

ORTHO-NEURO MEDICAL ASSOCIATES *v.*
Tonya M. JEFFERY

00-1480

37 S.W.3d 577

Supreme Court of Arkansas
Opinion delivered January 25, 2001

APPEAL & ERROR — MOTION FOR RULE ON CLERK — DENIED. —
Because the record on appeal was not filed within the time prescribed in Ark. R. App. P. 5(a), appellant's motion for rule on the clerk was denied.

Motion for Rule on the Clerk; denied.

Oscar Stilley, for appellant.

No response.

PER CURIAM. By motion, appellant seeks a rule on the clerk, directing the clerk to accept appellant's late record. Appellant argues its record was due on December 19, 2000. Appellant transmitted its record to Airborne Express for delivery on December 19th, but it was not delivered to the clerk's office until December 20, 2000. Appellant attaches to its motion an Airborne Express "shipment tracking report" which reflects "delivery was attempted on December 19, 2000 at 9:42 a.m." Appellant's counsel further declares that the failure of Airborne Express to deliver the record was because he was told the clerk's office was moving on the morning of December 19, 2000. Appellant submits no affidavit which shows the clerk's office was closed on December 19, and, in fact, the clerk's office was open on December 19th, as it is every weekday except certain designated holidays.

[1] Because the record on appeal was not filed within the time prescribed in Ark. R. App. P. 5(a), appellant's motion for rule on the clerk must be denied. See *Mitchell v. City of Mountain View*, 304 Ark. 585, 803 S.W.2d 556 (1991).

THORNTON, J., would grant.