

NOT DESIGNATED FOR PUBLICATION

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

08-675

**ROBIN BROOK HODGES
VERSUS
KENNETH LANE MILLER**

**APPEAL FROM THE
TWENTY-SEVENTH JUDICIAL DISTRICT COURT
PARISH OF ST. LANDRY, NO. 06-3887
HONORABLE DONALD W. HEBERT, DISTRICT JUDGE**

**ULYSSES GENE THIBODEAUX
CHIEF JUDGE**

Court composed of Ulysses Gene Thibodeaux, Sylvia R. Cooks, and John D. Saunders, Judges.

MOTION TO DISMISS APPEAL DENIED.

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THIBODEAUX, Chief Judge.

The Plaintiff/Appellee, Robyn Brook Hodges, filed a motion to dismiss this appeal as untimely. For the reasons assigned below, we deny the motion to dismiss.

This litigation arises out of the divorce of the parties and the establishment of spousal support. In the course of these proceedings, the trial court signed a judgment for spousal support on January 25, 2008. The Defendant timely filed a motion for new trial that was denied on March 24, 2008. The notice of judgment was mailed on April 2, 2008. The Defendant initially timely fax-filed a motion and order seeking appeal of the denial of the motion for new trial on April 22, 2008. The next day the lower court clerk's office filed a copy of the fax-filed motion. The trial court signed both the fax-filed and copy of the appeal order on April 23, 2008.

Also, on April 23, 2008, the Defendant timely fax-filed an amended motion and order for appeal seeking appeal of the denial of the motion for new trial as well as the trial court's January 25, 2008, ruling on spousal support. On April 24, 2007, the clerk's office filed a copy of the fax-filed motion. The trial court signed both the fax-filed and copy of the appeal order on May 5, 2008. The record in this appeal was lodged on May 28, 2008.

The Plaintiff claims that the Defendant's amended motion and order for appeal of the trial court's judgment of January 25, 2008, was untimely filed more than thirty (30) days from the date of the notice of judgment denying the motion for new trial. However, the record in this case indicates that the Defendant's amended motion and order for appeal was date stamped on the first page by the lower court clerk's office as filed on April 23, 2008, and was

signed by the trial court on May 5, 2008. The second page of the pleading, containing the order, was also date stamped by the clerk as filed on May 5, 2008. We find that the amended motion and order for appeal was timely filed on April 23, 2008, within thirty days of the notice of mailing of the judgment denying the motion for new trial on April 2, 2008. La.Code Civ.P. arts. 3942 and 3943. We further find that the trial court's delay in signing the order for appeal after the appeal delay had run is not imputed to the appellant. *Traigle v. Gulf Coast Aluminum Corp.*, 399 So.2d 183 (La.1991). Therefore, we deny the Plaintiff's motion to dismiss appeal.

MOTION TO DISMISS APPEAL DENIED.

This opinion is **NOT DESIGNATED FOR PUBLICATION.**
Rules 2-16.2 and 2-16.3, Uniform Rules, Courts of Appeal.