

SUPREME COURT OF ARKANSAS

No. 11-1062

BARRY JEWELL

APPELLANT

V.

SCOTT FLETCHER; JOHN T.
HOLLEMAN; DEBRA WORLEY,
ADMINISTRATRIX; AND ESTATE OF
MICHEAL SIMS

APPELLEES

Opinion Delivered March 29, 2012APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. CV-03-6891]HONORABLE TIMOTHY DAVIS FOX,
JUDGEAPPEAL DISMISSED.**COURTNEY HUDSON GOODSON, Associate Justice**

Appellant Barry Jewell appeals an order of the Pulaski County Circuit Court denying his motion to vacate an order in a corporate-dissolution action awarding the estate of Micheal Sims (Sims) a personal judgment against Jewell, a former shareholder of the dissolved corporation of Jewell, Moser, Fletcher & Holleman (JMFH). For reversal, Jewell challenges the circuit court's ruling on five grounds. We have jurisdiction, pursuant to Arkansas Supreme Court Rule 1-2(a)(7) (2011), as this case is a subsequent appeal. Because Jewell's notice of appeal was untimely, we dismiss the appeal.

This is the fourth appeal arising from the dissolution proceedings of JMFH. In *Jewell v. Fletcher*, 2010 Ark. 195, ___ S.W.3d ___, we recited the facts of this case and held that due process required that Sims's estate should be afforded some form of relief. As to Sims, we reversed and remanded, directing the circuit court to determine a mechanism for paying

Sims's claim. *Id.* Following *Jewell, supra*, Sims reached an oral settlement with shareholders, Scott Fletcher and John Holleman. However, there remained the issue of paying the remainder of Sims's claim, and the circuit court held a hearing on remand. On June 14, 2011, the circuit court entered a judgment against the remaining two shareholders of JMFH, ruling that Barry Jewell and Keith Moser were jointly and severally liable in the amount of \$848,757.62 plus interest.

On June 21, 2011, the circuit court received a letter from Jewell objecting to the court's order. Subsequently, on July 6, 2011, Jewell filed a motion to vacate the circuit court's order. Citing Rule 60(a) of the Arkansas Rules of Civil Procedure, Jewell argued that it would be grossly unfair to award Sims a personal judgment against him for a corporate debt, among other reasons, constituting "three times the amount of the net shareholder distributions [he] received in this dissolution action." Sims filed a response to Jewell's motion to vacate the order. On August 3, 2011, Jewell filed a notice of appeal, seeking to appeal the June 14, 2011 order granting judgment. In his notice of appeal, Jewell asserted that his June 21, 2011 letter should be treated as "any other motion to vacate, alter, or amend" that would extend the time for appealing the order, pursuant to Rule 4(b)(1) of the Arkansas Rules of Appellate Procedure—Civil. Jewell further noted that the circuit court never ruled on the motion to vacate and claimed that it was deemed denied on August 5, 2011. Jewell later filed a supplemental notice of appeal on August 17, 2011, designating additional portions of the record. From the June 14, 2011 order and the purported deemed-denial of his motion to vacate, Jewell now brings his appeal.

Before turning to the merits of Jewell's arguments, we decide the issue of whether the notice of appeal was timely. A timely notice of appeal is essential to this court obtaining jurisdiction. *Stacks v. Marks*, 354 Ark. 594, 127 S.W.3d 483 (2003). The failure to file a timely notice of appeal deprives the appellate court of jurisdiction. *Jefferson v. Ark. Dep't of Human Servs.*, 356 Ark. 647, 158 S.W.3d 129 (2004). Arkansas Rule of Appellate Procedure—Civil 4 states 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) (2011). The timely filing of certain specific motions may extend the time for filing a notice of appeal. Ark. R. App. P.—Civ. 4(a), (b). The only motions that will extend the time 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 pursuant to 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 entry of the judgment. Ark. R. App. P.—Civ. 4(b); *Reeve v. Carroll Cnty.*, 373 Ark. 584, 285 S.W.3d 242 (2008). If a timely motion is filed, the notice of appeal shall be filed within thirty days of the order disposing of the last motion outstanding; however, if the court neither grants nor denies the motion within thirty days of its filing, the motion shall be deemed denied as of the thirtieth day, and the notice of appeal must be filed within thirty days from that date. Ark. R. App. P.—Civ. 4(b).

Here, Jewell claims that, pursuant to Rule 4(b)(1), his motion to vacate was deemed denied on August 5, 2011, because the circuit court did not enter a ruling on the motion.

However, Jewell's motion to vacate was filed on July 6, 2011, which was more than ten days after the entry of the June 14, 2011 order. Thus, Jewell is precluded from relying on the deemed-denied provision of Rule 4(b)(1) because his motion to vacate the order was untimely.

Additionally, Jewell asserts that his June 20, 2011 letter to the circuit court must be construed as a motion to vacate and that this letter would have qualified as a timely motion to "vacate, alter, or amend the judgment," pursuant to Rule 4(b). However, we have stated that the date a judgment is filed with a court clerk is denoted by the clerk marking or stamping the date and the word "filed" on the document. *Ark. Dep't of Human Servs. v. Hardy*, 316 Ark. 119, 871 S.W.2d 352 (1994); *Shaefer v. McGhee*, 284 Ark. 370, 681 S.W.2d 353 (1984). When a document has been received by the clerk, file-marking is not inexorable proof of the exact time of filing, but is only evidence of the time of filing. *Ark. Game & Fish Comm'n v. Eddings*, 2009 Ark. 359, at 13, 324 S.W.3d 328, 335. This same rule does not apply to allow a litigant to prove that a document has in fact been *received* by the clerk. *Id.* (emphasis added). Here, Jewell's letter is stamped, "REC'D JUNE 21 2011," but is not marked with an official file-stamp from the circuit clerk's office. While it appears that the letter was received by the circuit judge, the circuit clerk never file-stamped Jewell's letter.

Therefore, we conclude that the letter, which Jewell purports to be a motion to vacate, is not one of the postorder motions that extends the time for filing the notice of appeal under Arkansas Rule of Appellate Procedure—Civil 4(b). It did not extend the time for filing the notice of appeal. See *Centennial Bank v. TriBuilt Constr. Group, LLC*, 2011 Ark. 245, ___

S.W.3d _____. To be timely, Jewell was required to file his notice of appeal within thirty days of the June 14, 2011 order. Jewell did not file his notice of appeal until August 3, 2011. Because the notice of appeal was untimely, we dismiss this appeal.

Appeal dismissed.