

SUPREME COURT OF ARKANSAS

No. 09-408

MONTE RED and MICHELLE RED
APPELLANTS

V.

U.S. BANK

APPELLEE

Opinion Delivered February 4, 2010

APPEAL FROM THE SALINE
COUNTY CIRCUIT COURT
[NO. CV07-534-2]

HON. GARY M. ARNOLD, JUDGE

APPEAL DISMISSED; COURT OF
APPEALS REVERSED.

JIM HANNAH, Chief Justice

Monte and Michelle Red appeal the January 23, 2008 order of the Saline County Circuit Court denying several motions that attempted to litigate an action already brought to final judgment. The Reds assert that the circuit court erred in failing to allow them to assert and develop additional defenses in the concluded action. The circuit court was without jurisdiction to consider the motions or enter an order thereon. We dismiss this appeal.

The appeal of this matter was first heard in the court of appeals. In an unpublished decision, the court of appeals affirmed the circuit court and held that the Reds failed to challenge the summary judgment, which precludes consideration of their appeal. *See Red v. U.S. Bank, N.A.*, 2009 Ark. App. 237 (unpublished). The Reds petitioned this court for review, which we granted. When we grant a petition for review, we consider the appeal as



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though it had been originally filed in this court. *See, e.g., Guffey v. Counts*, 2009 Ark. 410.

The action before us was commenced when appellee U.S. Bank, N.A., filed a Complaint Forcible Entry and Detainer on June 14, 2007. U.S. Bank sought possession of the Reds' home, based on a deed acquired in a prior statutory foreclosure sale. *See Ark. Code Ann. §§ 18-50-101 to -117 (Repl. 2003 & Supp. 2007)*. On July 9, 2007, the Reds filed an answer, setting out several affirmative defenses and alleging that the foreclosure sale was not conducted "in accordance with the law." On July 27, 2007, U.S. Bank filed a motion for summary judgment, alleging that it held proper title to the property and that there was no genuine issue of material fact to be litigated in the action. The Reds did not respond to the motion for summary judgment. The circuit court granted summary judgment in an order entered on September 7, 2007.¹ The Reds never filed a notice of appeal to appeal the summary-judgment order. Further, the Reds did not otherwise challenge the summary judgment.

Summary judgment concludes the rights of the parties to the action and is a final, appealable order. *Stacks v. Marks*, 354 Ark. 594, 598, 127 S.W.3d 483, 484 (2003). Because no appeal was perfected, the judgment became final. *See, e.g., Ark. State Univ. v. Prof'l Credit Mgmt.*, 2009 Ark. 153 at 3, 299 S.W.3d 535, 536. Upon expiration of time permitted under the rules to file a notice of appeal, the circuit court lost jurisdiction to hear the motions or to enter an order on the motions. *See, e.g., Murchison v. Safeco Ins. Co. of Ill.*, 367 Ark. 166, 168,

¹The Reds' current counsel asserts that prior counsel were served and did not respond to the motion for summary judgment.



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238 S.W.3d 11, 13 (2006). Because the circuit court lacked jurisdiction, this court also lacks jurisdiction. *Koonce v. Mitchell*, 341 Ark. 716, 719, 19 S.W.3d 603, 605 (2000). Accordingly, we dismiss the appeal.

Appeal dismissed; court of appeals reversed.

Matthew Henry, for appellant.

Burns Law Firm, P.A., by: *Thomas Burns*, for appellee.