SLIP OPINION

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SUPREME COURT OF ARKANSAS

No. 09-22

BRANDY MAE DUNCAN, APPELLANT, VS. JEREMY SCOTT DUNCAN, APPELLEE,	**Opinion Delivered** 11-12-09 APPEAL FROM THE WHITE COUNTY CIRCUIT COURT, NO. CR-08-141, HON. CRAIG HANNAH, JUDGE, REMAND TO COURT OF APPEALS.

ROBERT L. BROWN, Associate Justice

By certification memorandum dated June 23, 2009, the Arkansas Court of Appeals certified to this court the question of whether a scrivener's error in a notice of appeal regarding the date of the order appealed from deprives an appellate court of jurisdiction to hear the appeal under Rule 3(e) of the Arkansas Rules of Appellate Procedure-Civil. We hold that the notice of appeal substantially complies with Rule 3(e), and we remand the matter to the court of appeals.

This certified question arises from a divorce proceeding in White County. On February 21, 2008, appellant Brandy Mae Duncan filed a complaint for divorce against appellee Jeremy Scott Duncan. At the time, she was represented by attorney James "Red" Morgan. Appellee Jeremy Duncan counterclaimed for divorce on March 21, 2008. On April 22, 2008, Brandy Duncan filed a release allowing Mr. Morgan to withdraw from further representation of her

in the matter, and attorney Randall W. Henley entered an appearance on her behalf on April 24, 2008.

Following a hearing on May 6, 2008, the circuit judge entered several orders. On May 7, 2008, he entered an order appointing an attorney ad litem to protect the interests of the parties' minor children. On May 20, 2008, he entered a temporary restraining order, prohibiting the parties from removing their children from the state, from harassing the other party, and from selling, disposing of, or otherwise encumbering any of their property. On May 28, 2008, he entered a temporary order awarding Jeremy Duncan temporary custody of the parties' two minor children, subject to visitation rights in Brandy Duncan, and ordered Brandy Duncan to pay child support on a weekly basis.

On July 14, 2008, Mr. Henley moved to withdraw as counsel for Brandy Duncan and said that "irreconcilable differences" had made his representation of her "impossible." On August 7, 2009, Jeremy Duncan filed notice of a final hearing set for September 2, 2008, and on August 12, 2009, Mr. Henley filed a notice that a hearing on his motion to withdraw had been scheduled for August 19, 2008. At the August 19th hearing, Mr. Henley stated that he had not had contact with Brandy Duncan for six to eight weeks and that he had mailed her notice of the final hearing but that his letter had been returned to his office marked "Moved Left No Address, Unable to Forward, Return to Sender." At the conclusion of the hearing,

the circuit judge allowed Mr. Henley to withdraw as counsel for Brandy Duncan, and a written order to that effect was entered on August 20, 2008.

On September 2, 2008, the matter came on for a final hearing. Brandy Duncan was not present at the hearing, nor was she represented by counsel. Following the hearing, the circuit judge entered the divorce decree on October 7, 2008. The decree dismissed Brandy Duncan's complaint for divorce and awarded an absolute divorce in favor of Jeremy Duncan. The decree further granted him full custody of the parties' two children and granted him possession of the majority of the couple's joint property, including sole title to two parcels of real property.

On October 17, 2008, Brandy Duncan filed a notice of appeal. Her notice of appeal stated that she was appealing from "the Order entered herein on May 4, 2001." Recognizing that no such order existed, the court of appeals certified the case to this court for the sole purpose of addressing whether such an error rendered Brandy Duncan's notice of appeal fatally defective under Rule 3(e) of the Arkansas Rules of Appellate Procedure-Civil.

Rule 3(e) of the Arkansas Rules of Appellate Procedure-Civil provides in pertinent part as follows:

> A notice of appeal or cross-appeal shall specify the party or parties taking the appeal; shall designate the judgment, decree, order or part thereof appealed from and shall designate the contents of the record on appeal. The notice shall also contain a statement that the appellant has ordered the transcript, or specific portions thereof, if oral testimony or proceedings are designated, and has made financial arrangements required by the court reporter pursuant to Ark. Code Ann. § 16-13-510(c). The notice

> shall also state whether the appeal is to the Court of Appeals or to the Supreme Court; and if to the Supreme Court, the Appellant shall designate the applicable subdivision of Supreme Court Rule 1-2(a) which gives the Supreme Court jurisdiction.

While the filing of a notice of appeal is jurisdictional, this court has required only substantial compliance with the procedural steps set forth in Rule 3(e). *See Helton v. Jacobs*, 346 Ark. 344, 57 S.W.3d 180 (2001); *Rogers v. Tudor Ins. Co.*, 325 Ark. 226, 925 S.W.2d 395 (1996). This court has said in dictum that a notice of appeal that fails to designate the judgment or order appealed from as required under Rule 3(e) is deficient, but such a defect is not necessarily fatal to the notice of appeal. *See Jasper v. Johnny's Pizza*, 305 Ark. 318, 807 S.W.2d 664 (1991).

Moreover, we addressed a similar issue in *Pro-Comp Management, Inc. v. R.K. Enterprises, LLC*, 372 Ark. 190, 272 S.W.3d 91 (2008). In *R.K. Enterprises, LLC*, the appellants' amended notice of appeal said that they were appealing from a judgment "entered . . . on April 12, 2007." The record, however, reflected that no judgment had been entered on April 12, 2007. The order was actually entered on June 12, 2007. Because appellants' arguments on appeal were clearly directed to the June 12, 2007 order, and their amended notice of appeal was timely filed with respect to that order, this court held that the appellants' failure to designate the June 12 judgment in their amended notice of appeal was not fatal to their appeal of that judgment. *See also Henley v. Medlock,* 97 Ark. App. 45, 244 S.W.3d 16 (2006) (notice of appeal's reference to the hearing date as the date of the order appealed from

rather than the actual date that the order was entered not fatal to the appeal); *Farm Bureau Mut. Ins. Co. of Ark., Inc. v. Sudrick*, 49 Ark. App. 84, 896 S.W.2d 452 (1995) (notice of appeal's reference to an order that did not exist was not fatal to the appeal where appellant's arguments on appeal were directed at the only order in the case by which the appellant was aggrieved and the notice of appeal was timely filed with respect to that order).

In the instant case, Brandy Duncan's notice of appeal reads that she is appealing from "the Order entered herein on May 4, 2001." Yet, no order was actually filed on that date as the complaint initiating the underlying action was not filed until February 21, 2008. Nevertheless, because Brandy Duncan's arguments on appeal are obviously directed to the divorce decree entered by the White County Circuit Court on October 7, 2008, and her notice of appeal was timely filed with respect to that order, we hold that the date in the notice of appeal was a scrivener's error.[1] We further hold that such an error does not render her notice of appeal fatally deficient due to the fact that the notice of appeal substantially complies with Rule 3(e).

Remanded to the court of appeals.

HANNAH, C.J., not participating.

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[1]Brandy Duncan raises three points on appeal: (1) whether the circuit judge erred by allowing her counsel to withdraw thirteen days prior to a final hearing involving issues of divorce, child support and custody, and property division; (2) whether the circuit judge's division of marital property was erroneous; and (3) whether the circuit judge erred by transferring title to the parties' real property in Louisiana.