

Terry CAMP, Hugh CAMP and John CAMP
v. Mo TUCKER

84-174

674 S.W.2d 938

Supreme Court of Arkansas
Opinion delivered September 17, 1984

1. TIME — FILING NOTICE OF APPEAL AFTER DENIAL OF POST JUDGMENT MOTION. — A party has ten days following denial of a post judgment motion to file notice of appeal from the original judgment, but the time cannot be reduced below the 30 days allowed to file notice of appeal. [Ark. R. App. P. 4(d).]
2. TIME — PRESENTATION OF POST JUDGMENT NOTICE TO TRIAL COURT. — A post judgment motion must be presented to the court within 30 days; if the court cannot hear it within 30 days, the party must request the court to set it for a definite date. [Ark. R. App. P. 4(c).]
3. TIME — POST JUDGMENT MOTION — EFFECT OF DELAY ON TIME FOR FILING NOTICE OF APPEAL. — Unless the court sets a hearing date or takes it under advisement during the 30 days, the ten days for filing notice of appeal commences to run 30 days after the motion is filed. [Ark. R. App. P. 4(c).]

Motion to Dismiss Appeal; granted.

Crumpler, O'Conner & Wynne, by: *John W. Unger, Jr.*,
for appellants.

Thomason & Thomason, by: *Byron Thomason*, for
appellee.

PER CURIAM. The judgment was filed for record on October 5, 1983. The motion to set aside the judgment had been filed the day before entry of the judgment. The motion was therefore timely. The order denying the motion was not filed until February 7, 1984. Appellants filed notice of appeal on March 1, 1984. Arkansas R. App. P. 4 (d) provides that a party has ten days following denial of a post judgment motion to file notice of appeal from the original judgment provided the time cannot be reduced below the 30 days allowed to file notice of appeal. Additionally, Ark. R. App. P. 4 (c) requires the party filing the motion to present it to the court within 30 days. If the court cannot hear it within 30 days, the party must request the court to set it for a definite

date. Unless the court sets a hearing date or takes it under advisement during the 30 days, the ten days for filing notice of appeal commences to run 30 days after the motion is filed. Therefore the motion to dismiss the appeal is granted.
