

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA12-126

BOB R. HOWARD, JUDY HOWARD,
and NORA HOWARD

APPELLANTS

V.

ARKANSAS CAMA TECHNOLOGY;
JOE POWELL, FRANKLIN COUNTY
JUDGE; GUS YOUNG; FRANKLIN
COUNTY ASSESSOR; ET AL.

APPELLEES

Opinion Delivered October 10, 2012APPEAL FROM THE FRANKLIN
COUNTY CIRCUIT COURT,
NORTHERN DISTRICT
[NO. CV-2010-213(I)]HONORABLE WILLIAM M.
PEARSON, JUDGE

AFFIRMED

ROBIN F. WYNNE, Judge

Bob R. Howard, Judy Howard, and Nora Howard appeal from a Franklin County Circuit Court order dismissing their appeal from the county court for lack of jurisdiction. We agree with the circuit court and affirm its order dismissing appellants' appeal.

Appellants challenged the tax assessment of several pieces of real property, first to the Franklin County Board of Equalization and then before the Franklin County Court. After the Franklin County Court entered an order finding in favor of appellees, appellants attempted to appeal to the Franklin County Circuit Court. They filed a notice of appeal and a certified copy of the county court's judgment within thirty days. They sent notice of their appeal to the parties directly.¹ Appellants filed their complaint in circuit court on January 20,

¹Appellants appear to have initially sent notice via regular mail.

2011, an amended complaint on February 10, 2011, and a second amended complaint, adding the Franklin County Assessor and the Franklin County Equalization Board as defendants, in June 2011.

The county defendants filed a motion to dismiss the appeal on several grounds, including that appellants failed to strictly comply with Arkansas District Court Rule 9's requirements regarding service of notice. After extensive briefing and a hearing, the circuit court granted the motion. The circuit court found that appellants failed to strictly comply with Rule 9(b) because they failed to serve a certified copy of their notice of appeal upon counsel for all other parties (specifically, Franklin County Civil Attorney James C. Mainard), thus depriving the circuit court of jurisdiction to hear the appeal. Appellants then appealed to this court.

This case involves interpretation of Arkansas District Court Rule 9 (2012). Our supreme court has held that court rules are construed using the same means, including canons of construction, as are used to construe statutes. See *Velev v. State (City of Little Rock)*, 364 Ark. 531, 533, 222 S.W.3d 182, 184 (2006). Issues of statutory construction are reviewed de novo. *Id.*

Arkansas District Court Rule 9 states, in pertinent part, as follows:

(b) *How Taken From District Court.* A party may take an appeal from a district court by filing a certified copy of the district court's docket sheet, which shows the awarding of judgment and all prior entries, with the clerk of the circuit court having jurisdiction over the matter. Neither a notice of appeal nor an order granting leave to appeal shall be required. The appealing party shall serve a copy of the certified docket sheet upon counsel for all other parties, and any party proceeding pro se, by any form of mail that requires a signed receipt.

.....

(e) *Special Provisions For Appeals From County Court to Circuit Court.* Unless otherwise provided in this subdivision, the requirements of subdivisions (a), (b), (c), and (d) govern appeals from county court to circuit court. A party may take an appeal from the final judgment of a county court by filing a notice of appeal with the clerk of the circuit court having jurisdiction over the matter within thirty (30) days from the date that the county court filed its order with the county clerk. A certified copy of the county court's final judgment must be attached to the notice of appeal. . . .

Thus, subdivision (e) of Rule 9 provides special provisions for appeals from county court to circuit court, while stating that the requirements of subdivisions (a), (b), (c), and (d) apply to the extent not "otherwise provided" in subdivision (e). Subdivision (e) requires a party appealing from county court to circuit court to file a notice of appeal and a certified copy of the county court's final judgment; there is no provision for service of the notice. In the only part of subdivision (b) that could apply to appeals from county court, the Rule provides: "The appealing party shall serve a copy of the certified docket sheet upon counsel for all other parties, and any party proceeding pro se, by any form of mail that requires a signed receipt." Accordingly, the notice of appeal and attached certified copy of the county court's final judgment (required for appeals from county court instead of a certified copy of the district court's docket sheet) must be served upon counsel for all other parties, and any party proceeding pro se, by any form of mail that requires a signed receipt.

Appellants contend that they did perfect their appeal and the circuit court erred when it concluded otherwise; they argue that service of notice does not affect the validity of an appeal. They point to the Addition to Reporter's Notes, 2008 Amendment, which provides:

To ensure notice of the appeal to opposing parties, the appealing party must serve the docket sheet on all other parties by some form of mail that generates a signed receipt. This provision echoes the requirements of Arkansas Rule of Appellate Procedure—Civil 3(f) about serving a notice of appeal. Rule of Civil Procedure 4 does not apply and service of process is not required.

