

Cite as 2019 Ark. 40
SUPREME COURT OF ARKANSAS
No. CV-18-567

KE'ONDRA M. CHESTANG
APPELLANT

V.

RICHARD MAYS, CHAIRMAN,
ARKANSAS PAROLE BOARD; AND M.
GRAYDON, PAROLE OFFICER,
CUMMINS UNIT

APPELLEES

Opinion Delivered: February 14, 2019

PRO SE APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, SIXTH
DIVISION; MOTION FOR
ENFORCEMENT OF STATUTE
[NO. 60CV-18-840]

HONORABLE TIMOTHY DAVIS FOX,
JUDGE

DISMISSED; MOTION MOOT.

RHONDA K. WOOD, Associate Justice

Appellant Ke'ondra M. Chestang appeals from an order denying his pro se petition for writ of mandamus and a subsequent motion for modification of that order. Chestang filed the petition for writ against the chairman of the Arkansas Parole Board and a parole officer. Chestang has additionally filed a motion for enforcement of statute that contains arguments he also raised in petition to the circuit court. Because Chestang's notice of appeal was untimely, we dismiss the appeal and find the motion is moot.

Chestang's mandamus petition sought an order directing compliance with what he alleged were required procedures concerning his transfer eligibility. The circuit court denied the petition on February 15, 2018. Under Arkansas Rule of Appellate Procedure—Civil 4 (2017), Chestang was required to file his notice of appeal within thirty days of the

date of the entry of the order. Chestang filed a notice of appeal on April 10, 2018, which was fifty-four days after the order. Absent an effective notice of appeal, this court lacks jurisdiction to consider the appeal. *Worsham v. Day*, 2017 Ark. 192, 519 S.W.3d 699.

Although Chestang did file a motion to amend the order denying his writ of mandamus under Arkansas Rule of Civil Procedure 52(b), it was not timely. Rule 52(b) requires a party to file a motion to amend within ten days after entry of the judgment. If timely filed, the motion would extend the time for filing a notice of appeal. Ark. R. App. P.–Civ 4(b). Because the period is less than fourteen days, the time for filing a Rule 52 motion is calculated excluding weekends and holidays in accord with Rule 6(a) of the Arkansas Rules of Civil Procedure. See *Davis v. Davis*, 2016 Ark. 64, 487 S.W.3d 803. In this case, the last day for filing a motion under Rule 52 was March 2, 2018. Chestang did not file his motion until March 12, and thus, it was not timely and did not extend the time for filing his notice of appeal.

Dismissed; motion moot.

HART, J., dissents.

JOSEPHINE LINKER HART, Justice, dissenting. I dissent. While the majority is correct that March 2, 2018 is the last day that Chestang could have filed his Rule 52(b) motion with the circuit court, and that Chestang’s motion here shows a filemark of March 12, 2018, the majority is incorrect to dispose of Chestang’s appeal without more. Instead, this court should remand for a hearing pursuant to Rule 6(e) of the Arkansas Rules of Appellate Procedure–Civil. This would allow the parties to make a record and the circuit

court to make a determination as to the date that Chestang's Rule 52(b) motion was actually delivered to the Pulaski County Circuit Court.

“If any difference arises as to whether the record truly discloses what occurred in the circuit court ... the appellate court ... on its own initiative, may direct that the omission or misstatement be corrected, and if necessary, that a supplemental record be certified and transmitted.” Ark. R. App. P. 6(e)—Civil. “Though a filing mark is evidence of the filing of the document, the mark in and of itself is not an essential element of the act.” *Henard v. St. Francis Election Comm.*, 301 Ark. 459, 461, 784 S.W.2d 598, 599 (1990). “The reason is that while it is proper for the clerk when he receives papers to indorse thereon the date of the filing, such indorsement is not the filing, but is simply an evidence of such filing. A paper is said to be filed when it is *delivered* to the proper officer and by him received to be kept on file.” *Hogue v. Hogue*, 137 Ark. 485, 208 S.W. 579, 582 (1919) (emphasis added).

While the filemark on Chestang's Rule 52(b) motion shows a date of March 12, 2018, Chestang's signature on that motion reflects a date of February 28, 2018, nearly two weeks earlier, and notably before the March 2, 2018 deadline. If Chestang's motion was signed and mailed from the Cummins Unit on February 28, 2018, it would not be surprising to learn that the motion was delivered to the Pulaski County Courthouse, barely an hour's drive away, by March 2, 2018. On the other hand, a stretch of nearly two weeks seems to be a questionably long period of time for the same delivery. A court has a duty to determine whether or not it has jurisdiction to consider the matter before it, and these

circumstances invite inquiry. I would remand for a hearing to settle the issue of when Chestang's Rule 52(b) motion was actually delivered to the circuit court.

Ke'Ondra M. Chestang, pro se appellant.

Leslie Rutledge, Att'y Gen., by: *Reid P. Adkins*, Ass't Att'y Gen., for appellee.