

ARKANSAS COURT OF APPEALSDIVISION I
No. CV-12-815

DEAN BANKS

APPELLANT

V.

RANDY RIDDLE AND DONNA
RIDDLE, d/b/a D & R MARINE & RV
SERVICE

APPELLEES

OPINION DELIVERED MAY 22, 2013

APPEAL FROM THE PIKE COUNTY
CIRCUIT COURT,
[NO. CV 2011-101-1]HONORABLE CHARLES A.
YEARGAN, JUDGEDISMISSED IN PART; AFFIRMED IN
PART**ROBERT J. GLADWIN, Chief Judge**

Acting pro se, Dean Banks brings this appeal from the order of the Pike County Circuit Court which dismissed his complaint on the basis that res judicata barred his claims against his neighbors, appellees Randy Riddle and Donna Riddle. The court also awarded the Riddles sanctions under Ark. R. Civ. P. 11 against Banks in the amount of \$3,660.95. We must dismiss the appeal in part because we lack jurisdiction to hear a portion of this appeal. We affirm the award of sanctions¹

Banks's predecessor in interest, Steve Morpew, was involved in litigation with the Riddles about the division of Pine Street, an unopened city street situated between their properties. The City of Murfreesboro adopted an ordinance that abandoned Pine Street. The circuit court disposed of the prior litigation by order entered on July 20, 2011. Morpew and

¹The Riddles have moved this court to award them additional sanctions for a frivolous appeal under Arkansas Rule of Appellate Procedure—Civil 11 (2012). We deny the motion.

the Riddles were each awarded half of Pine Street.² The order referenced Arkansas Code Annotated section 14-301-306 as authority for dividing Pine Street equally between abutting land owners. The order additionally found Pine Street to be 66' wide and specifically stated that each landowner would receive 33' of Pine Street to the centerline. The order from the prior litigation was not appealed.

After the conclusion of the prior litigation, Banks acquired his property by quitclaim deed from Morpew. The deed, prepared by Banks, referenced the ordinance abandoning the street, as well as the prior litigation dividing the property at the centerline of Pine Street. Morpew also conveyed a portion of Pine Street that had been awarded to him in the prior litigation to the Riddles by quitclaim deed filed on October 20, 2011.

On November 14, 2001, Banks filed this action asking the circuit court to find that the order issued in the prior litigation could not have found that Pine Street was 66' wide and order that it be divided in half under Arkansas Code Annotated section 14-301-306. Banks asserted that Pine Street was approximately 68' wide, contrary to the ruling in the prior litigation. He relied on a plat survey that showed that Pine Street was 68' wide where it met Main Street.³ Banks later amended his petition to assert other instances of problems between the Riddles and him.

The Riddles filed an answer that asserted the affirmative defenses of res judicata and

²The court's decision was explicitly premised on the assumption that the city had correctly abandoned Pine Street.

³The plat showed that Pine Street was 66' wide away from its intersection with Main Street.

failure to state facts upon which relief can be granted. They also asserted that Banks's claim was frivolous. Contemporaneously, they also filed a motion to dismiss for failure to state facts upon which relief can be granted. The Riddles later filed a motion seeking sanctions under Rule 11 of the Rules of Civil Procedure.

Following a hearing, the circuit court entered its order on March 21, 2012, dismissing Banks's suit because Banks failed to state facts upon which relief can be granted pursuant to Rule 12(b)(6).⁴ The court also found that the prior litigation had judicially determined that Pine Street was 66' wide and that this determination was not timely appealed, thus barring Banks's claims on the basis of res judicata, collateral estoppel and claim preclusion. The order also granted the Riddles' motion for sanctions. On June 14, 2012, the court entered an order directing Banks to pay the Riddles \$3,660.95 in attorney fees and costs as sanctions. Banks filed his notice of appeal on June 28, 2012.

On appeal, Banks raises several issues concerning the court's order in the prior litigation, whether the court properly dismissed the present case on the basis of res judicata, and whether the court erred in imposing Rule 11 sanctions.

