

Sandra Lee BOLIN and Nathan A. Bolin *v.* William L.
GRIGGS, M.D., and Robert S. Heusinkveld, M.D.

95-1286

928 S.W.2d 339

Supreme Court of Arkansas
Opinion delivered September 23, 1996¹
Dissenting opinion delivered September 23, 1996

ROBERT L. BROWN, Justice. The case involves two identical orders of summary judgment — one signed by the trial court on May 16, 1995, and filed on that same date, and the second signed by the trial court on May 15, 1995, and filed on May 19, 1995. The Bolins, as appellants, filed their notice of appeal on June 16, 1995, which is timely only if the order filed on May 19, 1995, is valid. On January 16, 1996, we remanded the case for correction of the record for the purpose of having the trial court determine which of the two orders of summary judgment is the valid order. On June 5, 1996, the trial court entered an order which appears to state that both orders are valid.

This court first denied a motion for rule on the clerk on July 8, 1996, on the basis that the notice of appeal was untimely, and now a motion for reconsideration has been filed. I would grant the

¹ *Reporter's note:* The per curiam order in this case was not published.

motion for reconsideration and the motion for rule on the clerk. First, I can find no law that illuminates which order takes priority under these circumstances. Secondly, I perceive no manipulation at work here. This is not a case where an identical order was filed later in order to extend the period of appeal. Rather, here the May 19 order was actually signed by the trial court a day earlier than the May 16 order.

It is entirely reasonable to conclude that when the identical May 19 order was entered, it superseded and took precedence over the order filed three days earlier. Again, we have no case law on this point. If the trial court is unable to give guidance as to which of its orders takes precedence, how is the appellants' counsel to know? I respectfully dissent.

ROAF, J., joins.
