

CENTURY LIFE INSURANCE COMPANY v. BROOKS.

Opinion delivered March 28, 1932.

1. COURTS—APPEAL FROM MUNICIPAL COURT.—The circuit court properly dismissed an appeal from the municipal court where it was not lodged in the circuit court within thirty days after the judgment was rendered.
2. COURTS—APPEAL FROM MUNICIPAL COURT.—An appeal from the municipal court of Hot Springs was properly dismissed by the circuit court where the applicant did not file an affidavit that the appeal was not taken for the purpose of delay, but that justice might be done him.

Appeal from Garland Circuit Court; *Earl Witt*, Judge; affirmed.

J. D. Shackelford, for appellant.

Felix L. Smith, for appellee. ◦

BUTLER, J. Suit was brought in the municipal court of Hot Springs by the appellee against the appellant to recover on two insurance policies issued by the appellant on the life of Elnore Brooks, appellee being the beneficiary named in the policies. The appellee recovered judgment in that court on June 17, 1931, and on the same day the appellant filed its motion and bond for an appeal to the circuit court. The transcript of the proceedings in the municipal court was not lodged in the circuit court until October 30, 1931. A motion to dismiss the appeal was filed, and, upon hearing, the court sustained the motion and dismissed the appeal. The action of the court in this respect is here for review.

The suit was brought in the municipal court under act No. 2 of the Acts of 1917, creating the municipal court in and for Garland County, which act, by § 7, provided that appeals from the municipal court should be taken and the transcripts of appeal lodged in the office of the clerk of the circuit court within thirty days after judgment was rendered, and not thereafter; and by § 8 of said act, the general laws relating to procedure in justices of the peace courts, not inconsistent with the provisions of the act or of the general laws, should apply to proceedings in the municipal court.

One of the prerequisites for an appeal is that the applicant, or some person for him, shall make and file an affidavit that the appeal is not taken for the purpose of delay, but that justice may be done him. No such affidavit was made, and the court properly dismissed the appeal. *Merrill v. Johnson*, 19 Ark. 647; *Middleton v. Clardy*, 166 Ark. 342.

The judgment is affirmed.
