

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

FRED JOSEPH THOMPSON,  
  
Appellant,

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D06-5637

MELISSA MILLENDER,  
  
Appellee.

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Opinion filed December 27, 2006.

An appeal from the Circuit Court for Franklin County.  
William L. Gary, Judge.

Fred Joseph Thompson, pro se, Appellant.

John H. Sytsma, Apalachicola, for Appellee.

PER CURIAM.

Upon consideration of the appellant's response to the Court's order of November 9, 2006, the Court has determined that the appellant has failed to demonstrate that the notice of appeal timely invoked the Court's jurisdiction. Specifically, the Court's show cause order pointed out that it was not apparent whether the appellant's motion for rehearing was timely served thus delaying

rendition of the underlying order. The Court directed the appellant to submit a copy of the motion for rehearing bearing the date of service. However, the motion for rehearing bears no certificate indicating when the motion was served on the opposing party. Although the motion was filed within ten days of the date the underlying order was filed in the lower tribunal, it is the date of service that determines whether the motion was timely pursuant to Florida Rule of Civil Procedure 1.530. Pennington v. Waldheim, 669 So. 2d 1158 (Fla. 5th DCA 1996). Because it appears to the Court that the appellant's notice of appeal was not timely filed, the appeal is hereby dismissed for lack of jurisdiction.

BROWNING, C.J., DAVIS, and LEWIS, JJ., CONCUR.