

Cite as 2010 Ark. 43

**SUPREME COURT OF ARKANSAS**

No. 10-27

ALAN SARGENT,

APPELLANT,

VS.

WILLIAM SPRINGER,

APPELLEE,

**Opinion Delivered** January 28, 2010MOTION FOR RULE ON CLERK  
AND MOTION FOR EXTENSION  
OF TIME TO FILE RECORD ON  
APPEALGRANTED.**PER CURIAM**

Alan Sargent, by his attorney, Michael R. Lipscomb, has filed a motion for rule on the clerk asserting that the clerk erred in refusing to lodge his record on appeal. Sargent appeals from an order granting summary judgment in favor of appellee, William Springer. That order was entered on September 23, 2009, by the circuit court. Sargent then filed a motion to reconsider on October 15, 2009. That motion was denied on October 19, 2009.

Sargent filed a notice of appeal on October 21, 2009. The notice of appeal was filed within the requisite thirty days under Ark. R. App. P.—Civil 4(a)(2009). Sargent filed his record with the clerk on January 6, 2010. This falls within the ninety-day time limit imposed by Ark. R. App. P.—Civil 5(a)(2009). In his motion for rule on clerk, Sargent states that the clerk would not file the record on appeal because the motion to reconsider had not been filed within ten days of the ruling as required by Ark. R. Civ. P. 59(b)(2009).

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It is true that Sargent's motion to reconsider was not timely under Ark. R. Civ. P. 59(b), which requires such a motion to be filed within ten days after the entry of judgment. However, Sargent was not required to file the motion to reconsider in order to preserve his challenge to the order granting summary judgment. Ark. R. Civ. P. 59(f) ("A party who has preserved for appeal an error that could be the basis for granting a new trial is not required to make a motion for new trial as a prerequisite for appellate review of that issue.").

Because Sargent's notice of appeal and tendering of the record were both timely, we direct the Supreme Court Clerk to file the record in this case and to set a briefing schedule. Motion for rule on clerk granted.

Sargent also filed a motion for extension of time to file the record on appeal. Because his motion for rule on clerk has been granted, his motion for extension of time is moot.