

SUPREME COURT OF ARKANSAS

No. 10-886

O.C. DUFFY,

APPELLANT,

VS.

RUTH LITTLE,

APPELLEE,

Opinion Delivered April 14, 2011

APPEAL FROM THE WOODRUFF
COUNTY CIRCUIT COURT,
NO. CV-2009-46,
HON. RICHARD PROCTOR, JUDGE,

DISMISSED.

KAREN R. BAKER, Associate Justice

Appellant O.C. Duffy appeals from the order of the Woodruff County Circuit Court granting appellee Ruth Little’s motion to dismiss without prejudice under Rule 41(a) of the Arkansas Rules of Civil Procedure. On October 30, 2008, appellee filed a breach-of-contract action pro se in the district court of Augusta, Arkansas. Appellee sought \$5000 in damages related to renovations that she hired appellant to perform on her house. A hearing was held on the matter on March 19, 2009. The district court found in favor of appellee and awarded damages in the amount of \$5000, plus costs. The judgment was entered on April 17, 2009.

On April 16, 2009, appellant filed a notice of appeal purporting to appeal the case from district court to the Woodruff County Circuit Court and attached a certified copy of the district court proceedings. Appellee filed a document titled “answer” on April 22, 2009,

in which she stated her future intention to contest the appeal. On August 28, 2009, the circuit court granted appellee's petition for leave to proceed in forma pauperis, and appellee filed her complaint. Appellant filed a motion to dismiss on October 26, 2009, asserting that the case should be dismissed because appellee failed to comply with our District Court Rule 9(c) by not filing her complaint within thirty days after appellant perfected his appeal.

On November 2, 2009, appellee filed a motion for voluntary dismissal under Rule 41(a) of the Arkansas Rules of Civil Procedure. The circuit court held a hearing on December 11, 2009, and entered a letter order on March 19, 2010, granting appellee's motion for dismissal without prejudice. Appellant filed a motion to set aside this order on April 15, 2010, arguing that the circuit court erred in not requiring strict compliance with the mandatory procedural requirements for appeals from district court set forth in Rule 9(c). The circuit court denied the motion for reconsideration on May 7, 2010. From this order, appellant brings this appeal. This appeal requires the court to interpret Arkansas District Court Rule 9. Accordingly, jurisdiction is proper pursuant to Ark. Sup. Ct. R. 1-2(b)(6) (2010).

Appellant's sole argument on appeal is that because appellee failed to follow Rule 9 of the District Court Rules, the circuit court was without subject-matter jurisdiction to enter a dismissal pursuant to Rule 41(a) of the Arkansas Rules of Civil Procedure. However, before we can examine appellee's compliance with Rule 9, we must first determine whether appellant perfected his appeal to circuit court in order to vest jurisdiction with that court.

This issue is not raised in the parties' briefs on appeal, but subject-matter jurisdiction is an issue that can, and indeed must, be raised by this court sua sponte. *Brock v. Townsell*, 2009 Ark. 224, 309 S.W.3d 179. If the circuit court lacked jurisdiction, this court is likewise without jurisdiction to hear this appeal. *Id.*

The issue before the court is the construction of District Court Rule 9, which governs appeals taken from inferior courts to circuit court. Rule 9 states, in pertinent part, as follows:

A party may take an appeal from a district court *by filing a certified copy of the district court's docket sheet*, which shows the awarding of judgment and all prior entries, with the clerk of the circuit court having jurisdiction over the matter. Neither a notice of appeal nor an order granting leave to appeal shall be required. The appealing party shall serve a copy of the certified docket sheet upon counsel for all other parties, and any party proceeding pro se, by any form of mail that requires a signed receipt.

Ark. Dist. Ct. R. 9(b) (2009) (emphasis added). This court has consistently held that an appellant must comply with Rule 9 in order for a circuit court to acquire jurisdiction. *Johnson v. Dawson*, 2010 Ark. 308, 365 S.W.3d 913.

The provisions of Rule 9 are mandatory and jurisdictional. *Id.* We have held that the 2008 amendments to Rule 9, which took effect on January 1, 2009, and were in effect when appellant attempted to perfect his appeal from the district court order, require the filing of a certified copy of the docket sheet in order to perfect an appeal to circuit court. *Id.* In *Johnson*, we concluded that strict compliance with Rule 9(b) required "filing a certified copy of the district court's docket sheet" and that filing the appeal transcript was insufficient. *Id.* at 9, 365 S.W.3d at 918. Specifically, we stated that "by not filing a certified copy of the

docket sheet from the district court proceedings, [the appellant] failed to perfect his appeal, and the circuit court erroneously concluded that it possessed jurisdiction to entertain the appeal.” *Id.* at 9, 365 S.W.3d at 918.

Here, appellant attempted to perfect his appeal by filing a notice of appeal and attaching the appeal transcript that had been certified by the district court clerk. Appellant notably did not file a certified copy of the docket sheet, and the docket sheet was not included in the certified transcript from the district court. Based on the plain language of Rule 9, we hold that the circuit court lacked jurisdiction to entertain this appeal; it then follows that this court lacks jurisdiction as well. *Id.* at 10, 365 S.W.3d at 918. Accordingly, the circuit court’s order has no effect, and the judgment of the district court stands. Dismissed.