

Kenneth Dana BREWTON *v.* STATE of Arkansas

CR 07-330

256 S.W.3d 481

Supreme Court of Arkansas  
Opinion delivered May 3, 2007

APPEAL & ERROR — MOTION FOR RULE ON CLERK — REMANDED FOR COMPLIANCE WITH RULE 5(b)(1)(C). — The record for this appeal did not show strict compliance with Arkansas Rules of Appellate Procedure – Rule 5(b)(1)(C), as all parties did not have an opportunity to be heard on appellant’s motions to extend time for filing the transcript; the supreme court therefore remanded the case to the trial court for compliance with Rule 5(b)(1)(C).

Motion for Rule on Clerk; remanded.

*John W. Settle*, for appellant.

No response.

**P**ER CURIAM. Appellant, Kenneth Dana Brewton, by and through his attorney, John W. Settle, has filed a motion for rule on clerk to file his record and have his appeal docketed. The clerk refused to accept the record. The record before us does not show strict compliance with Arkansas Rules of Appellate Procedure – Rule 5(b)(1)(C), as all parties have not had an opportunity to be heard on appellant’s motions to extend time for filing the transcript.

[1] We have held that Rule 5(b)(1) applies to both civil and criminal cases for the determination of the timeliness of a record on appeal. *See Roy v. State*, 367 Ark. 178, 238 S.W.3d 117 (2006) (per curiam). Rule 5(b)(1) provides in pertinent part:

(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 prescribed by subdivision (a) of this rule or a prior extension order, 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;

*Id.* We have made it clear that there must be strict compliance with the requirements of Rule 5(b), and that we do not view the granting

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of an extension as a mere formality. See *White v. State*, 366 Ark. 295, 234 S.W.3d 882 (2006); *Rackley v. State*, 366 Ark. 232, 234 S.W.3d 314 (2006). As the record before us does not comply with this rule, we remand this case to the trial court for compliance with Rule 5(b)(1)(C).

Remanded.

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