

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-CA-00628 COA
CONSOLIDATED WITH
NO. 95-CA-00858 COA**

**BARRETT & COMPANY AND RICHARD
BARRETT**

APPELLANTS

v.

JACKSON PAPER COMPANY

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	05/09/95
TRIAL JUDGE:	HON. JAMES E. GRAVES JR.
COURT FROM WHICH APPEALED:	HINDS COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANTS:	RICHARD BARRETT
ATTORNEY FOR APPELLEE:	STEPHEN J. CARMODY
NATURE OF THE CASE:	CIVIL - CONTRACT
TRIAL COURT DISPOSITION:	SUMMARY JUDGMENT GRANTED TO APPELLEE BY COUNTY COURT; APPEAL TO CIRCUIT COURT DISMISSED AS UNTIMELY
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	12/29/97
CERTIORARI FILED:	2/23/98
MANDATE ISSUED:	4/30/98

BEFORE BRIDGES, C.J., DIAZ, AND COLEMAN, JJ.

DIAZ, J., FOR THE COURT:

The appellant assigns error to the lower court proceedings which resulted in partial summary judgment being granted in favor of the appellee. Finding that the appellant failed to file a timely notice of appeal, we affirm the circuit court's dismissal of the case and decline to address the appellant's remaining issues.

FACTS

The appellee, Jackson Paper Company, filed suit in the County Court of Hinds County against the appellant, Barrett & Company and Richard Barrett (hereinafter referred to as Barrett), to collect on three invoices which Barrett refused to pay. The county court granted partial summary judgment in favor of Jackson Paper on two of the three invoices in question. The third invoice was submitted to a jury, which found in favor of Barrett. The court then awarded Barrett \$350.00 in attorney's fees. The final judgment of the court was entered on January 12, 1995. On January 18, 1995, Barrett filed his first notice of appeal. However, on January 23, 1995, Jackson Paper filed with the county court a motion for a judgment notwithstanding the verdict, or in the alternative, a motion for a new trial. On March 7, 1995, the county court entered an order denying Jackson Paper's motions. On March 23, 1995, Jackson Paper filed a motion in circuit court to dismiss Barrett's appeal on grounds that his appeal was untimely filed. On March 27, 1995, Barrett filed his second notice of appeal. On April 17, 1995, Barrett petitioned the court to extend his time limit for filing a notice of appeal. The county court denied his motion. On May 9, 1995, the circuit court dismissed Barrett's appeal. On May 12, 1995, Barrett filed his third notice of appeal. On July 28, 1995, the circuit court dismissed Barrett's appeal of the county court's denial of his motion for leave to file an untimely appeal.

DISCUSSION

Section 11-51-79 of the Mississippi Code Annotated governs appeals from county courts to circuit courts. The statute requires that such appeals be taken within ten days of the entry of final judgment. **Miss. Code Ann. § 11-51-79 (1972)**. However,

[T]he time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect. A new notice of appeal must be filed within the prescribed time measured from the entry of the order disposing of the motion as provided above.

M.R.A.P. 4(d). "An appeal shall be dismissed if the notice of appeal was not timely filed pursuant to Rules 4 or 5." **M.R.A.P. 2(a)(1)**. Clearly, Barrett properly filed his first notice of appeal within the ten day time limit; however, when Jackson Paper filed its post-trial motions, Barrett's notice of appeal was invalidated. He had ten days after the entry of the county court's order denying Jackson Paper's motions in which to re-file his notice of appeal. He failed to do so; therefore, Barrett waived his opportunity to appeal the county court's decision. Barrett argues, however, that Jackson Paper's post-trial motions were not timely filed within the ten-day time period allowed under M.R.C.P. 50 and 59, and that therefore his first notice of appeal is still intact. Although the rules state that post-trial motions must be filed no later than ten days after the entry of judgment, **M.R.C.P. 6(a)** provides in part:

[t]he last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, as defined by statute, or any other day when the courthouse or the clerk's office is in fact closed, whether with or without legal authority, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, a legal holiday, or any other day when the courthouse or the clerk's office is closed.

In the present case, final judgment was entered on January 12, 1995, and Jackson Paper filed its post-

trial motions on January 23, 1995. Because January 22, 1995, was in fact a Sunday, Jackson Paper had until the close of business on January 23, 1995, to file its motions. Therefore, since Jackson Paper filed its post-trial motions within the time limit prescribed by the rules, we find that the circuit court properly dismissed Barrett's appeal.

Likewise, we agree with the lower courts' denial of Barrett's motion for leave to file an untimely notice of appeal. "The county judge may within said ten (10) days, for good cause shown by affidavit, extend the time [in which to file a notice of appeal]. . . ." **Miss. Code Ann. § 11-51-79 (1972)**. If Barrett had needed more time in which to file his notice of appeal, he should have adhered to the mandate of the statute. His failure to do so properly resulted in both the county and circuit courts denying his motion. Finding no reversible error in the lower court proceedings, we affirm the circuit court's dismissal of Barrett's appeal.

THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT IS AFFIRMED. COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANTS.

BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.