



www.QGTlaw.com

Deficient Notice of Appeal Results in Dismissal

October 2017

By: Sarah Keith-Bolden

Contact:

Sarah Keith-Bolden
501.379.1789
sbolden@QGTlaw.com

Although Arkansas's rules of appellate procedure have been liberalized in recent years to eliminate certain "frustrating procedural pitfalls,"¹ it is still critical for attorneys to pay close attention to procedural rules when handling an appeal. The need for caution is illustrated by a recent decision in which the Arkansas Court of Appeals dismissed an appeal because it concluded that the circuit court did not have jurisdiction to enter the only order that was referenced in the notice of appeal.²

In *Tidwell v. Rosenbaum*, the original order that the appellant attempted to appeal was entered on September 19, 2016.³ The appellant timely moved to vacate and for a new trial on September 21, 2016.⁴ The circuit court did not rule on the motion for a new trial within 30 days, and it was deemed denied on October 21, 2016.⁵ Six days later, on October 27, 2016, the circuit court entered an order denying the motion for a new trial.⁶

¹ See *White v. Davis*, 352 Ark. 183, 187 n.4, 188, 99 S.W.3d 409, 412 n.4, 413 (2003) (Brown, J., dissenting) ("Over the past decade, a trend has been established in [the Arkansas Supreme Court] to eliminate procedural pitfalls that resulted in no decision on the merits of a case. Those pitfalls were frustrating to both the bench and the bar.").

² *Tidwell v. Rosenbaum*, 2017 Ark. App. 490, at 1.

³ *Id.* at 1.

⁴ *Id.*; see Ark. R. Civ. P. 59(b) ("A motion for a new trial shall be filed not later than 10 days after the entry of judgment.").

⁵ *Tidwell*, 2017 Ark. App. 490, at 1; see Ark. R. Civ. P. 59(b) ("If the court neither grants nor denies the motion [for a new trial] within 30 days of the date on which it is filed or treated as filed, it shall be deemed denied as of the 30th day.").

⁶ *Tidwell*, 2017 Ark. App. 490, at 1.

The appellant timely filed a notice of appeal on November 21, 2016, within 30 days of the deemed denial of the motion for new trial.⁷ The notice, however, referenced only the “order refusing new trial” and not the original September 19, 2016 order or the October 21, 2016 deemed denial of the motion for new trial.⁸ On appeal, the appellee did not challenge the contents of the notice of appeal or the appellate court’s jurisdiction.⁹

Dismissing the appeal *sua sponte* for lack of jurisdiction, the court of appeals held that the notice of appeal did not perfect the appeal because “orders not mentioned in the notice of appeal are not properly before [the appellate court].”¹⁰ While “absolute strict compliance with [Rule 3(e) of the Arkansas Rules of Civil Procedure, which outlines the content of a notice of appeal,] is not always necessary. . . Arkansas appellate courts do require substantial compliance.”¹¹ Since the notice of appeal referenced only the October 27, 2016, order denying a new trial—which the circuit court had no jurisdiction to enter more than 30 days after the motion for a new trial was filed—the notice of appeal was ineffective and the appellate court lacked jurisdiction.¹² The appeal was dismissed without consideration of the merits of the appellant’s arguments.¹³

⁷ *Id.*; see Ark. R. App. P.—Civ. 4(b)(1) (“Upon timely filing in the circuit court of a motion . . . for a new trial under Rule 59(a), the time for filing a notice of appeal shall be extended for all parties. The notice of appeal shall be filed within thirty (30) days from entry of the order disposing of the last motion outstanding. However, if the circuit court neither grants nor denies the motion within thirty (30) days of its filing, the motion shall be deemed denied by operation of law as of the thirtieth day, and the notice of appeal shall be filed within thirty (30) days from that date.”).

⁸ *Tidwell*, 2017 Ark. App. 490, at 2; see Ark. R. App. P.—Civ. 3(e) (“A notice of appeal or cross-appeal shall. . . designate the judgment, decree, order or part thereof appealed from. . .”).

⁹ Appellee’s Br., *Tidwell v. Rosenbaum*, Case No. CV-17-110 (May 30, 2017).

¹⁰ *Tidwell*, 2017 Ark. App. 490, at 3.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*