

Eva Deanna SULLIVAN *v.* Joe A. WICKLIFFE

678 S.W.2d 771

Supreme Court of Arkansas  
Opinion delivered November 5, 1984

1. APPEAL & ERROR — EXTENSION OF TIME TO FILE RECORD. — The trial court's order of extension of time in which to file the record beyond 90 days from the filing of the notice of appeal must be *entered* within the 90 day period; the critical factor is when the order is *entered* not signed. [Ark. R. App. P. 5(b).]
2. APPEAL & ERROR — ORDER CANNOT BE DEEMED TO BE ENTERED JUST BECAUSE IT IS SIGNED. — Ark. R. Civ. P. 5(d) does not mean an order can be deemed "entered" simply because it is signed by a judge.

Motion for Rule on the Clerk; denied.

*Miller & Goldman*, by: *David Goldman*, for appellant.

No Response by Appellee.

PER CURIAM. In this civil case, the appellant's tender of the transcript was denied by our clerk because the order of extension beyond 90 days from the filing of the notice of appeal was not *entered* within the 90 day period. Ark. R. App. P. 5 (b).

The trial judge signed the order within the 90 day period, on the 89th day. However, it was not *entered* and filed with the circuit clerk's office until the 91st day.

We explained in *Finley v. State*, 281 Ark. 38, 661 S.W.2d 358 (1983), that the critical factor in such cases is when the order is entered, not signed. A question has been raised about our decision in *Finley*; specifically whether ARCP Rule 5 (d) controls in this situation. ARCP Rule 5 (d) provides:

Filing with the Judge. The judge may permit papers or pleadings to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

Rule 5 (d) obviously does not mean an order can be deemed "entered" simply because it is signed by a judge. Rule 5 (b) of the Rules of Appellate Procedure provides:

Extension of Time. In cases where there has been designated for inclusion any evidence or proceeding at the trial or hearing which was stenographically reported, the trial court, upon finding that a reporter's transcript of such evidence or proceeding has been ordered by appellant, and upon a further finding that an extension is necessary for the inclusion in the record of evidence or proceedings stenographically reported, may extend the time for filing the record on appeal, *but the order of extension must be entered before the expiration of the period for filing as originally prescribed or extended by a previous order.* In no event shall the time be extended more than seven (7) months from the date of the entry of the judgment, decree or order. Counsel seeking an extension shall give to opposing counsel notice of the application for an extension of time (Italics supplied.)

Motion denied.

HUBBELL, C.J., dissents.