

**FIRST STATE BANK OF SPRINGDALE,  
Arkansas v. Charles W. SHAVER and Darlena SHAVER,  
Husband and Wife**

82-303

648 S.W.2d 453

Supreme Court of Arkansas  
Opinion delivered March 28, 1983

**APPEAL & ERROR — ATTEMPT TO APPEAL FROM DENIAL OF MOTION TO AMEND — TIMELINESS.** — Although appellees contend that this appeal should be dismissed because the notice of appeal was not given within 30 days of the entry of judgment, ARAP Rule 4 (a), nor within 10 days from the date of the entry of the order denying the motion to amend, ARAP Rule 4 (d), nevertheless, where appellant is not attempting to appeal from any holding in the original judgment but seeks to appeal only from the order denying the motion to amend, which may have decided new questions, and where the motion to dismiss, to which

there has been no response, does not make it clear that the notice of appeal was necessarily too late, the motion must be denied.

Motion to Dismiss Appeal; motion denied.

*John C. Everett of Everett & Whitlock, for appellant.*

No response for appellees.

PER CURIAM. The appellees have moved to dismiss this appeal on the ground that the notice of appeal was not filed within the time allowed by ARCP Rule 4. We decline to dismiss the appeal. Jurisdiction is in this Court pursuant to Rule 29 (1) (c).

The final decree was entered on September 2, 1982. On September 13, 1982, a motion to amend the decree was filed pursuant to ARCP Rules 59 (a) (6) and (8). On October 7, 1982, the trial court denied the motion to amend. Notice of appeal was given on November 4, 1982. Appellees contend that the appeal should be dismissed because the notice of appeal was not given within 30 days of the entry of judgment, ARAP Rule 4 (a), nor was it given within 10 days from the entry of the order denying the motion to amend. ARAP Rule 4 (d). The motion would be well taken if the appellant is attempting to appeal from any holding in the original judgment. However, the notice of appeal provides that the appellant seeks to appeal only from the order denying the motion to amend, which may have decided new questions. Since the motion to dismiss, to which there has been no response, does not make it clear that the notice of appeal was necessarily too late, the motion must be denied.