

Cite as 2015 Ark. 157

SUPREME COURT OF ARKANSAS

No. CV-14-585

JAMES TREE AND CRANE SERVICE,
INC., AND ROGER WILLIAMS
APPELLANTS

V.

TERRI FOUGHT

APPELLEE

Opinion Delivered April 9, 2015MOTION TO INTERVENE OR
OTHERWISE BE HEARDMOTION DENIED WITH
PREJUDICE.**PER CURIAM**

By a per curiam order dated February 17, 2015, this court appointed a special master to conduct a hearing and to make findings of fact whether court reporter Sheila Russell should be held in contempt for not complying with the writ of certiorari issued by this court. *James Tree & Crane Serv., Inc. v. Fought*, 2015 Ark. 48 (per curiam). Thereafter on February 26, 2015, this court issued a second per curiam amending the order appointing the special master. *In re Russell*, 2015 Ark. 87 (per curiam). *In re Sheila Russell*, 2015 Ark. 87 (per curiam). In this per curiam, we noted that it had come to our attention that Russell had not completed the records in other cases, and we directed the special master to inquire into the status of the record preparation in the other appeals.

On March 19, 2015, Marlow Properties, LLC, and Daria Marlow, by and through their counsel Lloyd W. “Tre” Kitchens, filed with our clerk the present motion to intervene or otherwise be heard in the proceedings before the special master, representing that their

appeal in *Marlow Properties, LLC v. Petkovek*, No. CV-14-953, was one of the other appeals involving Russell. This representation was made despite the fact that this court had denied in a series of syllabus entries Marlow Properties' petition for writ of certiorari to complete the record, a motion for rule on clerk, a motion to reconsider the denial of the motion for rule on clerk, an amended motion to reconsider the denial of the motion for rule on clerk, and a petition for judicial relief. In the instant motion, Marlow Properties asked the special master to recommend that this court issue a rule on clerk to docket the appeal. To that end, Kitchens appeared at the hearing held by the special master on March 13, 2015, and complained that this court had denied the various requests for relief "without explanation."

We deny the motion to intervene or otherwise be heard. Because the appeal in *Marlow Properties, LLC v. Petkovek* cannot go forward, we also deny the motion with prejudice. Generally, it is the practice of this court to announce our decisions on routine motions and petitions by syllabus entry particularly where, as here, the reason for our ruling is patently obvious on the face of the record. Although a syllabus entry would suffice in this instance, we provide the following explanation for the denial of the motion.

Our rules require the record to be filed with the clerk within ninety days from the filing of the first notice of appeal. Ark. R. App. P.–Civil 5(a). Pursuant to Rule 5(b)(2), a circuit court is authorized to enter orders extending the time for filing the record to a maximum of seven months from the entry of judgment. However, the circuit court must enter an extension order before the expiration of the initial ninety-day period or before the expiration of the time period set forth in a previous extension order. Ark. R. App. P.–Civil

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5(b)(1); *see also* *Voyles v. Voyles*, 311 Ark. 186, 842 S.W.2d 21 (1992) (per curiam).

The partial record filed with this court reflects that the circuit court entered its judgment on March 31, 2014, and that Marlow Properties filed a notice of appeal on April 7, 2014. Thereafter, the circuit court entered four orders extending the time for filing the record on appeal. First, on July 7, 2014, the circuit court entered a timely order extending the time for lodging the record to September 2, 2014. Although Marlow Properties filed a timely motion to further extend the time for filing the record, the order granting that motion was not filed until September 4, 2014. The filing of this order was late, as the time for lodging the record had expired on September 2, 2014. It is the duty of counsel, not the judge, the clerk, or the reporter, to perfect an appeal. *Johnson v. Dawson*, 2010 Ark. 308, 365 S.W.3d 913. An appellant's failure to obtain, in a timely manner, an order extending the time within which the record on appeal may be filed is a defect of jurisdictional proportion. *See Willis v. State*, 323 Ark. 41, 912 S.W.2d 430 (1996); *Voyles v. Voyles, supra*; *Sullivan v. Wickliffe*, 284 Ark. 33, 678 S.W.2d 771 (1984) (per curiam); *Finley v. State*, 281 Ark. 38, 661 S.W.2d 358 (1983) (per curiam). For this reason alone, the appeal was not salvageable in this case. *Williams v. Helena Reg'l Med. Ctr.*, 2012 Ark. 126 (per curiam) (recognizing that the failure to timely lodge the record is fatal to an appeal of a civil case, absent extraordinary circumstances or unavoidable casualty, unless the appeal involves the termination of parental rights).

Our review of the partial record reveals additional irregularities. The last extension order entered by the circuit court purported to extend the full seven-month period allowed

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by the rule and set a deadline of November 7, 2014. However, under Rule 5(b)(2), this date was erroneous because the record was due no later than seven months from the entry of judgment. The circuit court entered the judgment on March 31, 2014. Therefore, the record had to be filed by October 31, 2014, not November 7, 2014, as stated in the extension order. A circuit court does not have jurisdiction to extend the time for filing the record beyond the seven months contemplated by Rule 5(b)(2). *Midwest Terminals of Toledo, Inc. v. Palm*, 2011 Ark. 81, 378 S.W.3d 761; *In re Estate of Wilkinson*, 311 Ark. 311, 843 S.W.2d 316 (1992) (per curiam).

In addition, on November 7, 2014, Marlow Properties tendered a petition for writ of certiorari to complete the record pursuant to Rule 5(b)(3) and Supreme Court Rule 3-5. Under these rules, this court may extend the time for filing the record beyond the seven-month period, if the petition to do so is filed within the seven months. *Hammer v. Aviation Cadet Museum, Inc.*, 2011 Ark. 441 (per curiam); *Bulsara v. Watkins*, 370 Ark. 461, 261 S.W.3d 461 (2007) (per curiam). Marlow Properties presented the petition for writ of certiorari to complete the record after October 31, 2014, the seven-month deadline set by the rule. Therefore, the petition was untimely, requiring dismissal of the appeal, absent extraordinary circumstances or unavoidable casualty. *Hammer, supra*. Moreover, the petition for writ of certiorari did not comply with Rule 3-5(a) in that Marlow Properties failed to provide “a dated and certified copy of the order or judgment appealed from” in order to confer jurisdiction on this court to entertain the petition. Here, the partial record was not filed until November 10, 2014, three days after the petition was tendered and three days after

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the erroneous deadline set in the extension order had expired. Therefore, even if the November 7, 2014 date had not been miscalculated, the petition would have been untimely.

As is plain from our discussion, the record in *Marlow Properties, LLC v. Petkovsek*, CV-14-953, was not lodged within the time provided by our rules. Therefore, the motion to intervene or otherwise be heard must be denied, and it is denied with prejudice.

Motion denied with prejudice.

DANIELSON, J., not participating.