by Ark. Code Ann. § 14-40-604(a)(1).

Here, the annexation order was entered on September 14, 2012, and Fuller did not file a complaint in circuit court until November 16, 2012. Fuller’s complaint, filed sixty-three



Cite as 2013 Ark. App. 370

days after the county court entered the annexation order, was untimely and thus properly dismissed by the circuit court.

Affirmed.

PITTMAN and WOOD, JJ., agree.

Law Office of Paul D. Love, by: *Paul D. Love*, for appellant.

Lightle, Raney, Streit & Streit, LLP, by: *Donald P. Raney*, for appellee.