

Robert McCOY & Mary Domineck McCoy v.
CARTER JONES TIMBER CO. & Tina Brasel McCoy

07-807

261 S.W.3d 467

Supreme Court of Arkansas
Opinion delivered September 6, 2007

APPEAL & ERROR — MOTION FOR RULE ON CLERK. — Where appellants' motion for extension of time to file the record was not filed with the circuit clerk until after the ninety-day deadline for filing the record, and where the attorney failed in his responsibility to monitor the filing prior to the deadline, the supreme court clerk was correct in refusing to docket the appeal, and the motion for rule on clerk was denied.

Motion for Rule on Clerk; denied.

Jimmie Lee Wilson, for appellants.

Richard Lamar Roper, for appellee Carter Jones Timber Co.

Willie E. Perkins, Jr., for appellee Tina Brasel McCoy.

PER CURIAM. Appellants, Robert McCoy and Mary Domineck McCoy, by and through their attorney, have filed a motion for rule on clerk.

Judgment was entered in this case on October 13, 2006, and a timely notice of appeal was filed on December 8, 2006. Because the record could not be completed before the expiration of the ninety-day period from the date of the first notice of appeal, a motion for extension was filed on March 13, 2007. However, the circuit court denied the motion for being untimely. The motion for extension was not filed with the circuit clerk before the expiration of the ninety-day deadline for filing the record, March 8, 2006. Because the motion for extension was untimely, a proper order extending the time could not have been properly filed.

[1] Under Ark. R. App. P.–Civ. 5(b), any order extending the time to complete the transcript must be entered before the expiration of the period for filing prescribed by Ark. R. App. P.–Civ. 5(a); under Rule 5(a), this is “90 days from the filing of the first notice of appeal.” It was the duty of the attorney to monitor the filing prior to the deadline, and the attorney failed to do so in this case. Therefore, the supreme court clerk was correct in refusing to docket the appeal, and the motion for rule on clerk is denied. *See Davis v. Williamson*, 353 Ark. 225, 114 S.W.3d 216 (2003). This case shall be stricken from the docket, the jurisdiction of the court terminated, and the filing fee forfeited. *See Ark. Sup. Ct. R. 2-2(d)*.

Motion denied.