

Steve ROBINSON v. Joe O'BRYAN

95-156

894 S.W.2d 921

Supreme Court of Arkansas
Opinion delivered March 20, 1995

APPEAL & ERROR — MOTION FOR RULE ON THE CLERK. — During a series of transfers, a non-suit, and a refile, a case was assigned, at different times, two different case numbers; when the most recent case was dismissed with prejudice and a notice of appeal was timely filed, appellant alleges that a scrivener's error was made when the first case number, instead of the second, was used; as soon as the error was discovered, a second, corrected notice of appeal was filed, but it was one day late. *Held*: Where appellant included only the untimely notice of appeal in the record for his motion for rule on the clerk, but did not include the timely notice of appeal, appellant failed to supply a sufficient record upon which the appellate court could make a determination, and the motion was denied.

Motion for Rule on the Clerk; denied.

Richard Quiggle, P.A., for appellant.

No response.

PER CURIAM. Appellant, Steve Robinson, by his attorney, has moved for a rule on the clerk. Robinson originally filed his case in Pulaski County Circuit Court. Joe O'Bryan, appellee, moved to dismiss the action arguing improper venue. Robinson replied, requesting a transfer of the case to Lonoke County Circuit Court. On July 28, 1993, the Pulaski County court transferred the case to Lonoke County. Lonoke County assigned the case a number, No. 93-308, and filed it.

The case rested with Lonoke County until February 1994 when O'Bryan attacked its filing there. Lonoke County sent the

case back to Pulaski County, refusing to accept the transfer. Robinson then non-suited in Pulaski County and filed his case in Lonoke County. Lonoke County assigned the case a new number, No. 94-270. O'Bryan moved to quash service, and to strike and dismiss the complaint. On November 8, 1994, Lonoke County dismissed No. 94-270, with prejudice.

Appellant states in his motion that he filed a notice of appeal on November 17, 1994, apparently from the November 8, 1994, order. However, through a scrivener's error, appellant states he used the first case number, 93-308, instead of the new number, 94-270, in the notice of appeal. Appellant noticed the error when getting the record from the Lonoke Clerk and immediately filed a second notice of appeal with the proper number, 94-270, on December 9, 1994.

The clerk in this court refused to accept the record as the December 9, 1994, notice of appeal was one day late. Appellant asks us to grant this motion, arguing that the first notice of appeal was timely filed and contained only an inadvertent error in the substitution of case numbers.

[1] Appellant, however, has only included in the record the untimely notice of appeal from December 9, 1994, and not the timely notice from November 17, 1994. Having failed to supply this court with a sufficient record to make a determination, the motion for rule on the clerk is denied.