

**ARKANSAS COURT OF APPEALS**

DIVISION I  
No. CV-18-737

BETTY RORIE

APPELLANT

V.

CLAY MAXEY FORD, LLC, D/B/A  
CLAY MAXEY AND FORD MOTOR  
COMPANY

APPELLEES

**Opinion Delivered:** March 13, 2019

APPEAL FROM THE BOONE  
COUNTY CIRCUIT COURT  
[NO. 05CV-16-147]

HONORABLE GAIL INMAN-  
CAMPBELL, JUDGE

AFFIRMED

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**KENNETH S. HIXSON, Judge**

On June 6, 2016, appellant Betty Rorie filed a complaint for damages against appellees Clay Maxey Ford, LLC, and Ford Motor Company, alleging fraud and breach of warranty in relation to Rorie’s purchase of an allegedly defective vehicle. On October 6, 2016, the trial court entered an order dismissing Rorie’s complaint for failure to obtain service on the appellees within 120 days. On March 1, 2018, the trial court entered an order setting aside the October 6, 2016 dismissal order.<sup>1</sup> On May 14, 2018, the trial court entered an order vacating the March 1, 2018 order, finding on further review that it lacked jurisdiction to set aside the October 6, 2016 dismissal order. Rorie now appeals from the May 14, 2018 order, arguing that because the appellees had been properly served with the

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<sup>1</sup>Although the March 1, 2018 order states that Rorie had filed a motion to set aside the dismissal order, no such motion appears in the record. In the March 1, 2018 order, the trial court gave no explanation for setting aside the dismissal order.

complaint, the trial court erred in vacating its March 1, 2018 order that had set aside the October 6, 2016 dismissal order. We affirm.

Critical to this case is Rorie's failure to appeal from the October 6, 2016 order that dismissed her complaint. Arkansas Rule of Appellate Procedure—Civil 4 states that “a notice of appeal shall be filed within thirty (30) days from the entry of the judgment, decree or order appealed from.” Ark. R. App. P.—Civ. 4(a). The timely filing of certain motions may extend the time for filing a notice of appeal. See Ark. R. App. P.—Civ. 4(a), (b). In this case, Rorie did not timely appeal from the October 6, 2016 dismissal order, nor did she file a motion to vacate the order or any other motion that would have extended the time for filing the notice of appeal. In this appeal, Rorie argues that the October 6, 2016 dismissal order was entered in error because the appellees had been properly served. That argument would have been cognizable had Rorie timely appealed from October 6, 2016 dismissal order. However, because Rorie declined to appeal from that order, this argument comes too late.

The only order that Rorie has timely appealed from is the May 14, 2018 order that vacated the March 1, 2018 order that had set aside the October 6, 2016 dismissal order.<sup>2</sup> In the May 14, 2018 order being appealed, the trial court vacated its March 1, 2018 order based on its finding that it lacked jurisdiction to set aside the October 6, 2016 dismissal

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<sup>2</sup>We recognize that Arkansas Rule of Appellate Procedure—Civil 2(b) provides that “[a]n appeal from any final order also brings up for review any intermediate order involving the merits and necessarily affecting the judgment.” However, this rule does not encompass review of the October 6, 2016 dismissal order because that was not an intermediate order; it was a final order from which an appeal must be taken. See *Mikkelson v. Willis*, 38 Ark. App. 33, 826 S.W.2d 830 (1992).

order. In this appeal, Rorie does not challenge the trial court’s finding that it lacked jurisdiction to set aside the October 6, 2016 dismissal order or offer any argument as to why the trial court had jurisdiction to do so. Instead, Rorie simply argues that she had timely served the defendants—an argument which should have been made in a direct appeal from the October 6, 2016 order.<sup>3</sup>

The March 1, 2018 order that purported to set aside the October 6, 2016 order was entered seventeen months after the original order was entered. Arkansas Rule of Civil Procedure 60(a) allows a court to “modify or vacate a judgment, order or decree . . . within ninety days of its having been filed with the clerk.” After ninety days, the court’s power to vacate or modify a judgment is limited by Rule 60(c) to reasons such as fraud. In its March 1, 2018 order, the trial court gave no reason why it had jurisdiction to set aside the October 6, 2016 order seventeen months after it was entered, and it subsequently concluded that it lacked jurisdiction. In this appeal, Rorie makes no argument that any of the limited exceptions set forth in Rule 60(c) are applicable.

It is well established that it is within the discretion of the trial court to determine whether it has jurisdiction under Rule 60 to set aside a judgment. *Grand Valley Ridge, LLC v. Metro. Nat’l Bank*, 2012 Ark. 121, 388 S.W.3d 24. In this case, the trial court ultimately concluded that it lacked jurisdiction to set aside the October 6, 2016 order dismissing Rorie’s complaint against the appellees. Rorie does not argue on appeal that this was an abuse of discretion, nor does she give any reason as to why the trial court had jurisdiction

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<sup>3</sup>We observe that the record does not contain proof that the appellees were timely served with the complaint.

to set aside the dismissal order. Therefore, the May 14, 2018 order reinstating the October 6, 2016 dismissal order is affirmed.

Affirmed.

ABRAMSON and VIRDEN, JJ., agree.

*TS Branch Law Firm PLLC*, by: *Tabatha Branch*, for appellant.

*Goheen Legal Services, LLC*, by: *R. Jake Goheen*; and *Jones Law Firm*, by: *F. Parker Jones III*, for appellee Clay Maxey Ford, LLC.

*Wright, Lindsey & Jennings LLP*, by: *Michael A. Thompson* and *Antwan D. Phillips*, for appellee Ford Motor Company.