Rule 3(f) of the Arkansas Rules of Appellate Procedure—Civil (2012) provides that failure to serve notice shall not affect the validity of the appeal. Appellants then point to *Wise v. Barron*, 280 Ark. 202, 655 S.W.2d 446 (1983), in which the supreme court denied a motion to dismiss the appeal for failure to serve the then-required separate Notice of Designation of Record.

Appellees argue that appellants failed to acknowledge that there was a second ground that the circuit court found for dismissal: that necessary parties who were named for the first time in the second amended complaint (the assessor and the equalization board) were not properly served. This ground for dismissal was not included in the written order, however, and the court made inconsistent statements about this second ground during the hearing. Furthermore, whether the circuit court acquired jurisdiction is a threshold issue that must be addressed first. *E.g.*, *Sloan v. Ark. Rural Med. Practice Loan and Scholarship Bd.*, 369 Ark. 442, 445, 255 S.W.3d 834, 837 (2007). Therefore, this court must address the merits of appellants' argument. In addition, we note that many of appellees' arguments are directed toward service of the complaints under Rule 9(c) rather than service of the notice of appeal and certified copy of the county court's judgment under Rule 9(b). Accordingly, they are inapposite to the issue presented on appeal.

Our supreme court has been clear that compliance with Rule 9 must be strict; substantial compliance will not suffice. *Johnson v. Dawson*, 2010 Ark. 308, at 8, 365 S.W.3d 913, 917. *Cf. Morgan v. Turner*, 2010 Ark. 245, at 7, 368 S.W.3d 888, 893 (holding that failure to serve the notice of appeal by a form of mail requiring a signed receipt, pursuant to Ark. R. App. P.—Civ. 3(f), is not fatal to appeal). Where a party fails to perfect an appeal

from an inferior tribunal to a circuit court in the time and manner provided by law, the circuit court never acquires jurisdiction of the appeal. *Id.* In *Johnson, supra*, our supreme court held that by not filing a certified copy of the docket sheet from the district court proceedings, and instead filing a certified copy of the entire appeal transcript, Dawson failed to perfect his appeal.

Given that compliance with Rule 9 must be strict, we agree with the circuit court's interpretation of Rule 9. Subdivision (e) of Rule 9 does not address service of notice; therefore, it is not in conflict with subdivision (b) and its requirement that an appellant serve notice of the appeal upon counsel for all other parties. Appellants failed to strictly comply with Rule 9 when they failed to serve notice of their appeal on counsel for the defendants.

Affirmed.

GLOVER, J., agrees.

GRUBER, J., concurs.

RITA W. GRUBER, Judge, concurring. Based upon decisions of our supreme court requiring strict compliance with Arkansas District Court Rule 9 (2012) and the text of the rule itself, I agree that this case must be affirmed. I write separately regarding the reporter's notes to Rule 9.

The reporter's notes are not precedent; however, our supreme court has held that they may offer some guidance as to a rule's meaning. *Velek v. State (City of Little Rock)*, 364 Ark. 531, 534, 222 S.W.3d 182, 185 (2006). Here, appellants argued, in part, that the true issue on

appeal—service of the notice—was not jurisdictional. In doing so, they relied upon the 2008 reporter’s notes, which state that subdivision (b) of Rule 9 “echoes the requirements of Arkansas Rule of Appellate Procedure—Civil 3(f) about serving a notice of appeal.” Ark. Dist. Ct. R. 9 addition to rep. notes 2008 amend. (2012). Arkansas Rule of Appellate Procedure—Civil 3(f) states that a “[f]ailure to serve notice shall not affect the validity of the appeal.”

If subdivision (b) of District Court Rule 9 is to be an echo of the service requirements of Arkansas Rule of Appellate Procedure—Civil 3(f), then appellants’ argument would seem reasonable but for the fact that our courts have mandated strict compliance with Rule 9. The same cannot be said for Ark. R. App. P.—Civ. 3(f). See, e.g., *Morgan v. Turner*, 2010 Ark. 245, 368 S.W.3d 888. Therefore, in my view, the guidance provided by the 2008 reporter’s notes has created some confusion—confusion that cost the appellants their day in court.

Accordingly, I respectfully concur.

The Law Offices of Candice A. Settle, P.A., by: *Candice A. Settle*, for appellants.

James C. Mainard, Franklin County Civil Attorney, for appellees Franklin County, Franklin County Board of Equalization, Franklin County Assessor, Cathy Bennett, Gus Young, and Franklin County Judge Joe Powell.