

Alex BHATTI d/b/a ABCO Builders v. Timothy C. McCABE
and Sheryl D. McCabe

96-964

928 S.W.2d 340

Supreme Court of Arkansas
Opinion delivered September 30, 1996

1. APPEAL & ERROR — RECORD TENDERED TIMELY USING DATE AND TIME SHOWN BY CHANCERY CLERK'S FACSIMILE MACHINE — RULE ON CLERK GRANTED. — The Arkansas Rules of Appellate Procedure do not provide for facsimile transmission; rather, they provide that the clerk of the supreme court shall determine time and dates from the file marks made by the clerk of the trial court; applying the appellate rules in the literal sense, petitioner tendered the record out of time; using the date and time shown by the chancery clerk's facsimile machine, however, the record was tendered in a timely manner; under those circumstances, the supreme court granted petitioner's motion for rule on the clerk.
2. APPEAL & ERROR — COMMITTEE ON CIVIL PRACTICE DIRECTED TO RECOMMEND WHETHER APPELLATE RULES SHOULD BE MODIFIED REGARDING FACSIMILE TRANSMISSION. — The supreme court directed its Committee on Civil Practice to make a recommendation on whether the Rules of Appellate Procedure should be modified regarding facsimile transmission.

Motion for Rule on Clerk; granted.

Frank J. Wills, for petitioner.

William G. Almand, for respondents.

PER CURIAM. Petitioner tendered the record in this case and the Clerk of this court rejected it because, on its face, the record appeared to be outside the time allotted by our rules. On March 7, 1996, the Chancery Court of Pulaski County entered its Amended Order and Judgment. On March 19, by facsimile, petitioner filed a motion for reconsideration with the Pulaski County Chancery Court Clerk. The Chancery Clerk accepted the facsimile filing pursuant to Ark. Code Ann. § 16-20-109 (Repl. 1994). The facsimile copy received by the Chancery Clerk had a date and time received printed upon it by the Clerk's facsimile machine, and since it already had a time and date on it, the Chancery Clerk did not separately file-stamp the copy with a time and date.

[1] The Rules of Appellate Procedure do not provide for facsimile transmission; rather, they provide that the Clerk of this Court shall determine time and dates from the file-marks made by the clerk of the trial court. *See* Ark. R. App. P. 4 & 5. Consequently, applying the Rules of Appellate Procedure in the literal sense, petitioner tendered the record out of time. However, if the date and time shown by the Chancery Clerk's facsimile machine are used, the record was tendered in a timely manner. Under these circumstances, we grant the Rule on the Clerk.

[2] By this per curiam, we ask our Committee on Civil Practice to make a recommendation on whether our Rules of Appellate Procedure should be modified.
