

Eric DAVIS *v.* STATE of Arkansas

CR 06-1385

246 S.W.3d 439

Supreme Court of Arkansas
Opinion delivered January 4, 2007

APPEAL & ERROR — MOTION FOR RULE ON CLERK — REQUIREMENTS OF ARKANSAS RULE OF APPELLATE PROCEDURE – CIVIL 5(b)(1)(C) NOT MET — MATTER REMANDED. — The supreme court remanded this matter to the circuit court for compliance with Arkansas Rule of Appellate Procedure – Civil 5(b)(1)(C); the clerk refused the filing of the record because the circuit court did not find 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).

Motion for Rule on Clerk, remanded.

Gary W. Potts, for appellant.

No response.

PER CURIAM. Appellant Eric Davis filed a motion for rule on clerk seeking an order of this court directing the Arkansas Supreme Court Clerk to accept his record for filing. Appellant attempted to file his record on December 1, 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 seven months from the date of judgment. The clerk refused the filing because the circuit court did not find 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, the following:

(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., Woods v. Tapper*, 367 Ark. 239, 238 S.W.3d 929 (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.
