THOMAS L. WEBSTER, *et al.,* Appellants, c. VAR- N IE FREEMAN, *et* n/., Appellees.

AP P EAL FROM TH E CiRC U IT CO URT OF TH E SiXTH *S* UDICIAL CiRC U IT,

**MO NTSERRADO CO U NTY•**

Argued April 21, 1964. Decided May 22, 1964.

Where the record shows that an appellant has failed to comply with the rules or the Supreme Court and the statutory provisions prescribing the periods of time within which the prerequisites for perfection of an appeal must be com- pleted, the Supreme Court will order the trial court to resume jurisdiction arid enforce the j udgment appealed from.

On appeal from a judgment in an action of ejectment, appellees’ *motion* for an order to the circuit court to resume jurisdiction and enforce its judgment was *granted* and the *ap peal dismissed.*

*Samu el B. Clo le* for Ap pellants. *Sant u el E.K. Pel- ham* for Appellees.

MR. **JUSTICE** HARRIS d elivered the opinion of the

Court.

The above-entitled case was heard iii the Circuit Court of the Sixth Judicial Circuit, Montserrado County, and final judgment was rendered against the appellants, plaintiffs below, to which they expected and announced an appeal to this Court. At the call of the case for hear- ing, this Court was informed that an application had been filed by the appellees, defendants below, for order of this Court to the court below to resume jurisdiction and enforce its judgment, which application we hereunder quote:

“And now come the defendants-appellees in the above-entitled cause and respectfully apply to the

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Supreme Court for an order to the trial court to resume jurisdiction over the case of ejectment and enforce its judgment rendered in the case, for the following legal and f actual reasons, to wit:

“i. Because judgment in the case was rendered

# on September 6, '9°3. ri nd the plaintiffs in

- ejectnient announced appeal to the Supreme

Court on the same day. The bill of excep- tions, which is the first jurisdictional step fo r completion of the appeal, should have been prepared and filed not later than September

# °. 9\*3 i but instead, the said bill of excep-

tions was not prepared and filed until October

# 3. 9°3. quite ry days over and above the time

required by law, as will more fully appear by

clerk’s certificates and a certified copy of the said bill of exceptions hereto attached and marked Exhibits A, B, and C to form a part of this application. The Court will please take judicial notice of the original record filed in the clerk’s office in the court below and the certificate already mentioned *su pra* and marked Exhibit A which Iurther shows that I I days after the rendition of the judgment, the bill of exceptions had not been filed in the office of the clerk.

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And also because the notice of completion of appeal, which alone gives the Supreme Court jurisdiction over the cause and parties, should have been served upon the defendants-appel- lees and evidence of said service shown by the returns of the sheriff; although this notice was never served upon the defendants-appel- lees or their counsel, yet the record made in the lower court has shown that such service



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has been made upon Counsellor Pelham—a statement which is entirely Ialse and untrue. For not only was no copy of the notice of completion of appeal served on the defendants- appellees or their counsel, but no copy hus been accompanied by certificate verified by oath, in keeping with Rule IV of Supreme Court Rules, Part 4.

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And also because the entire records pertain- ing to the appeal in this case have been Ialsi- fied in the court below, as is evidenced by the Iact that even though the clerk of court has recorded on the bill of exceptions (original) the filing date to be October 3, '9°3. yet the

judge in approving the bill of exceptions in-

structed the clerk to record September i Cth as the filing date ; which order, if carried out, should be Ialse, and untrue, and hurt the de- fendants-appellees’ interest. The Court will please take judicial notice of the original trial records in the clerk’s office in the court below. *o f* ski cñ *de fen dants-a p pellees are read y to*

And also because defendants-appellees aver that the bill of exceptions was not approved

on September i , i963, As indicated thereon by the judge, for the order given by the judge to the clerk of court is very much strange to the practice of this jurisdiction, and for which defendants-appellees most respectfully invite

Your Honors’ attention to the said order of the judge as found at the foot of the bill of ex- ceptions to the clerk of court directing him to file same on the said I Cth day of September,

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9\*3› when indeed and in truth, the said bill of exceptions did not reach to the clerk’s office until the 3rd day of October, I Q\* 3. as indi- cated by the cle rk on the said bill of excep-

tions.

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And also because defendants-appellees main- tain that, according to the record and the no- tation made by the judge to the effect the bill of exceptions was approved within statutory time, that is to say, on the I Cth day of Septem- ber. If correct, why would he make such no- tation to the clerk of court ordering him to file the said bill of exceptio ns for the said i Cth day of September, i 9\*3. when the clerk is re-

quired to file all documents on the day and

date they are carried to his office?

