

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA10-486

DAVID REIMER

APPELLANT

V.

ELDON RAGSDALE, SANDRA
RAGSDALE, TIMOTHY L. VENABLE,
and ACCURATE HOME INSPECTION
SERVICE OF ARKANSAS, INC.

APPELLEES

Opinion Delivered FEBRUARY 2, 2011

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. CV-09-467-3]

HONORABLE THOMAS LYNN
WILLIAMS, JUDGE

DISMISSED

RITA W. GRUBER, Judge

Appellant David Reimer bought a house from appellees Sandra and Eldon Ragsdale for \$178,000. After he bought the house, appellant discovered various defects, including water damage; mold; rotten insulation in the attic; and defects in the structure, subflooring, and roof. Appellant filed a complaint against appellees alleging breach of contract, nondisclosure, misrepresentation, fraud, fraudulent concealment, and constructive fraud.¹ Appellees filed a motion to dismiss, which the circuit court granted. Appellant filed a motion for relief from judgment pursuant to Rule 60 of the Arkansas Rules of Civil Procedure thirteen days later, and the court denied appellant's motion. Appellant brings this appeal,

¹The complaint also included defendant Timothy Venable, individually and doing business as Accurate Home Inspection Service of Arkansas, but the court dismissed him without prejudice pursuant to Rule 41(a) of the Arkansas Rules of Civil Procedure before the notice of appeal was filed.

contending that the circuit court erred in dismissing his complaint; in failing to provide that the dismissal was without prejudice; and in denying his Rule 60 motion for relief. We dismiss this appeal for lack of jurisdiction.

The timely filing of a notice of appeal is an issue affecting the jurisdiction of this court to decide the appeal. *Hausman v. Throesch*, 104 Ark. App. 113, 289 S.W.3d 493 (2008). A notice of appeal must be filed within thirty days of the entry of the order from which the appeal is taken. Ark. R. App. P.–Civ. 4(a) (2010). The only exceptions to this thirty-day filing requirement are found in Rule 4(c) (pertaining to election cases) and Rule 4(b). Rule 4(b) provides for an extension of time in cases where a timely motion is filed pursuant to Arkansas Rules of Civil Procedure 50(b), 52(b), 59(a), or “any other motion to vacate, alter, or amend the judgment made no later than 10 days after entry of judgment.” Ark. R. App. P.–Civ. 4(b) (2010). This language includes motions filed pursuant to Rule 60 so long as they are filed no later than ten days after entry of judgment. *Murchison v. Safeco Ins. Co.*, 367 Ark. 166, 170, 238 S.W.3d 11, 14 (2006). If a timely motion is filed, the notice of appeal must be filed within thirty days from entry of the order disposing of the last motion outstanding. Ark. R. App. P.–Civ. 4(b)(1). If, however, the circuit court does not decide 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.” *Id.*

Here, the court entered its judgment and order of dismissal on November 5, 2009.

Appellant filed a Rule 60 motion on November 18, 2009. The court entered an order denying appellant's motion on January 14, 2010. Appellant filed a notice of appeal on February 11, 2010. We compute the time period for securing an appeal in accordance with Rule 6(a) of the Arkansas Rules of Civil Procedure. Pursuant to Rule 6(a), "[w]hen the period of time prescribed or allowed is less than fourteen (14) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation." Ark. R. Civ. P. 6(a) (2010); *see also Whitmer v. Sullivent*, 373 Ark. 327, 284 S.W.3d 6 (2008) (applying Ark. R. Civ. P. 6(a) to calculation of time for postjudgment motions under Ark. R. App. P.–Civ. 4(b)). Thus, in this case, we do not count November 7 (Saturday), November 8 (Sunday), November 14 (Saturday), or November 15 (Sunday). Appellant timely filed his Rule 60 motion on November 18, 2009; therefore his motion falls within the ambit of Rule 4(b)(1), including the deemed-denied provision.

The court did not rule on appellant's motion until January 14, 2010. But because appellant's motion was timely filed on November 18, 2009, appellant's motion was deemed denied on December 18, 2009, at which time the court lost jurisdiction to rule on appellant's motion. *Murchison*, 367 Ark. at 171, 238 S.W.3d at 15. Appellant's notice of appeal was due within thirty days of the motion's deemed denial, or by January 17, 2010. Appellant did not file a notice of appeal until February 11, 2010. Because we cannot acquire jurisdiction without a timely filed notice of appeal, we are without jurisdiction to hear this case. *Ellis v. Ark. State Highway Comm'n*, 2010 Ark. 196, 363 S.W.3d 321.

Dismissed.

VAUGHT, C.J., and ABRAMSON, J., agree.