

Robert MOORE, Chairman, Arkansas
Transportation Commission, et al *v.* ARKANSAS
TRANSPORT COMPANY

80-111
Supreme Court of Arkansas
Opinion delivered June 2, 1980

APPEAL & ERROR — APPEALS FROM CIRCUIT COURT TO SUPREME COURT — PROCEDURE. — Insofar as the provisions of Ark. Stat. Ann. § 73-134 (Repl. 1979) relate to the time for lodging a transcript in the office of the Clerk of the Supreme Court are concerned, they are superseded by Rule 5, Rules of Appellate Procedure [Ark. Stat. Ann., Vol. 3A (Repl. 1979)], which became effective July 1, 1979, under which the record on appeal must be filed with the Supreme Court Clerk within 90 days from the filing of the first notice of appeal.

Motion for Rule on Clerk from Pulaski Circuit Court, Second Division, *Perry V. Whitmore*, Judge; granted.

Walter A. Murray, for appellants.

Jack East III, for appellee.

PER CURIAM

On April 29, 1980, appellant tendered to the clerk of this court a transcript of the record of the proceedings in the case of Arkansas Transport Company versus Robert Moore, Chairman, Arkansas Transportation Commission, et al, No. 79-5197, in the Circuit Court of Pulaski County, in order to perfect their appeal from an order of that court entered on January 4, 1980, and the supplemental order entered January

11, 1980. The tender was refused by the clerk because of the provisions of Ark. Stat. Ann. § 73-134 (Repl. 1979).

Notice of appeal was filed in the circuit court on February 1, 1980. Under the provisions of the section of the statute above cited, a record on appeal to this court from the circuit court was to be lodged in the office of the Clerk of the Supreme Court within 60 days of the rendition of the order in the circuit court. This record obviously was not tendered within that time.

Appellant relies upon Rule 5 of the Rules of Appellate Procedure [Ark. Stat. Ann., Vol. 3A (Repl. 1979)]. Under that rule the record on appeal must be filed with the Clerk of this court within 90 days from the filing of the first notice of appeal. This record was timely filed under that rule. Rule 5 was effective July 1, 1979. It was adopted pursuant to Act 38 of 1973 and the constitutional and inherent powers of this court to regulate procedures in the courts. Under Act 38 of 1973, the General Assembly provided that rules made by this court under the authority of that act may prescribe the times and manner of taking appeals. It also provided that all laws in effect on the effective date of that act relating to the time and manner of taking appeals in civil proceedings should remain in effect only until such time as the Supreme Court prescribed rules regarding the same or until revised or repealed by legislative action. Act 38 was passed on January 31, 1973. Ark. Stat. Ann. § 73-134 was in effect on the effective date of that act. Insofar as the provisions of § 73-134 relate to the time for lodging a transcript in the office of the clerk of this court are concerned, they are superseded by Rule 5; and the record was timely tendered under that rule.

The rule on the clerk is granted.