“Off o/ o Etch *de fen dams-a p pellees are read y to*

*p rove.*

“Wheref ore, in view of the foregoing, def endants- ap pel lees most respectf ully pray that Your Honors will order the lower court to resume jurisdiction and enforce its judgment as ren-

dered on September 6, I °3› and grant unto them any and Iurther relief as the nature of

the case and justice demand.”

To the said application, as quoted above, the appellants filed a resistance which we hereunder also quote:

“The appellants in resisting the motion Ior order of this Court to the court below to resume jurisdiction and enf orce its judgment, most respectf ully pray this Honorable Court to deny said motion for the Iollow- ing legal reasons, to wit:

“I. That appellants deny the allegations made in the motion of ap pellees to the effect that apel-

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lants have f ailed to prosecute the appeal in lteep in g with law. A recourse to the records of court will reveal that:

“ (a) The bill of exceptions was tendered the judge within ten days after the render- ing of final judgment in the case, and the endorsement on the f act of the bill of exceptions ordering the clerk to file as of certain date confirms this.

“ (b) The notice of appeal was served and returned by the mini sterial office r in keeping with the statute control lin g, and all of this was done within the time provided by law.

“I n view of the above, ap pellants pray this H onor- able Court not to entertain said motion but to dismiss same with costs against appe11'ees.”

Recourse to the records as certified to us from the court below reveals that in support of the a pplication for an order to the court below to resume jurisdiction and enforce its judgment, the appellees, defendants below, obtained a certificate from the clerlc of the Circuit Court of the Sixth J ud icial Circuit, of the following tenor:

“CERTIFICATE:

“From an inspection and perusal of the records filed in the Office of the Clerk of Court, Sixth Judicial Cir- cuit, Montserrado County in the below-named case:

The heirs of the late Thomas L. Webster, plaintiffs,

*versus*

Varnie Freeman *et al.,*

defendants

Action of

Ejectment

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this is to certify that the plaintiff’s bill of exceptions was filed on October 3, '9^3-

(L.S.) “Given under my hand and seal of Court

this gth day of March, 1 64.

[Sgd.j “JON ATHAN R. B. CAMPBELL

*Assistant Clerk, Lizil has to urt.”*

Although a recourse to the bill of exceptions as filed by the appellants shows that the same was approved by

the trial judge on September it, '9°3. yet the following notation is thereon made: “Approved: if sufficiently sup- ported by and revealed in the records of court on this I Cth

day of September, i 9\*3. for which the clerk is ordered to have same filed for this date in his office.”

Obviously the approval date for which the judge or- dered the clerk to file the bill of exceptions was not suf- ficiently supported by and revealed in the records of the court; hence the clerk gave the certificate to the appel- lees, certifying that the appeilants’ bill of exceptions was

filed on October 3, I 9° 3. ri nd not on September i $, 1 63, thereby proving that the bill of exceptions, in order to have been tendered within the time prescribed by law,

should have been tendered on the 16th day of September,

and not on the 3 Rd day of October, I g6 3, Which filing date as certified by the clerk is I y days without the statutory filing period. It must be particularly noted that there

is no definite date indicated on the bill of exceptions be- cause two different dates are shown : September I Cth as well as September I Cth ; and this has raised doubts in our minds as to whether the bill of exceptions was tendered in time.

With respect to the notice of the completion of the ap- peal not having been served on the defendants-appellees as is alleged in Count 2 of the application, there is no document made profert with the application to substan- tiate the same and hence we refrain from commenting thereon. But in Count 2 of the application, it is alleged that the following rule of this Court pertaining to the

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service of notices of completion of appeals was violated: “Notice—Whenever an appeal to the Supreme Court is announced f roni a judgment, ruling or de- cision, counsel for the appealing party shall, after an- nouncing ap peal and performing all of the statutory acts incident to the completion of said appeal, and at ter taking all of the jurisd ictional steps necessary within the time prescribed, serve a copy of the notice o1 appeal upon his adversary, the original of which must have been issued by the clerk and served and returned by the ministerial officer. Another copy which shall be accompanied by certificate verified by oath, to the effect that he has properly supervised his appeal, shall then be filed in the office of the clerk of the Supreme Court and shall be included in the

records.” R. Sup. Ct. IV (4) › 3 L.L.R. 9 97-

Had the ap pell ants in the present case complied with

the above-quoted rule of the Supreme Court, their ad- versaries would not have been able to sustain the allega- tion that no notice of completion of appeal was served. In view of the fact that the violation of this rule has been called to our attention, the Court must recognize the dis- obedience of its rule ; and in such a case, we would seem to have no alternative but to comply with the rule and dismiss the ap pea1. The clerk of this Court is ordered to send a mandate to the court below commanding it to resume jurisdiction and enforce its judgment with costs against appellants. And it is so ordered.

*H p p cal dismiss ed.*