

Brenna KEESEE *v.* David KEESEE

06-1022

240 S.W.3d 573

Supreme Court of Arkansas
Opinion delivered October 5, 2006

APPEAL & ERROR — MOTION FOR RULE ON CLERK — REMANDED FOR NONCOMPLIANCE WITH ARK. R. APP. P. — CIVIL 5(b)(1)(C). — Where appellant attempted to file her record pursuant to a motion for extension of time, the clerk refused the filing because there was no finding in the order by the circuit court that “all parties had the opportunity to be heard on the motion, either at a hearing, or by responding in writing” as required by Ark. R. App. P. — Civil 5(b)(1)(C).

² “The impropriety of giving evidence showing that the accused had been guilty of other crimes, merely for the purpose of thereby inferring his guilt of the crime for which he is on trial, may be said to have been assumed and consistently maintained by the English courts ever since the common law itself has been in existence.” *People v. Shea*, 147 N.Y. 78, 99, 41 N.E. 505, 511 (1895).

Motion for Rule on Clerk, remanded.

Lynn F. Plemmons, for appellant.

No response.

PER CURIAM. [1] Appellant Brenna Keese filed a motion for rule on clerk seeking an order of this court directing the Arkansas Supreme Court Clerk to accept her record for filing. Appellant attempted to file her record on September 6, 2006, pursuant to a motion for extension of time to file the record under Arkansas Rules of Appellate Procedure – Civil 5(b), and an order by the circuit court granting an extension to September 9, 2006. The clerk refused the filing because there was no finding in the order by the circuit court that “all parties had the opportunity to be heard on the motion, either at a hearing, or by responding in writing” as required by Rule 5(b)(1)(C).

Arkansas Rules of Appellate Procedure – Civil 5(b)(1)(C) provides in part:

(b) *Extension of time.*

(1) If any party has designated stenographically reported material for inclusion in the record on appeal, the circuit court, by order entered before expiration of the period . . . *may extend the time for filing the record only if it makes the following findings:*

...

(C) All parties have had the opportunity to be heard on the motion, either at a hearing or by responding in writing[.] (Emphasis added.)

This court has made it very clear that we expect strict compliance with the requirements of Rule 5(b), and that we do not view the granting of an extension as a mere formality. *See, e.g., Woods v. Tapper*, 367 Ark. 239, 238 S.W.3d 929 (2006) (*per curiam*); *Hairgrove v. Oden*, 365 Ark. 53, 223 S.W.3d 827 (2006) (*per curiam*). The order of extension in this case makes no reference to the findings of the circuit court required under Rule 5(b)(1)(C). Accordingly, we remand this matter to the circuit judge for compliance with Rule 5(b)(1)(C).

Remanded.