

Elizabeth Gammon BROWN v. STATE of Arkansas

RC 89-47

777 S.W.2d 585

Supreme Court of Arkansas
Opinion delivered October 16, 1989

1. APPEAL & ERROR — WHEN RECORD OF APPEAL MUST BE FILED. — Ark. R. App. P. 5 provides that the record on appeal shall be filed with the clerk of the Supreme Court of Arkansas within ninety days of the notice of appeal unless the trial court grants an extension.
2. APPEAL & ERROR — DUTY OF COUNSEL TO TRANSMIT THE RECORD ON APPEAL TO THE CLERK FOR FILING AND DOCKETING. — It is the responsibility of the attorney to transmit the record on appeal to the clerk of the Supreme Court of Arkansas for filing and docketing.
3. APPEAL & ERROR — MOTION FOR RULE ON THE CLERK — REMAND TO DETERMINE WHETHER THERE IS GOOD CAUSE FOR GRANTING MOTION WITHOUT USUAL REQUIREMENT THAT COUNSEL ADMIT FAULT. — Where counsel alleged, without admitting fault, that he was prevented from meeting his responsibility for filing a timely record in that the circuit clerk had been instructed by the circuit judges “to not turn over the transcripts in any criminal cases to defense attorneys appealing them, but to take care of mailing the transcripts themselves,” the allegation, if true, could provide good cause to grant the motion without the usual requirement that counsel admit fault for the late filing, and the appellate court remanded to the trial court for a determination as to whether the actions of the court or its circuit clerk prevented counsel from discharging his duty to transmit the record on appeal to the clerk of the Supreme Court of Arkansas.

Motion for Rule on Clerk; remanded.

William Lee Fergus, for movant.

Steve Clark, Att’y Gen., by: *Theodore Holder*, Asst. Att’y Gen., for respondent.

PER CURIAM. William Lee Fergus, Elizabeth Gammon Brown's attorney, has filed a motion on behalf of Brown for rule on clerk. For the reasons stated below, we remand to the trial court for further proceedings.

An order for judgment and commitment was entered in Mississippi County Circuit Court against the appellant, Elizabeth Gammon Brown, on April 17, 1989. Notice of appeal was filed on April 25, 1989, and an order extending the time to file the record until September 1, 1989, was entered on June 26, 1989. The record was received by the clerk of this court on September 5, 1989, and the clerk refused to docket the appeal because the record was not timely filed pursuant to Ark. R. App. P. 5.

[1, 2] Ark. R. App. P. 5 provides that the record on appeal shall be filed with the clerk of this court within ninety days of the notice of appeal unless the trial court grants an extension. It is the responsibility of the attorney to transmit the record on appeal to the clerk of this court for filing and docketing. *Lewis v. State*, 295 Ark. 165, 747 S.W.2d 91 (1988).

[3] In support of Brown's motion for rule on clerk, counsel alleges, without admitting fault, that he was prevented from meeting his responsibility for filing a timely record in that the circuit clerk has been instructed by the circuit judges "to not turn over the transcripts in any criminal cases to defense attorneys appealing them, but to take care of mailing the transcripts themselves." This allegation, if true, may provide good cause to grant Brown's motion without the usual requirement that counsel admit fault for the late filing. Accordingly, we remand to the trial court for a determination as to whether the actions of the court or its circuit clerk prevented counsel from discharging his duty to transmit the record on appeal to the clerk of this court.

Remanded.