

Andrea Jane (Benton) COGGINS v.  
William John BENTON

CA 94-192

873 S.W.2d 820

Court of Appeals of Arkansas  
En Banc  
Opinion delivered April 13, 1994

APPEAL & ERROR — NO UNAVOIDABLE CASUALTY — FAILURE TO FILE RECORD WITHIN SEVEN-MONTH PERIOD — EXTENSION ISSUED BY TRIAL COURT WITHOUT AUTHORITY TO DO SO. — In the absence of unavoidable casualty an appeal should be dismissed when the record is filed outside the seven-month period; where the trial court extended the time for filing the record to a time that was outside the seven-month period without the authority to do so, and the record was filed in the appellate court after expiration of the seven-month period, the appeal was dismissed.

Motion to Dismiss Appeal granted.

*Norman Wilbur*, for appellant.

*Larry Dean Kisse*, for appellee.

PER CURIAM. The appellee has filed a motion to dismiss the above appeal because the transcript was not filed within seven months from the entry of the judgment from which the appeal was taken as required by Rule 5(b) of the Rules of Appellate Procedure. The problem comes from the fact that the transcript was not completed by the court reporter in time to be filed within the seven-month period.

[1] We find the motion to dismiss must be granted. It has been held that in the absence of unavoidable casualty an appeal should be dismissed when the record is filed outside the seven-month period. *Pierce v. Pierce*, 238 Ark. 46, 377 S.W.2d 868 (1964); see also *Thomas v. Arkansas State Plant Board*, 254 Ark. 997-A, 497 S.W.2d 9 (1973).

Here, the trial court extended the time for filing the record to a time which was outside the seven-month period, but the court had no authority to take that action. In the case of *In Re Estate of Wilkinson*, 311 Ark. 311, 843 S.W.2d 316 (1992), the supreme

court said, "when an appellant seeks an extension of time beyond the seven months to file his or her record, his or her remedy is to file a partial record in the supreme court and seek an extension for a compelling reason, such as unavoidable casualty." See also Arkansas Supreme Court and Court of Appeals Rule 3-5, which was formerly Rule 26, and the case of *Evans v. Northwest Tire Service*, 21 Ark. App. 75, 728 S.W.2d 523 (1987).

COOPER, J., not participating.