

SUPREME COURT OF ARKANSAS

No. 12-24

BARRY JEWELL

APPELLANT

V.

KEITH MOSER; SCOTT FLETCHER;
JEWELL, MOSER, FLETCHER &
HOLLEMAN, P.A.; JMF ENTERPRISES,
INC.; and DEBRA WORLEY,
ADMINISTRATRIX FOR THE ESTATE
OF MICHEAL SIMS

APPELLEES

Opinion Delivered June 14, 2012APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CV2003-6891]

HON. TIMOTHY D. FOX, JUDGE

APPEAL DISMISSED.**JIM GUNTER, Associate Justice**

Appellant Barry Jewell appeals from the denial of his motion for entry of satisfaction of judgment. For reversal, he contends that as one of four shareholders in the law firm of Jewell, Moser, Fletcher & Holleman (JMFH), he was a joint obligor and that when two of the shareholders, Scott Fletcher and John Holleman, were released, the debt was satisfied. Our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(a)(7), as this is a second or subsequent appeal following an appeal that has been decided by this court. We do not reach the merits of appellant's argument because we dismiss this appeal for lack of jurisdiction.

This is the fifth occasion we have had before us some aspect of this litigation. See *Jewell v. Fletcher*, 2012 Ark. 132 (*Jewell II*); *Jewell v. Fletcher*, 2010 Ark. 195, ___ S.W.3d ___ (*Jewell I*); *Sims v. Moser*, 373 Ark. 491, 284 S.W.3d 505 (2008) (*Sims II*); *Sims v. Fletcher*, 368 Ark. 178, 243 S.W.3d 863 (2006) (*Sims I*). The case began when appellant filed a complaint for the

judicial dissolution of JMFH on June 19, 2003, in Pulaski County Circuit Court. Micheal Sims, who subsequently passed away and whose claim was pursued by his estate (hereinafter referred to as “Sims”), obtained a judgment against JMFH on June 3, 2004, in Lonoke County Circuit Court. Sims sought payment for his judgment against the assets of JMFH in dissolution. The Pulaski County Circuit Court denied Sims’s claim without a hearing and distributed the funds remaining in the court registry to the shareholders of JMFH as part of the dissolution. On appeal, this court reversed because the circuit court’s denial of Sims’s claim without a hearing was a violation of due process. *Sims II, supra*. On remand, the circuit court held a hearing and approved Sims’s claim against JMFH (not the individual shareholders) but gave Sims no outlet to execute his claim. The circuit court specifically denied Sims’s request to unwind the previous court orders disbursing JMFH’s funds to its shareholders and denied Sims’s request that JMFH’s shareholders be required to refund previously disbursed funds. In *Jewell I, supra*, we again reversed and remanded on this issue and held that due process required that the circuit court fashion a mechanism for paying Sims’s claim.

Thereafter, Sims reached an oral settlement agreement with Fletcher and Holleman. On June 14, 2011, a hearing was held on remand. Sims informed the court of the settlement with Fletcher and Holleman, and the circuit court entered an order reflecting that the remaining two shareholders, appellant and Keith Moser, were jointly and severally liable to Sims in the amount of \$848,757.62 plus interest, representing the total amount of Sims’s claim against JMFH. The court’s order specifically noted that the judgment against appellant and Moser “shall be subject to set-off in the event Sims receives further funds to be applied against

the claim amount.” On June 15, 2011, Sims executed a release and settlement agreement with Fletcher and Holleman, and the circuit court entered orders dismissing those parties with prejudice on July 25, 2011.

On September 23, 2011, appellant filed a motion for entry of satisfaction of judgment arguing that the four shareholders were treated as joint obligors on Sims’s claim and that the release with prejudice of Fletcher and Holleman resulted in satisfaction of the entire obligation. Appellant asked the circuit court to declare the judgment satisfied pursuant to Ark. Code Ann. § 16-65-602(c) (Repl. 2005). Sims responded to the motion, denying that appellant was entitled to satisfaction and affirmatively pleading that any payment received from Fletcher and Holleman would be applied to the outstanding balance of the claim against JMFH.

On October 26, 2011, appellant filed a notice of appeal from the denial of his motion for entry of satisfaction, maintaining that because the circuit court failed to rule on it within thirty days, it was deemed denied on October 24, 2011. Also on October 26, 2011, several hours after appellant filed his notice of appeal, the circuit court entered an order denying appellant’s motion for entry of satisfaction of judgment. Appellant never filed a notice of appeal from the court’s October 26 order; however, on October 28, 2011, appellant filed a “supplement to his notice of appeal” asking that the “order filed at 3:51 p.m. on October 26, 2011” be added to his designation of record.

