

SUPREME COURT OF ARKANSAS

No. 11-790

KENNETH G. MIDDLETON AND
LYNN CARL MIDDLETON
APPELLANTS

V.

GERALDINE LOCKHART, MILDRED
M. ANDERSON, JOYCE M. HENSON,
AND JESSIE J. BREWER
APPELLEES

Opinion Delivered December 8, 2011

MOTION TO DISMISS APPEAL AND
MOTION TO EXTEND TIME FOR
APPELLEES' RESPONSE BRIEF

MOTION TO DISMISS DENIED.
MOTION TO EXTEND TIME
GRANTED.

PER CURIAM

Appellants Kenneth G. Middleton and Lynn Carl Middleton appeal from an order of the Newton County Circuit Court denying summary judgment.

Kenneth G. Middleton was convicted of first-degree murder in Missouri for the death of his wife, Katherine. A judgment was also entered against him in the Missouri wrongful-death suit in the amount of \$1,350,000. Shortly after his conviction but before the Missouri wrongful-death suit had been adjudicated, Kenneth conveyed property he owned in Arkansas to his brother, Lynn Carl. This sale was found to be fraudulent and set aside by decree on May 25, 1999. *See Middleton v. Lockhart*, 344 Ark. 572, 43 S.W.3d 113 (2001). Appellees Geraldine Lockhart, Mildred M. Anderson, Joyce M. Henson and Jessie J. Brewer filed a petition for writ of scire facias on May 13, 2009, to allow more time to sell the property in an effort to satisfy the Missouri judgment. Appellants moved for summary judgment, alleging that Arkansas Code Annotated section 16-65-501(f) does not allow scire facias to revive a



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judgment after ten years from the date of the rendition of the judgment. The circuit court dismissed this motion through an order entered on April 21, 2011.

Appellants filed a consolidated motion for clarification on May 10, 2011. They then filed a notice of appeal on May 17, 2011. No order was entered on appellants' motion before June 9, 2011, and so it was deemed denied. Appellees argue that a second notice of appeal was required after the denial of the consolidated motion for clarification and move this court to dismiss appellants' claim. Because there is no merit to appellees' argument, we deny their motion.

Arkansas Rule of Appellate Procedure –Civil 4 sets out the time for filing a notice of appeal. Subsections (b)(1) and (2) of that rule deal with the extension of time to file based on certain postjudgment motions. Not only is a motion for clarification not outlined in Rule 4(b)(1) as one of the motions permitted, nowhere does the rule state that a notice of appeal filed before a motion is disposed of is no longer valid. In fact, Rule 4(b)(2) states:

A notice of appeal filed before disposition of any of the motions listed in paragraph (1) of this subdivision shall be treated as filed on the day after the entry of an order disposing of the last motion outstanding or the day after the motion is deemed denied by operation of law. Such notice is effective to appeal the underlying judgment, decree, or order. A party who also seeks to appeal from the grant or denial of the motion shall within thirty (30) days amend the previously filed notice.

Ark. Rule App. P. –Civ 4(b)(2) (2011). Therefore, the notice of appeal in this case is effective.

Because appellants have no objections to appellees' motion for extension of time to file their response brief, we hereby allow appellees thirty (30) days from this date to file their



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response brief.

Motion to dismiss denied. Motion to extend time to file response brief granted.