

WINROCK GRASS FARM, INC.; FBW, LC; and Frank B.
Whitbeck *v.* METROPOLITAN NATIONAL BANK

08-529

284 S.W.3d 521

Supreme Court of Arkansas
Opinion delivered May 22, 2008

APPEAL & ERROR — CIRCUIT COURT'S ORDER DID NOT COMPLY WITH
RULE 5(b)(1)(C) — REMANDED FOR COMPLIANCE. — Because the
circuit court's order of extension in this case made no reference to
each of the findings of the circuit court required by Rule 5(b)(1)(C)
of the Arkansas Rules of Appellate Procedure, and because there
must be strict compliance with the rule, the supreme court remanded
the matter to the circuit court for compliance with Rule 5(b)(1)(C).

Motion for Rule on Clerk; remanded.

James H. Penick, III, for appellants.

No response.

PER CURIAM. Appellants, Winrock Grass Farm, Inc.; FBW, LC; and Frank B. Whitbeck; by and through their attorney, James H. Penick, III, have filed a motion for rule on clerk. The record reflects that appellants timely filed their notice of appeal on December 10, 2007, making the record on appeal due on or before March 9, 2008. On January 22, 2008, appellants filed a motion for extension of time to file the record. One day later, on January 23, 2008, the circuit court entered an order extending the time for filing the record to seven months from November 21, 2007, the date of the judgment. Appellants state that when they attempted to tender the record to this court's clerk on April 30, 2008, the clerk declined to docket the record due to lack of compliance with Rule 5(b)(1)(C) of the Arkansas Rules of Appellate Procedure—Civil.

Arkansas Rule of Appellate Procedure—Civil 5(b)(1) provides:

(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 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:

(A) The appellant has filed a motion explaining the reasons for the requested extension and served the motion on all counsel of record;

(B) The time to file the record on appeal has not yet expired;

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

(D) The appellant, in compliance with Rule 6(b), has timely ordered the stenographically reported material from the court reporter and made any financial arrangements required for its preparation; and

(E) An extension of time is necessary for the court reporter to include the stenographically reported material in the record on appeal.

Ark. R. App. P.–Civ. 5(b)(1) (2007). 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 *Lancaster v. Carter*, 372 Ark. 181, 271 S.W.3d 522 (2008) (per curiam). We have further held 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 *id.* Where an order fails to comply with Rule 5(b), we may remand the matter to the circuit court for compliance with the rule. See, e.g., *Kelly v. Ford*, 373 Ark. 111, 281 S.W.3d 744 (2008) (per curiam).

Upon a remand for compliance with Rule 5(b)(1), 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. See *id.* (citing *McGahey v. State*, 372 Ark. 46, 269 S.W.3d 814 (2007) (per curiam)). 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. See *id.* 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. See *id.*

[1] Because the order of extension in this case makes no reference to each of the findings of the circuit court required by the rule and because there must be strict compliance with the rule, we remand the matter to the circuit court for compliance with Rule 5(b)(1).

Remanded.

BROWN, J., not participating.