

Patricia OSBURN *v.* Bryan BUSBEE
d/b/a Busbee Construction

99-1097

1 S.W.3d 441

Supreme Court of Arkansas
Opinion delivered October 14, 1999

APPEAL & ERROR — NOTICE OF APPEAL NOT TIMELY FILED — MOTION TO DISMISS GRANTED. — Where appellant's motion for amendment of judgment or for a new trial was not filed within ten days after the entry of judgment, it did not toll the thirty-day time limit for filing a notice of appeal; therefore, appellant's notice of appeal, filed fifty-eight days after the trial court entered its original order with the clerk, was untimely; because of appellant's untimely filing of her notice of appeal, the appeal was dismissed.

Motion to dismiss; granted.

Charles R. Chadwick, for appellant.

Jim D. Johnson, P.A., by: *Jim Johnson*, for appellee.

PER CURIAM. Appellee Bryan Busbee, d/b/a Busbee Construction ("Busbee"), filed a Motion to Dismiss the appeal of Appellant Patricia Osburn ("Osburn") for failure to include language in her Notice of Appeal and Designation of Record that she had made financial arrangements with the court reporter for payment of the record. We dismiss Appellant's appeal, but on different grounds.

Appellee states in his motion that this appeal originates from a Washington County Circuit Court matter in which that court ruled that he was entitled to a judgment and lien against Appellant for repairs made to certain properties owned by Appellant. The trial court entered its order on June 22, 1999, and Appellee filed a Motion for Amended Judgment or for New Trial on July 8, 1999. The trial court denied this motion in an order entered August 3, 1999. Appellant then filed her Notice of Appeal and Designation of Record on August 19, 1999.

Appellant's Notice of Appeal was not timely filed. Appellant filed her Motion for Amendment of Judgment or for New Trial

pursuant to Ark. R. Civ. P. 52 and 59 respectively. These rules require that these motions be filed within ten days after the entry of the judgment in order for the court to consider them and to toll the thirty-day time limit for filing a Notice of Appeal. *See Benedict v. National Bank of Commerce*, 329 Ark. 590, 951 S.W.2d 562 (1997). Here, Appellant filed her motion on July 8, 1999, sixteen days after the original order was filed. As such, Appellant's time for filing her Notice of Appeal was not tolled by these motions. Therefore, Appellant's Notice of Appeal, filed fifty-eight days after the trial court entered its original order with the clerk, was untimely.

[1] Because of Appellant's untimely filing of her Notice of Appeal, Appellant's appeal is dismissed.
