

Lee HUFF *v.* Lucious ARTER  
and Willie Jackson

04-1325

203 S.W.3d 638

Supreme Court of Arkansas  
Opinion delivered February 17, 2005

APPEAL & ERROR — MOTION TO DISMISS — GRANTED — The record on appeal had to be filed by December 7, 2004, and appellant tendered a partial record to the supreme court on December 6, 2004, along with a petition for a writ of *certiorari* to complete the record and a motion to proceed in *forma pauperis*, where the motion to proceed in *forma pauperis* was denied in a January 13, 2005, letter from the court that directed appellant to pay the filing fees by January 20, 2005, and appellant did not pay the fees, nor was the complete record filed by January 20, 2005, the appeal was dismissed for failure to timely file the record.

Motion to Dismiss; granted.

*Appellant, pro se*

No response.

**P**ER CURIAM. Lucious Arter filed a motion to dismiss Lee Huff's appeal from summary judgment entered by the Lee County Circuit Court. The order entering summary judgment was filed August 10, 2004, and Huff filed a notice of appeal on September 8, 2004. Arter asserts that the appeal must be dismissed because the notice of appeal is defective and because the record was not timely filed. Under Ark. R. App. P.—Civ. 5, the record must be filed within ninety days of the date that the notice of appeal was filed. That meant Huff had to file the record by December 7, 2004.

[1] Huff tendered a partial record to this court on December 6, 2004, along with a petition for a writ of *certiorari* to complete the record and a motion to proceed in *forma pauperis*. The motion to proceed in *forma pauperis* was denied in a January 13, 2005, letter from this court that directed Huff to pay the filing fees by January 20, 2005. Huff did not pay the fees, and the complete record was not filed by January 20, 2005. His appeal is therefore dismissed for failure to timely file the record. *U.S. Bank v. Milburn*, 352 Ark. 144.

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100 S.W.3d 674 (2003). Because we dismiss the appeal based on a failure to timely file the record, we do not reach the issue of the alleged defects in the notice of appeal.

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