

SUPREME COURT OF ARKANSAS

No. 09-1334

K&S DEVELOPMENT, LLC
APPELLANT

V.

KRISTIN J. THOMSEN, CARL
BECKER, AND VICKI BECKER
APPELLEES

Opinion Delivered January 14, 2010

MOTION FOR RULE ON CLERK

DENIED.

PER CURIAM

Appellant K&S Development, Inc. (“K&S”), by and through its attorney, Benjamin D. Brenner, has filed a motion for rule on clerk. The circuit court in this case entered its final amended order on July 22, 2009. After obtaining an extension of time to file the notice of appeal pursuant to Ark. R. App. P.–Civ. 4(b)(3), K&S filed its notice of appeal on September 2, 2009. According to Rule 5(a) of our Rules of Appellate Procedure –Civil, K&S’s record on appeal was due to be lodged with the Supreme Court clerk’s office by December 1, 2009.

Counsel for K&S was notified by the Garland County Circuit Clerk that the record had been completed around November 17, 2009. According to the motion for rule on clerk, counsel, who was out of state at the time, instructed a paralegal to retrieve the record and lodge it with this court. The paralegal failed to do so, however, and the record was not lodged at that time. The paralegal left counsel’s firm’s employment on November 25, 2009.



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Counsel discovered the error and attempted to lodge the record with this court on December 9, 2009. Our clerk refused to accept the untimely appeal.

K&S now urges this court to grant its motion for rule on clerk due to what it calls “unavoidable casualty.” We are unable to grant the motion. In criminal cases, under Arkansas Rule of Appellate Procedure–Criminal 2(e), a petitioner may seek to appeal an order, in some circumstances, despite having failed to comply with the time requirements imposed by the rules governing criminal appeals. No comparable rule exists to perfect an appeal in civil cases. 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. *See 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 and law office, thus warranting the granting of a motion for rule on clerk in a civil case.). However, no such circumstances exist here. *See Sisler v. Bramlett*, 2009 Ark. 404, 372 S.W.3d 318 (per curiam) (No unavoidable casualty existed



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where counsel inadvertently miscalculated the due date because of medical problems.).

It was ultimately counsel's responsibility to ensure that the record had been retrieved from the Garland County Circuit Clerk's office and properly lodged with this court. The failure to ensure that this court's deadlines are not properly met does not constitute an "unavoidable casualty" that would warrant granting a motion for rule on clerk.

Motion denied.

BOWEN, J., not participating.

Benjamin D. Brenner, for appellant.

No response.