

SUPREME COURT OF ARKANSAS

Hunter v. Video Real Estate Agency, Inc.

355 Ark. 387 (2003) · Decided December 11, 2003

SUMMARY

The Arkansas Supreme Court considered the Hunters’ motion for a rule on the clerk after the clerk refused to file their tendered appellate record. The court held that the appeal was timely as to the order denying their motion to vacate or obtain a new trial and as to the deemed denial of their Rule 52(b) motion, but untimely as to the underlying judgment; it therefore granted the motion in part, denied it in part, and directed the clerk to file the record.

CASE DETAILS

COURT	Supreme Court of Arkansas
JURISDICTION	Arkansas
DECIDED	December 11, 2003
DISPOSITION	other
PROCEDURAL POSTURE	The appellants moved for a rule on the clerk after the Supreme Court Clerk refused to file the tendered record. They sought review of the denial of a motion to vacate and for a new trial, the underlying judgment, and the deemed denial of a Rule 52(b) motion.
STANDARD OF REVIEW	The opinion addresses appellate timeliness and filing requirements rather than reviewing the merits of the underlying judgment.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion
PARTIES	Ray Hunter, Helena Hunter v. Video Real Estate Agency, Inc.

TOPICS

- appellate procedure
- final judgment rule
- motion for new trial
- default judgment
- civil procedure

PRACTICE AREAS

- civil procedure
- appellate procedure
- real estate

QUESTIONS PRESENTED

1. Whether the Hunters' notice of appeal was timely as to the circuit court's order denying their motion to vacate and for a new trial.

2. Whether the Hunters' notice of appeal was timely and effective to appeal the underlying December 21, 2001 judgment.
3. Whether the record was timely tendered for filing and whether the Supreme Court Clerk should be directed to file it.
4. Whether the amended notice of appeal was timely as to the deemed denial of the Rule 52(b) motion for additional findings of fact.

HOLDINGS

1. A motion to vacate and for a new trial filed within one year of the judgment was timely under Arkansas Rule of Civil Procedure 60(c)(1), and the Hunters' notice of appeal filed within thirty days after denial of that motion was timely as to the order denying the motion.
2. The Hunters' notice of appeal was untimely and ineffective to appeal the underlying judgment because their motion to vacate and for a new trial was not filed within ten days after entry of that judgment and therefore did not extend the time for appeal.
3. The record was timely tendered, and the amended notice of appeal was timely as to the deemed denial of the motion for additional findings of fact; therefore, the Clerk was directed to file the record.

FACTUAL BACKGROUND

Video Real Estate Agency sued Ray and Helena Hunter over a broker commission arising from the sale of the Hunters' property, the Good Shepard Inn. Judgment was entered against the Hunters on December 21, 2001. The Hunters asserted that they lacked notice of the trial and were unrepresented after their counsel had withdrawn, and they later moved to vacate the judgment and obtain a new trial based on lack of notice and alleged misrepresentation of evidence.

PROCEDURAL HISTORY

Video Real Estate Agency filed a complaint in Sharp County Circuit Court concerning a broker commission for the sale of the Hunters' property. The circuit court entered judgment against the Hunters on December 21, 2001, denied their motion to set aside the default judgment, and later denied their motion to vacate and for a new trial. The Supreme Court held that the notice of appeal was timely as to the order denying the motion to vacate/new trial and as to the deemed denial of the Rule 52(b) motion, but untimely as to the underlying judgment, and directed the Clerk to file the record.

DISPOSITION

other

REMAND INSTRUCTIONS

The Supreme Court directed the Clerk of the Supreme Court of Arkansas to file the record. The motion for rule on clerk was granted in part and denied in part; the matter was not remanded to the circuit court.

