

IN THE ARKANSAS COURT OF APPEALS

CAROL BITTING, et al

APPELLANTS

VS.

CASE NO. CV-18-427

**ARKANSAS POLLUTION CONTROL
& ECOLOGY COMMISSION AND
ELLIS CAMPBELL d/b/a EC FARMS**

APPELLEES

MOTION TO DISMISS APPEAL

Comes the separate appellee, Ellis Campbell d/b/a EC Farms, and for its Motion to Dismiss Appeal, states:

1. On January 10, 2018, the Newton County Circuit Court entered its Order on the appeal of the permit decision of the Arkansas Pollution Control & Ecology Commission (“PC&E”). (R. 63-66)

2. PC&E filed a motion for reconsideration of the Order on January 25, 2018, fifteen days after the entry of the Order. (R. 67-72) The Circuit Court did not rule on the motion for reconsideration.

3. On February 12, 2018, the appellants filed their notice of appeal to this Court. (R. 83-84)

4. Rule 4 of the Arkansas Rules of Appellate Procedure – Civil requires that a notice of appeal be filed within thirty days of the entry of the order from which

the appeal is taken. *See* Ark. R. App. P. Civ. Rule 4(a). The thirty-day period begins to run the day after the order is entered. *See* Ark. R. App. P. Civ. Rule 6(a). The first day of the thirty-day period to file the notice of appeal was January 11, the day after the judge issued the order. The thirtieth day of the period and deadline for filing the notice was Friday, February 9. The appellants' notice of appeal was not filed in a timely manner, and their appeal should therefore be dismissed.

5. Even if the appellants were to argue that PC&E's motion for reconsideration could extend the time for filing a notice of appeal, the motion for reconsideration did not extend the filing deadline in this instance because it was filed more than ten days after the judge's ruling. The deadline for filing a notice of appeal is extended by thirty days when a motion to vacate, alter, or amend an order is filed, but that motion must be filed no later than ten days after the entry of the order being appealed from. *See* Ark. R. App. P. Civ. Rule 4(b)(1). Arkansas courts have held that a motion for reconsideration qualifies as a motion to vacate, alter or amend an order for the purposes of Rule 4(b). However, a thirty-day extension is not available when, as in the present case, a party files a motion to reconsider more than ten days after the subject order's issuance. *See* Ark. R. App. P. Civ. Rule 4(b)(1). Therefore, the appeal should be dismissed.

WHEREFORE, Ellis Campbell d/b/a EC Farms moves the Court to dismiss the appellants' appeal and for all other proper relief to which he may be entitled.

Respectfully submitted,

/s/ William A. Waddell, Jr.

WILLIAM A. WADDELL, JR.

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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2018, I served the foregoing document via electronic mail on the following:

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/s/ William A. Waddell, Jr.
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Case Name: Carol Bitting et al v. Arkansas Department of Environmental Quality et al.

Docket No: Case No. CV-18-427

Title of Document: Motion to Dismiss Appeal

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies:

I have submitted and served on opposing counsel an unredacted PDF document that complies with the Rules of the Supreme Court and Court of Appeals of the State of Arkansas. The PDF document is identical to the corresponding parts

of the paper document from which they were created as filed with the Court. To the best of my knowledge, information, and belief formed after scanning the PDF document for viruses with an antivirus program, the PDF document is free of computer viruses. A copy of this certificate has been filed with the Court and has been served on all opposing parties.

Identification of paper documents not in PDF format: None.

Dated July 6, 2018.

/s/ William A. Waddell, Jr.
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