

Cite as 2021 Ark. 227
SUPREME COURT OF ARKANSAS
No. CV-20-643

MEDICANNA, LLC

APPELLANT

V.

ARKANSAS DEPARTMENT OF
FINANCE AND ADMINISTRATION,
ARKANSAS ALCOHOLIC BEVERAGE
CONTROL DIVISION; ARKANSAS
MEDICAL MARIJUANA COMMISSION;
AND NATURE’S HERBS AND
WELLNESS OF ARKANSAS, LLC

APPELLEES

Opinion Delivered: December 9, 2021

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. 60CV-20-1386]

HONORABLE WENDELL GRIFFEN,
JUDGE

APPEAL DISMISSED.

JOHN DAN KEMP, Chief Justice

Appellant Medicanna, LLC, appeals the Pulaski County Circuit Court’s dismissal of its lawsuit against appellees Arkansas Department of Finance and Administration, Arkansas Alcoholic Beverage Control Division; Arkansas Medical Marijuana Commission (collectively, “State appellees”); and Nature’s Herbs and Wellness of Arkansas, LLC. Medicanna failed to timely lodge the record pursuant to Arkansas Rule of Appellate Procedure–Civil 5(a). We therefore dismiss the appeal for lack of jurisdiction.

I. *Facts*

Medicanna applied to the Arkansas Medical Marijuana Commission for a license as a medical-marijuana dispensary in zone seven—one of the eight geographic zones created by

the Commission across the state. It also paid a \$7,500 application fee pursuant to the Commission's administrative rules.

Medicanna, the fifth-highest-scoring applicant in zone seven, was not awarded one of the four licenses for that zone. According to the Commission's administrative rules, if the Commission decides to issue an additional license in a zone, the next-highest-ranking unselected applicant in that zone will have an opportunity to obtain a dispensary license. Here, the Commission voted to award an additional dispensary license in zone seven. Because Medicanna had requested and was granted a refund of one-half of its dispensary-application fee, it was not selected for the license. Nature's Herbs and Wellness of Arkansas, LLC, which was the next-highest-scoring applicant from the applications held in reserve, was awarded the license.

On February 13, 2020, Medicanna filed a complaint against the State appellees, alleging violations of the Commission's administrative rules, the Administrative Procedure Act, and Medicanna's equal-protection and due-process rights. It sought a temporary restraining order (TRO), preliminary and permanent injunctions, and declaratory judgment.¹ The circuit court granted a TRO on February 25, pending a March 3 preliminary-injunction hearing. On February 28, the State appellees moved to dissolve the TRO, deny injunctive relief, and dismiss the complaint. The circuit court held a hearing on March 3 and

¹Medicanna later amended its complaint to add Nature's Herbs and Wellness of Arkansas as a defendant in the case.

entered an order on March 12.² In its order, the circuit court found that because Medicanna had received a refund of one-half of its application fee, it lacked standing to bring its lawsuit. The circuit court dismissed Medicanna's complaint, dissolved the TRO, and denied its injunction requests. It also denied Medicanna's contempt motion and request for a stay.

On March 31, Medicanna filed a motion for new hearing and relief from judgment pursuant to Rules 59 and 60 of the Arkansas Rules of Civil Procedure. The State appellees responded that the Rule 59(b) motion was untimely and that Medicanna could not meet its burden of proof under Rule 60. On May 19, Medicanna filed a notice of appeal stating that it had "no pending but unresolved claims. To the extent necessary, it abandons any such claims." On August 21, the circuit court entered an order denying Medicanna's March 31 motions. Medicanna filed a second notice of appeal on August 25, appealing from the August 21 order. On November 9, Medicanna lodged the record, and we now consider its appeal.

II. *Jurisdiction*

As an initial matter, the State appellees moved to dismiss the appeal because Medicanna failed to timely file both the notice of appeal and the record. The timely filings of the notice of appeal and the record are threshold jurisdictional prerequisites for this court.

²Meanwhile, on March 6, nonparty Mitchell Wine filed a pro se motion to intervene in the case pursuant to Arkansas Rule of Civil Procedure 24(a)(2). The circuit court denied his motion on March 10. Wine filed a motion for reconsideration on March 11 and a motion for new trial pursuant to Arkansas Rule of Civil Procedure 59 on March 19. On April 14, the circuit court denied Wine's motion for new trial. He filed a second motion for reconsideration on April 16. The circuit court eventually entered an order months later--on August 21--denying Wine's second motion for reconsideration.

Sloan v. Ark. Rural Med. Prac. Loan & Scholarship Bd., 369 Ark. 442, 445, 255 S.W.3d 834, 837 (2007).

Pursuant to Arkansas Rule of Appellate Procedure–Civil 5(a), “[t]he record on appeal shall be filed with the clerk of the Arkansas Supreme Court and docketed therein within 90 days from the filing of the first notice of appeal, unless the time is extended by order of the circuit court” as provided in Rule 5(b). We have said that this deadline applies regardless of whether both parties file a notice of appeal, or whether one party files more than one notice of appeal. *Larry v. Grady Sch. Dist.*, 362 Ark. 65, 68, 207 S.W.3d 451, 453 (2005). Always requiring a record to be filed within ninety days of the *first* notice of appeal from a final judgment has the beauty of uniformity and eliminates any possibility of confusion for the parties. *Id.* at 69, 207 S.W.3d at 453.

Here, Medicanna filed its first notice of appeal on May 19, 2020. Thus, its deadline to lodge the record with the clerk was ninety days later—on August 17. Medicanna lodged the record on November 9. Because the record was not filed within ninety days from the filing of the first notice of appeal in accordance with Arkansas Rule of Appellate Procedure–Civil 5, we lack jurisdiction over the appeal. Thus, we grant the State appellees’ motion to dismiss. Because we dismiss the appeal for failure to file a timely record, we do not address the State appellees’ additional argument for dismissal.

Appeal dismissed.

Special Justice EMILY WHITE joins in this opinion.

WOMACK, J., concurs without opinion.

HUDSON, J., not participating.

WH LAW, PLLC, by: *Chris W. Burks*, for appellant.

Leslie Rutledge, Att'y Gen., by: *Jennifer L. Merritt*, Sr. Ass't Att'y Gen., for appellee.