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Arkansas Supreme Court Cures Defect in Thousands of Orders in Two Arkansas Counties

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A recent decision by the Arkansas Court of Appeals temporarily “call[ed] into question the effectiveness of thousands of orders in this state.” *In re Admin. Order No. 2(b)(2)*, 2016 Ark. 172, at 2 (per curiam). Before the court was a judgment that was stamped “RECORDED” by the Baxter County Circuit Clerk’s office. *Havner v. Ne. Ark. Elec. Coop.*, 2016 Ark. App. 149, at 3. Neither party questioned the effectiveness of the judgment. *See id.* (“Whether an order is final and appealable is a matter going to our jurisdiction; jurisdiction is an issue that we are obligated to raise on our own motion.”).

The Arkansas Court of Appeals, however, noted that a judgment is entered—and potentially appealable¹—only when the circuit clerk “stamp[s] or otherwise mark[s] it with the date and time and the word ‘*filed*.’” *Id.* at 4 (emphasis added) (quoting Ark. Sup. Ct. Admin. Order No. 2(b)(2)); *see Nat’l Home Cntrs, Inc. v. Coleman*, 370 Ark. 119, 120-21, 257 S.W.3d 862, 863 (2007) (explaining that a ruling from the bench is not final and appealable until it is “reduced to

¹ Rule 2 of the Arkansas Rules of Appellate Procedure–Civil outlines the types of civil orders, such as final judgments, from which an appeal may be taken.

writing and filed of record”). Because the order before it had been “*recorded* but never filed,” the court held, it was not final or appealable. *Havner*, 2016 Ark. App. 149, at 5. The court dismissed the appeal without prejudice. *Id.*

Petitioning for rehearing by the Arkansas Court of Appeals or review by the Arkansas Supreme Court, the appellant attached an affidavit by the Baxter County Circuit Clerk, who affirmed that the software utilized by the clerk’s office since February 2015 stamped all documents as “recorded” and that the judgment was considered “filed” by the clerk’s office. Appellant’s Petition for Rehearing at Ex. 3, *Havner v. Ne. Ark. Elec. Coop.*, No. CV-15-468 (Ark. Ct. App. Mar. 14, 2016); Appellant’s Petition for Review at Ex. 3, *Havner v. Ne. Ark. Elec. Coop.*, No. CV-16-219 (Ark. Sup. Ct. Mar. 14, 2016). It turned out that the Pike County Circuit Clerk, too, had been stamping documents as “recorded” rather than “filed” since May 2013. *In re Admin. Order No. 2(b)(2)*, 2016 Ark. 172, at 1-2 (per curiam). All of the orders purportedly entered in Baxter County for a year and Pike County for nearly three years were, therefore, potentially “in limbo,” and the time period for appealing these orders might not have begun to run. *See Deer/Mt. Judea Sch. Dist. v. Kimbrell*, 2013 Ark. 393, at 4-5, 7-8, 430 S.W.3d 29, 35 (explaining that claims “remain[] ‘in limbo’ until all outstanding claims [a]re either finally adjudicated or [a]re otherwise no longer a bar to finality and a final order [i]s entered”); *see also* Ark. R. App. P.–Civil 4(a) (providing that a notice of appeal must be filed within 30 days of the “*entry* of the judgment, decree or order appealed from”) (emphasis added).

The Arkansas Supreme Court responded with a per curiam order that chastised clerks for failing to comply with the court’s “clear directive . . . to stamp or otherwise mark judgments, decrees and orders . . . with the word ‘filed’” but decreed that all orders “marked ‘recorded,’ or

‘presented’ and ‘recorded,’ for the period beginning May 1, 2013, and ending April 14, 2016,” would be deemed “filed.” *In re Admin. Order No. 2(b)(2)*, 2016 Ark. 172, at 1-2 (per curiam). From April 14th on, however, clerks are expected to stamp all judgments, decrees, and orders with the word “filed.” *Id.* As for the *Havner* parties, although the Arkansas Court of Appeals declined to reconsider its holding, the Arkansas Supreme Court granted review. Letter Order, *Havner v. Ne. Ark. Elec. Coop.*, No. CV-15-468 (Ark. Ct. App. Apr. 6, 2016); Letter Order, *Havner v. Ne. Ark. Elec. Coop.*, No. CV-16-219 (Ark. Sup. Ct. Apr. 21, 2016). The appeal is now pending before the Arkansas Supreme Court. Assuming the judgment passes muster apart from the clerk’s stamp, the court will be able to consider the appeal.