

Keela McGAHEY *v.* STATE of Arkansas

CR 07-891

269 S.W.3d 814

Supreme Court of Arkansas
Opinion delivered December 13, 2007

1. APPEAL & ERROR — SECOND MOTION FOR RULE ON CLERK GRANTED. — Where the circuit court accepted remand and filed an amended order extending the time to prepare the transcript, the supreme court accepted the circuit court's return of the remand and granted appellant's second motion for rule on clerk.
2. APPEAL & ERROR — CLARIFICATION OF ARK. R. APP. P.—CIV. 5(b)(1)(C). — The supreme court took the opportunity to clarify to both the bench and bar its remands under Arkansas Rule of Appellate Procedure—Civil 5(b)(1)(C) and held that, upon remand for compliance with Rule 5(b)(1)(C), a circuit court shall determine whether the rule was complied with at the time of the original motion for extension was filed and granted; the supreme court further held that a circuit court should not permit the parties the opportunity to correct any deficiencies, but instead should make the findings required by the rule as if they were being made at the time of the original motion; where the requirements would not have been met at the time of the initial motion for extension and order, the circuit court's order upon remand should so reflect and be returned to the supreme court; the supreme court emphasized that it did not view the granting of an extension of time as a mere formality.

Second Motion for Rule on Clerk; granted.

Hubert W. Alexander, Jr., for appellant.

No response.

PER CURIAM. [1] Appellant Keela McGahey has filed with this court a second motion for rule on clerk. On August 22, 2007, Ms. McGahey filed her initial motion for rule on clerk. In it, she alleged that the circuit court's order granting her an extension of time in which to file her record did not comply with Ark. R. App. P.—Civ. 5(b)(1)(C), and she prayed for a rule on clerk to file

her record. We remanded the matter to the circuit court “for compliance with Rule 5(b)(1)(C).” See *McGahey v. State*, 370 Ark. 525, 262 S.W.3d 141 (2007) (per curiam). The circuit court accepted remand and on October 31, 2007, filed an amended order extending the time to prepare the transcript. We accept the circuit court’s return of the remand and grant Ms. McGahey’s second motion for rule on clerk.

[2] However, we take this opportunity to clarify to both the bench and bar our remands in these instances. Upon a remand for compliance with Ark. R. App. P.–Civ. 5(b)(1)(C), the circuit court shall determine whether the rule was complied with *at the time the original motion for extension of time was filed and granted*. The circuit court should not permit the parties the opportunity to correct any deficiencies, but instead should make the findings required by the rule as if they were being made at the time of the original motion. Should the requirements not have been met at the time of the initial motion for extension and order, the circuit court’s order upon remand should so reflect and be returned to this court. We again emphasize that we do not view the granting of an extension of time 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).

Motion granted.