As a threshold matter, we must address whether we have jurisdiction over this appeal where appellant has not filed a notice of appeal from the October 26 order denying his

motion. Rule 3(e) of the Arkansas Rules of Appellate Procedure—Civil provides in pertinent part:

A notice of appeal or cross–appeal shall specify the party or parties taking the appeal; shall designate the judgment, decree, order or part thereof appealed from and shall designate the contents of the record on appeal. The notice shall also contain a statement that the appellant has ordered the transcript, or specific portions thereof, if oral testimony or proceedings are designated, and has made financial arrangements required by the court reporter pursuant to Ark. Code Ann. § 16–13–510(c). The notice shall also state whether the appeal is to the Court of Appeals or to the Supreme Court; and if to the Supreme Court, the Appellant shall designate the applicable subdivision of Supreme Court Rule 1–(a) which gives the Supreme Court jurisdiction.

A timely notice of appeal is a jurisdictional requirement. *Stacks v. Marks*, 354 Ark. 594, 127 S.W.3d 483 (2003). Lacking a timely notice of appeal, the court has no jurisdiction to consider other issues raised on appeal. *Arkco Corp. v. Askew*, 360 Ark. 222, 200 S.W.3d 444 (2004). We are required to raise the issue of subject–matter jurisdiction on our own motion. *Stacks*, 354 Ark. at 599, 127 S.W.3d at 485.

While the filing of a notice of appeal is jurisdictional, this court has required only substantial compliance with the procedural steps set forth in Rule 3(e). *Helton v. Jacobs*, 346 Ark. 344, 57 S.W.3d 180 (2001) (noting that failure to include financial–arrangements language in a notice of appeal no longer renders that notice invalid); *Phillips v. LaValle*, 293 Ark. 364, 737 S.W.2d 652 (1987) (holding that it was not fatal when the notice of appeal did not state that the transcript had been ordered when in actuality it had been ordered). This court has said that a notice of appeal that fails to designate the judgment or order appealed from as required under Rule 3(e) is deficient, but such a defect is not necessarily fatal to the notice of appeal where it is clear what order the appellant is appealing and the notice of appeal

was filed timely as to that order. *Duncan v. Duncan*, 2009 Ark. 565, at 3–4. In *Duncan*, the appellant indicated in her notice of appeal that she was appealing an order dated May 4, 2001, when in fact, the initiating complaint in her case was not filed until February 21, 2008. *Id.* at 3–5. We held that the May 4, 2001 date in the notice of appeal was a scrivener’s error and did not render her notice of appeal fatally deficient because it was clear from appellant’s arguments on appeal that she was appealing the court’s final divorce order and her notice of appeal was timely as to that order.

Here, we conclude that appellant’s notice of appeal—attempting to appeal from the denial of his motion—did not contain a mere scrivener’s error. Rather, the circuit court had not ruled on appellant’s motion for satisfaction of judgment at the time he filed his notice of appeal, and appellant had no right to appeal when he filed his notice of appeal even though he mistakenly believed his motion had been deemed denied.¹ While the court did subsequently enter a written order denying appellant’s motion, appellant never filed a notice of appeal from that order. Although Arkansas Rule of Appellate Procedure–Civil 4(a) provides that a “notice of appeal filed after the circuit court announces a decision but before the entry of the judgment, decree, or order shall be treated as filed on the day after the judgment, decree, or order is entered,” when appellant filed his notice of appeal, the court had not

¹We presume appellant considered his motion as a post-trial motion under Arkansas Rule of Appellate Procedure–Civil 4. Those post-trial motions are deemed denied if not ruled on within thirty days and a notice of appeal filed prior to the entry of their disposition is considered filed the day after such entry. However, a motion for entry of satisfaction of judgment is not listed as a post-trial motion under Rule 4. Notwithstanding, Rule 4 post-trial motions are to be filed within ten days from the date of the judgment. Here, appellant’s motion for entry of satisfaction of judgment was filed 101 days after the judgment.

announced a decision. Hence, based on the plain language of the rule, the notice of appeal cannot be treated as filed the day after the court's October 26 order. Although appellant did file a supplement to his notice of appeal two days after the court entered its order, rather than amending his notice to appeal to appeal from the court's October 26 order, he only supplemented the record to add the October 26 order.

This case is unlike our substantial-compliance cases where an appellant indicated the wrong order or stated the wrong date in the notice of appeal. Instead, appellant filed his notice of appeal prematurely, prior to any ruling by the court. Simply put, appellant's notice of appeal filed on October 26 was of no effect because he had no right to appeal at that time. Thereafter, appellant failed to file a timely notice of appeal from the court's order denying his motion. Because the filing of a timely notice of appeal is jurisdictional, we must dismiss this appeal.

Appeal dismissed.