We cannot address the merits of Banks's arguments directed toward the circuit court's dismissal of his petition. The timely filing of a notice of appeal is a jurisdictional prerequisite for this court. *Sloan v. Ark. Rural Med. Practice Loan & Scholarship Bd.*, 369 Ark. 442, 255

⁴Circuit Judge Tom Cooper presided over the hearing. During the hearing, Judge Cooper indicated that Banks was not going to be allowed to relitigate issues determined in the prior litigation. Judge Cooper adjourned the hearing in order to confer with Judge Yeargan, who had presided during the prior litigation. The case was then transferred to Judge Yeargan, who issued the orders from which this appeal is taken.

S.W.3d 834 (2007). We must therefore address this issue first, as the jurisdiction of this court depends on the calculation of filing deadlines in the Arkansas Rules of Appellate Procedure—Civil. *U.S. Bank, N.A. v. Milburn*, 352 Ark. 144, 100 S.W.3d 674 (2003).

Rule 4(a) of the Arkansas Rules of Appellate Procedure—Civil provides that “a notice of appeal *shall* be filed within thirty (30) days from the entry of the judgment, decree, or order appealed from.” Ark. R. App. P.—Civ. 4(a) (2012) (emphasis added). Banks’s notice of appeal was filed on June 28, 2012, and identified the order being appealed from as the

[c]ourt’s final Order in CV 2011-101-1, entered for record on June 14, 2012; said Order declared [the Riddles’] Motion for Rule 11 Sanctions to be meritorious and therefore awarded [the Riddles] attorney fees totaling [\$3,660.95. Banks] also appeals the previous Order and Judgment Dismissing Petition with prejudice; said Order and Judgment, entered March 21, 2012, granted [the Riddles’] Motion for Sanctions under Arkansas Rule of Civil Procedure 11[.]

Because Banks failed to file a notice of appeal within thirty days of the entry of the March 21, 2012 order, we are precluded from addressing the merits of that order. *Reeve v. Carroll Cnty.*, 373 Ark. 584, 285 S.W.3d 242 (2008).

The fact that the circuit court later issued its order awarding the Riddles sanctions under Rule 11 does not aid Banks because motions requesting sanctions under Rule 11 of the Arkansas Rules of Civil Procedure are collateral to the merits of the underlying action. *Crockett & Brown, P.A. v. Wilson*, 321 Ark. 150, 901 S.W.2d 826 (1995); *Spring Creek Living Ctr. v. Sarrett*, 318 Ark. 173, 883 S.W.2d 820 (1994). The only motions that will extend the time for filing a notice of appeal are a motion for judgment notwithstanding the verdict under Rule 50(b) of the Arkansas Rules of Civil Procedure, a motion to amend the court’s findings of fact or to make additional findings under Rule 52(b), a motion for new trial under Rule

59(a), or any other motion to vacate, alter, or amend the judgment made no later than ten days after the entry of judgment. *See* Ark. R. App. P.–Civ. 4(b).

Although Banks did file a timely notice of appeal with respect from the June 14, 2012 order awarding Rule 11 sanctions, he cannot challenge the determination that he violated Rule 11 because that determination was made in the March 12, 2012 order from which there was no timely notice of appeal. Banks does not contest the amount of the sanctions imposed—the only issue open to him. Instead, he repeats his arguments as to why res judicata should not apply and his “effort to uphold existing law, in this case Arkansas Code Annotated § 14-301-306 and the application of § 14-301-306 in the prior litigation.” We are not persuaded that the circuit court abused its discretion in imposing sanctions under Rule 11. Accordingly, we affirm the circuit court’s order on this point.

Dismissed in part; affirmed in part.

HIXSON and BROWN, JJ., agree.

Dean Banks, pro se appellant.

Dunn, Nutter & Morgan, LLP, by: *Jonathan William Beck*, for appellees.