

SUPREME COURT OF ARKANSAS

No. 11-1273

TOM MUCCIO, MIKE MUCCIO, AND
NEXT CHAPTER RESOURCES, LLC
APPELLANTS

V.

JOHNELLE HUNT; PHIL PHILLIPS;
MIKE LAX; TOMMY VAUGHAN;
WALTER SMILEY; MICHAEL
JOHNSON; AMY SORRELL; DAVID
SCHUMACHER; TREY TRUMBO; J.B.
HUNT, LLC; JOHNELLE HUNT, LLC;
PHIL AND JUDY PHILLIPS FAMILY
LIMITED PARTNERSHIP, LLLP; TCH
INVESTMENTS, LLC; BIG HORN
LODGE FINANCING, LLC; BIOBASED
HOLDINGS, LLC; SMILEY
INVESTMENT COMPANY; LAX,
VAUGHAN, FORTSON, MCKENZIE &
ROWE, P.A.; HOMESTEAD HOMES,
LLC; and NEXT GENERATION
HOLDINGS, LLC

APPELLEES

Opinion Delivered November 8, 2012

MOTIONS TO DISMISS APPEAL
UPON CERTIFICATION FROM THE
ARKANSAS COURT OF APPEALS

DENIED.

JIM HANNAH, Chief Justice

The motions to dismiss appeal in this case come to this court upon our acceptance of certification from the Arkansas Court of Appeals. Appellees Mike Lax; Tommy Vaughan; Lax, Vaughan, Fortson, McKenzie & Rowe, P.A.; Michael Johnson; Amy Sorrell; Walter Smiley; Smiley Investment Company; Johnelle Hunt; Phil Phillips; David Schumacher; Trey Trumbo; J.B. Hunt, LLC; Johnelle Hunt, LLC; Phil and Judy Phillips Family Limited Partnership, LLLP; TCH Investments, LLC; Big Horn Lodge Financing, LLC; BioBased

Holdings, LLC; Homestead Homes, LLC; and Next Generation Holdings, LLC, filed motions to dismiss appellants Tom Muccio, Mike Muccio, and Next Chapter Resources, LLC's appeal. On August 5, 2011, the Washington County Circuit Court entered summary judgment in favor of appellees. On August 19, 2011, appellants filed a "MOTION TO RECONSIDER" seeking to "vacate" the judgment, pursuant to Arkansas Rule of Civil Procedure 59(b). That motion was denied by a September 12, 2011 order, and the appellants filed a notice of appeal on October 7, 2011.

In their motions to dismiss, appellees alleged that appellants' "MOTION TO RECONSIDER" was a nullity and that the notice of appeal was untimely because it was not filed within thirty days of entry of summary judgment. Accordingly, appellees allege that this court lacks jurisdiction to hear the appeal.

Appellees assert that appellants' "MOTION TO RECONSIDER" is not recognized as a valid motion. We disagree. See *Lake Village Healthcare Ctr. v. Hatchett*, 2012 Ark. 223, ___ S.W.3d ___; *Hagenbaugh v. Montgomery*, 2009 Ark. 239, 308 S.W.3d 132; *Williams v. Hudson*, 320 Ark. 635, 898 S.W.2d 465 (1995); *Riley v. Vest*, 235 Ark. 192, 357 S.W.2d 497 (1962); *Mandel v. Peay*, 20 Ark. 325 (1859). Appellees next assert that the time within which to file a notice of appeal may not be extended by postjudgment motions under Arkansas Rule of Appellate Procedure—Civil 4 following the grant of summary judgment. Finally, appellees assert that a motion for reconsideration and request for new trial is not a valid postjudgment motion after the grant of summary judgment, and that such a motion is not valid when it simply asks the circuit court to reverse its decision.

Rule 4(a) states that, “[e]xcept as otherwise provided in subdivision (b) and (c) of this rule, a notice of appeal shall be filed within thirty (30) days from the entry of the judgment.”

Rule 4(b)(1) provides in relevant part as follows:

Upon timely filing in the circuit court of 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 a new trial under Rule 59(a), *or any other motion to vacate, alter, or amend the judgment* made no later than 10 days after entry of judgment, the time for filing a notice of appeal shall be extended for all parties.

(Emphasis added.)

In determining whether a motion complies with Rule 4, “we will look to see what a motion actually is in determining Rule 4 questions.” *Fuller v. State*, 316 Ark. 341, 344, 872 S.W.2d 54, 55 (1994).¹ “In determining what a motion is, we look to content and substance—not to titles.” *Haynes v. State*, 311 Ark. 651, 654, 846 S.W.2d 179, 181 (1993) (citing *Cornett v. Prather*, 293 Ark. 108, 111, 737 S.W.2d 159, 710 (1987)) “Courts should not be guided blindly by titles but should look to the substance of motions to ascertain what they seek.” *Cornett*, 293 Ark. At 111, 737 S.W.2d at 160.

In *Williams v. Hudson*, 320 Ark. 635, 898 S.W.2d 465 (1995), a “motion for reconsideration” that included a request for a new trial was found to extend the time within which to file a notice of appeal under Rule 4(b) following the grant of summary judgment.

¹*Fuller v. State*, 316 Ark. 341, 872 S.W.2d 54 (1994) applied Rule 4(c) in a criminal matter where a postconviction motion was analogous to a civil motion under Rule 50, 52, or 59. In *Crisco v. State*, 328 Ark. 388, 391, 943 S.W.2d 582, 584 (1997), this court noted that dicta in *Fuller* regarding application of Arkansas Rule of Criminal Procedure 36.22 was in error.

Finally, with respect to the issue of whether a motion is valid that simply asks the circuit court to reverse its decision, we note that the motion for reconsideration tracked Rule 4 and Arkansas Rule of Civil Procedure 59 in requesting a new trial, setting out the alleged grounds of irregularity in the proceedings, it was a decision against the preponderance of the evidence, and there was error of law. Whether there was merit to the motion was an issue for the circuit court to decide. To the extent that *New Holland Credit Co., LLC v. Hill*, 362 Ark. 329, 337, 208 S.W.3d 191, 195–96 (2005), is inconsistent with this opinion, it is overruled.

The motions to dismiss are denied.

GOODSON, J., not participating.

Knight Law Firm, PLC, by: *K. Vaughn Knight* and *Mason J. Wann*, for appellants.

Shemin Law Firm, PLLC, by: *Kenneth R. Shemin*; and *Cullen & Co., PLLC*, by: *Tim J. Cullen*, for separate appellees *Johnelle Hunt*; *Phil Phillips*; *David Schumacher*; *Trey Trumbo*; *J.B. Hunt, LLC*; *Johnelle Hunt, LLC*; *Phil & Judy Phillips Family Limited Partnership, LLP*; *TCH Investments, LLC*; *Big Horn Lodge Financing, LLC*; *BioBased Holdings, LLC*; *Homestead Homes, LLC*; and *Next Generation Holdings, LLC*.

Barber, McCaskill, Jones & Hale, P.A., by: *Robert L. Henry, III*, and *R. Kenny McCulloch*, for separate appellees *Mike Lax*; *Tommy Vaughan*; and *Lax, Vaughan, Fortson, McKenzie & Rowe, P.A.*

Davis, Clark, Butt, Carithers & Taylor, PLC, by: *Constance G. Clark*, *William Jackson Butt, II*, and *Joshua D. McFadden*, for separate appellees *Michael Johnson*, *Amy Sorrell*, *Walter Smiley*, and *Smiley Investment Company*.