

Kitaka LAUDERDALE *v.* STATE of Arkansas

CR 06-1197

242 S.W.3d 615

Supreme Court of Arkansas
Opinion delivered November 9, 2006

APPEAL & ERROR — PROCEDURE — THE MATTER WAS REMANDED TO THE CIRCUIT COURT WHERE THE ORDER OF EXTENSION MADE NO REFERENCE TO THE FINDINGS OF THE CIRCUIT COURT. — Where the order of extension filed by the circuit court made no reference to the findings of the court as required by Ark. R. App. P. – Civil 5(b)(1)(C), the matter was remanded to the circuit court for compliance with the rule because the supreme court expected strict compliance with Rule 5(b) and did not view the granting of an extension as a mere formality.

Motion for Rule on Clerk; remanded.

W. Ray Nickle, for appellant.

No response.

PER CURIAM. Appellant Kitaka Lauderdale filed a motion for rule on clerk to file his record and have his appeal docketed. The clerk refused to docket the appeal based on a failure to comply with Arkansas Rule of Appellate Procedure – Civil 5(b).

Arkansas Rules of Appellate Procedure – Civil 5(b)(1)(C) states:

(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.)

[1] 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., McCrackin v. State*, 367 Ark. 366, 240 S.W.3d 97 (2006); *Petras v. State*, 363 Ark. 373, 214 S.W.3d 264 (2005). The order of extension filed by the circuit court makes no reference to the findings of the court required under Rule 5(b)(1)(C), and, accordingly, we remand this matter to the circuit court for compliance with the rule.

Remanded.
