

SUPREME COURT OF ARKANSAS

No. 11-925

TOM HAMMER AND SUE HAMMER,
INDIVIDUALLY AND AS TRUSTEES
OF THE TOM HAMMER
REVOCABLE LIVING TRUST U/D
MARCH 19, 2001, AND CO-
TRUSTEES OF THE SUE HAMMER
REVOCABLE TRUST U/D MARCH
19, 2001; DAVID ARNETT; JANE
ARNETT; JAMES RUPPEL; NANCY
RUPPEL; MARK STERLING; AND
DAVID POWELL

PETITIONERS

VS.

AVIATION CADET MUSEUM, INC.,
RESPONDENT

Opinion Delivered October 13, 2011

PETITION FOR WRIT OF
CERTIORARI FOR ADDITIONAL
TIME TO COMPLETE THE
RECORD

PETITION DENIED; APPEAL
DISMISSED.

PER CURIAM

Petitioners Tom Hammer and Sue Hammer, individually and as trustees of the Tom Hammer Revocable Living Trust U/D March 19, 2001, and co-trustees of the Sue Hammer Revocable Trust U/D March 19, 2001; David Arnett; Jane Arnett; James Ruppel; Nancy Ruppel; Mark Sterling; and David Powell purport to appeal from an order entered by the Circuit Court of Carroll County modifying a previous injunction to allow respondent Aviation Cadet Museum, Inc., to land and depart small, light aircraft exclusively from the north end of its airfield.¹ Before the court is petitioners' request for writ of certiorari seeking

¹ In a former appeal, this court affirmed the circuit court's decision finding that respondent's use of the airfield was a nuisance and enjoining it from using the airfield for



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additional time to complete the record. For the reasons discussed herein, we deny the petition and dismiss the appeal.

The circuit court entered its final order modifying the previous injunction on February 4, 2011. Petitioners filed a timely notice of appeal from the order on March 4, 2011. In accordance with Rule 5(a) of the Arkansas Rules of Appellate Procedure—Civil, the record was due to be lodged with the clerk of this court in ninety days from the filing of the notice of appeal, which fell on June 2, 2011. Petitioners filed a motion in circuit court to extend the time for filing the record on May 2, 2011. In this motion, the petitioners requested “[a]ccording to Rule 5(b)(2) the maximum time available in this case is 7 months (210 days) from the entry of judgment, which is September 30, 2011.” The circuit court granted the motion on May 18, 2011, giving petitioners “an additional one hundred twenty (120) days in which to file the record on appeal, up to and including September 30, 2011.”

Pursuant to Rule 5(b)(3), on September 20, 2011, petitioners filed with our clerk a petition for writ of certiorari and partial record, seeking an additional thirty days to lodge the complete record on appeal. Because the time for filing the record expired before the petition was filed, we deny the petition, and we must also dismiss the appeal.

Rule 5(b)(2) states that “[i]n no event shall the time be extended more than seven (7) months from the date of the entry of the judgment or order, or from the date on which a timely postjudgment motion is deemed to have been disposed of under Rule 4(b)(1), whichever is later.” In this case, no postjudgment motion was filed. Therefore, the latest date

purposes of allowing airplanes to land and depart from the airstrip. *Aviation Cadet Museum, Inc. v. Hammer*, 373 Ark. 202, 283 S.W.3d 198 (2008).



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for the record to be filed was on September 4, 2011, seven months from the entry of the final order on February 4, 2011. Although the circuit court's May 19, 2011 order extended the time for the record to be lodged until September 30, 2011, a circuit court does not have jurisdiction to extend the time for filing the record beyond the seven months contemplated by Rule 5(b)(2). *Midwest Terminals of Toledo, Inc. v. Palm*, 2011 Ark. 81, 378 S.W.3d 761; *In re Estate of Wilkinson*, 311 Ark. 311, 843 S.W.2d 316 (1992) (per curiam). This court may extend the time for filing the record beyond the seven-month period, if the petition to do so is filed within the seven months. *Bulsara v. Watkins*, 370 Ark. 461, 261 S.W.3d 461 (2007) (per curiam). Here, the petition was filed on September 20, 2011, well past the seven-month deadline.

This court has recognized some circumstances where an exception may be appropriate, however, such as cases involving the termination of parental rights where a right to appeal is implicated. *Sisler v. Bramlett*, 2009 Ark. 404, 372 S.W.3d 318 (per curiam); see, e.g., *Childers v. Ark. Dep't of Human Servs.*, 360 Ark. 517, 202 S.W.3d 529 (2005) (per curiam) (refusing to dismiss an appeal in a termination-of-parental-rights case where the parent had failed to timely lodge the record); *Linker-Flores v. Ark. Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004) (holding that indigent parents have a right to an appeal from a judgment terminating parental rights). We have also acknowledged that extraordinary circumstances may exist in other situations not involving the termination of parental rights. See, e.g., *Thomas v. Ark. State Plant Bd.*, 254 Ark. 997-A, 497 S.W.2d 9 (1973) (court found extraordinary circumstances and unavoidable casualty to exist where a tornado destroyed counsel's home



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and law office, thus warranting the granting of a motion for rule on clerk in a civil case). However, no such circumstances are alleged to exist here. It would appear that the due date was simply miscalculated.

The record in this case was not filed in a timely manner. We thus dismiss the appeal, because the timely filing of the record on appeal is a jurisdictional requirement for perfecting an appeal. *Hickson v. Ark. Dep't of Human Servs.*, 357 Ark. 577, 182 S.W.3d 483 (2004) (per curiam); *Coggins v. Coggins*, 353 Ark. 431, 108 S.W.3d 588 (2003) (per curiam); *Morris v. Stroud*, 317 Ark. 628, 883 S.W.2d 1 (1994).

Writ denied; appeal dismissed.