

Charlotte DEPRIEST *v.* T. David CARRUTH

CR 98-1005

974 S.W.2d 471

Supreme Court of Arkansas
Opinion delivered September 24, 1998

APPEAL & ERROR — MOTION FOR RULE ON CLERK — GRANTED. —

Where appellant's notice of appeal from the order, which denied appellant's motion to set aside a default judgment, was filed within the thirty-day period prescribed by Ark. R. App. P.—Civil 4(a), and where the tender of the record was also timely, appellant's motion for rule on the clerk was granted.

Motion for Rule on the Clerk; granted.

Charles Peden, for appellant.

No response.

PER CURIAM. Pursuant to Ark. Sup. Ct. R. 2-2 (1998), appellant, Charlotte DePriest, by her attorney, Charles Peden, filed a motion for rule on the clerk. On July 9, 1997, a default judgment was filed in favor of the appellee, T. David Carruth. On July 28, 1997, the appellant moved to set aside the default judgment. The motion to set aside the default judgment was deemed denied thirty days after its filing, and the order denying the motion was entered on April 20, 1998. Subsequently, the appellant tendered the record on appeal on August 10, 1998. However, on August 11, 1998, the Supreme Court Clerk notified the appellant that the tender was untimely pursuant to Ark. R. Civ. P. 52(b) (1998), which requires certain posttrial motions to be made within ten days of entry of judgment.

[1] The appellant contends that the record was timely tendered pursuant to Ark. R. Civ. P. 55(c) (1998), which provides the exclusive basis for moving to set aside a default judgment. We agree with the appellant that Ark. R. App. P.—Civil 4(b), (c), and (d) (1998), do not contemplate such a motion and that the time constraints mandated by those provisions are inapplicable. However, pursuant to Ark. R. App. P.—Civil 4(a), the appellant must file a notice of appeal within thirty days of the expiration period, here, April 20, 1998, and the record must be tendered within ninety days of the timely filing of a notice of appeal. Appellant's entry of notice of appeal, twenty-one days after the entry of the order denying the motion to set aside the judgment, complies with the time constraints of Ark. R. App. P.—Civil 4(a) because it was filed within the thirty-day window. Likewise, the tender of the record on August 10, 1998, was timely. Accordingly, we grant appellant's motion for rule on the clerk and order the Supreme Court Clerk to accept the record.