

Gladys FARRIS and Julie Burris *v.* MERRILL LYNCH BANK
and TRUST COMPANY (CAYMAN) LIMITED

08-114

276 S.W.3d 257

Supreme Court of Arkansas
Opinion delivered February 14, 2008

MOTIONS — MOTION TO DISMISS APPEAL GRANTED. — Where more than ninety days had passed since appellants filed their notice of appeal, no extension of time to file the record had been granted, and the record had not been lodged with the supreme court's clerk, the supreme court granted appellee's motion to dismiss and dismissed the appeal.

Motion to Dismiss Appeal; motion granted; appeal dismissed.

PER CURIAM. In this probate matter, the Sevier County Circuit Court entered an order on September 19, 2007, dismissing the appeal for lack of jurisdiction. On October 1, 2007, a notice of appeal from the September 19 order was filed on behalf of Appellants Gladys Farris and Julie Burris. Thereafter, on December 12, 2007, a motion for extension of time to lodge the record was filed in the circuit court. The partial record contains no order extending time for filing the record. Citing *Voyles v. Voyles*, 311 Ark 181, 842 S.W.2d 21 (1992), Appellee now moves to dismiss arguing that the failure to lodge the record within ninety days of the filing of the notice of appeal requires dismissal. Appellee argues its motion to dismiss should be granted for failure to comply with Ark. R. App. P. – Civil 5 (2007).

Rule 5 provides in pertinent part:

- (a) When filed. The record on appeal shall be filed with the clerk of the Arkansas Supreme Court and docketed therein within 90 days *from the filing of the first notice of appeal*, unless the time is extended by order of the circuit court as hereinafter provided. When, however, an appeal is taken from an interlocutory order under Rule 2(a)(6) or (7), the record must be filed with the clerk of the Supreme Court within thirty (30) days from the entry of such order.

Id. (emphasis added).

The ninety days contemplated by Rule 5 begins to run from the filing of the first notice of appeal. *Conlee v. Conlee*, 366 Ark.

342, 235 S.W.3d 515 (2006). If a party fails to file the record within the ninety-day period provided under Rule 5(a), the party's appeal is dismissed. *Id.*

[1] Here, more than ten days have passed since Appellee's motion to dismiss was filed and there is no response from Appellants. Ark. Sup. Ct. R. 2-1(d). More than ninety days have passed since Appellants filed their notice of appeal, no extension of time to file the record has been granted, and the record has not been lodged with our clerk. Therefore, we grant Appellee's motion and dismiss this appeal.

Motion granted; appeal dismissed.
