

Cite as 2023 Ark. App. 556
ARKANSAS COURT OF APPEALS
DIVISION III
No. CV-23-21

EDWARD TAYLOR

APPELLANT

V.

KALENDRIA BROOKS

APPELLEE

Opinion Delivered December 6, 2023

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
FOURTEENTH DIVISION
[NO. 60DR-22-92]

HONORABLE MILAS HALE,
DISTRICT JUDGE

APPEAL DISMISSED

RAYMOND R. ABRAMSON, Judge

Appellant Edward Taylor appeals the denial of his motion for reconsideration of a final order of protection entered in favor of his ex-girlfriend, Kalendria Brooks, on March 8, 2022.¹ Because there is a lack of a timely notice of appeal, we must dismiss the appeal.

This case stems from a final ten-year order of protection entered in Brooks's favor against Taylor after a hearing on March 7. The court also entered a ten-year order of protection in Taylor's favor against Brooks in another case, but that is a separate case and

¹The order was an amended order because the original March 7 order erroneously provided that the order terminated in 2022 rather than 2032.

not before us on appeal. Both cases were heard in the circuit court by a district court judge pursuant to Administrative Order No. 18.²

On March 9, Taylor moved for reconsideration of the final order of protection, alleging that the court rendered a decision without giving him the opportunity to rebut Brooks's testimony. In his concluding paragraph, he requested that the court set aside the order of protection and "continue the hearing for a final."³ Brooks responded and prayed that the motion be denied and that no hearing be set.

On March 29, Circuit Judge Shawn Johnson entered an order that provided:

There comes on for consideration Respondent Edward Taylor's motion to reconsider dated March 9, 2022 and to which Petitioner has filed her response. Because the matter was previously heard by District Judge Milas H. Hale, the court hereby refers the motion and the underlying subject matter to Judge Hale for further review and decision. Arkansas Administrative Order 18(6)(b)(2).

On April 15, District Judge Hale entered an "Order of Continuance" for the case to be reset. The court eventually held a hearing on the motion for reconsideration on August

²Arkansas Supreme Court Administrative Order No. 18(6)(b) provides that a state district court judge may be referred matters pending in the circuit court: "A state district court judge presiding over any referred matter shall be subject at all times to the superintending control of the administrative judge of the judicial circuit." Ark. Sup. Ct. Admin. Order No. 18(6)(b). Referred matters can include any case in the civil, probate, or domestic relations division in which the parties have agreed in writing to proceed in the district court, "protective orders," forcible entry and detainers and unlawful detainers, and other matters. Ark. Sup. Ct. Admin. Order No. 18(6)(b)(1)-(4). If there is an appeal, the court reporter assigned to the circuit judge who referred the case to the state district court is charged with transcribing the audio tape and certifying the transcript. Ark. Sup. Ct. Admin. Order No. 4(e)(1)-(2).

³It is unclear whether he was asking for a final hearing or a final order of protection. Both had already occurred at this juncture.

15, 2022. Taylor filed a notice of appeal on September 12, stating that he was appealing from the “final order of protection filed on August 15, 2022.” When he attempted to lodge the record, our clerk returned it to him because the lower court had not entered a written order.

A written order was entered on December 15, 2022, providing that the lower court entered an order of protection on March 7, Taylor moved for reconsideration on March 9, and “the court denied [Taylor’s] motion for reconsideration and rules that the order of protection entered on March 9, 2022, shall remain in place.”

Taylor filed an amended notice of appeal on December 16, stating that he was appealing from the court’s oral ruling on August 15 and its written order on December 15.

An appellate court must raise jurisdictional issues even when the parties do not. See *Barclay v. Farm Credit Servs.*, 340 Ark. 65, 8 S.W.3d 517 (2000). Because Taylor’s motion to reconsider, filed on March 9, 2022, was never ruled on, it was deemed denied on April 8, 2022. Rule 4(b)(1) of the Arkansas Rules of Appellate Procedure–Civil clearly states that if the circuit court neither grants nor denies the motion within thirty 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.”

In *Murchison v. Safeco Insurance Co.*, 367 Ark. 166, 177, 238 S.W.3d 11, 14 (2006), the supreme court held that the failure to act within the thirty-day period under Rule 4(b)(1) results in loss of jurisdiction in the circuit court to consider an appellant’s motion to set aside. In *Murchison*, the circuit court entered an order granting the appellee’s motion for summary judgment on December 16, 2004. The appellant filed a motion to set aside that

order on December 20. The circuit court held a hearing on the motion to set aside on January 25, 2005, and entered an order granting the motion on February 1. The appellee then moved to set aside the February 1 order, arguing that the circuit court lacked jurisdiction to enter it under Rule 4(b)(1). After a hearing, the circuit court entered a third order on April 8, 2005, in which it granted the appellee's motion to set aside the February 1 order and reinstated the December 16, 2004 order granting summary judgment. The appellant filed a notice of appeal on May 5, 2005. *Id.* at 168, 238 S.W.3d at 13.

On appeal, the supreme court noted that, although the appellant had timely filed his Arkansas Rule of Civil Procedure 60 motion within ten days of the initial order granting summary judgment, the motion nonetheless fell within the deemed-denied provision of Rule 4(b)(1). The *Murchinson* court found that by failing to act within thirty days, the circuit court was without jurisdiction to hold the hearing on January 25, 2005, regarding appellant's motion to set aside, and to enter the order on February 1, 2005. The circuit court also lacked jurisdiction to enter the subsequent order filed on April 8, 2005, and the time for filing a notice of appeal from the December 16, 2004, order had long expired thereby making the notice of appeal untimely. The court found it lacked jurisdiction to hear the appeal, and dismissed the appeal. *Id.* at 171, 238 S.W.3d at 15; *see Seay v. C.A.R. Transp. Brokerage Co., Inc.*, 366 Ark. 527, 237 S.W.3d 48 (2006); *see also Reimer v. Ragsdale*, 2011 Ark. App. 81 (circuit court lost jurisdiction to rule on appellant's timely Rule 60 motion when the court failed to act within thirty days; appellant's failure to file a timely notice of appeal after the deemed-denial date deprived this court of jurisdiction to consider his appeal).

The facts of the instant case fall squarely within the reasoning of *Murchison*. The court entered the final order of protection on March 8, 2022. Taylor filed a timely motion for reconsideration the next day, but the court did not act on that motion within thirty days. The motion was therefore deemed denied on April 8, 2022, and the lower court lost jurisdiction to act on the motion.⁴ Taylor had thirty days, or until May 9, 2022,⁵ to file a notice of appeal. Because Taylor did not file a notice of appeal until September 12 and an amended notice on December 16, this court lacks jurisdiction, and Taylor's appeal must be dismissed. See *Reimer, supra* (citing *Ellis v. Ark. State Hwy. Comm'n*, 2010 Ark. 196, 238 S.W.3d 11) (lack of timely notice of appeal deprives this court of jurisdiction).

Appeal dismissed.

WOOD and HIXSON, JJ., agree.

Worlow Law, by: *Jacob Worlow*; and *D.R. Horn P.A.*, by: *Dave Horn*, for appellant.

Center for Arkansas Legal Services, by: *Drew J. Rodgers*, *Cheyenne Pearce*, and *Cecille Doan*, for appellee.

⁴The order of continuance entered on April 15, and any orders entered thereafter, are void.

⁵The thirty-day deadline fell on Sunday, May 8, 2022, so the deadline was the following Monday, May 9.