

SUPREME COURT OF ARKANSAS

No. 10-1207

MICHAEL A. HAYES,
APPELLANT,

VS.

SANDRA L. HAYES OTTO,
APPELLEE,

Opinion Delivered December 16, 2010

MOTION FOR RULE ON
THE CLERK

GRANTED.

PER CURIAM

Appellant Michael A. Hayes, *pro se*, has filed a motion for rule on clerk, asserting that he erroneously included the wrong order on his notice of appeal causing the clerk of this court to reject his appeal as untimely filed. Appellant filed a motion for modification of child support in circuit court, and the court entered an order on the motion on August 30, 2010. On September 13, 2010, appellant filed a motion to amend the August 30, 2010 order, which was denied by order entered on September 30, 2010. On October 14, 2010, appellant filed a notice of appeal and stated that he was appealing from the order entered on August 30, 2010. When he attempted to lodge the record, however, the clerk of this court refused to accept it, finding that the notice of appeal was filed more than thirty days from the date of entry of the August 30, 2010 order and was, thus, untimely.

Appellant moves for rule on the clerk and argues that it was an error to state that he appealed from the August 30, 2010 order. Instead, he argues that he appealed from the September 30, 2010 order and that his October 14, 2010 notice of appeal was therefore

timely. Appellant is correct that his notice of appeal was timely. According to Arkansas Rule of Appellate Procedure–Civil 4(b), any motion to alter or amend a judgment, filed within ten days of entry of judgment shall extend the time for filing a notice of appeal. Ark. R. App. P.–Civ. 4(b) (2010). The appealing party must file a notice of appeal within thirty days of entry of the order disposing of the last motion outstanding. *Id.* In this case, the last motion outstanding was the motion to amend the August 30, 2010 order, which was disposed of by order entered on September 30, 2010. Appellant’s October 14, 2010 notice of appeal was therefore timely filed.¹

Motion granted.

¹While appellant argued in his motion for rule on clerk that the notice of appeal included the wrong date, this is not a typical scrivener’s error case. Rather, the only question before the court at this time is whether appellant’s notice of appeal, filed on October 14, 2010, was timely. For the reasons stated in this opinion, we find that it was.