

SUPREME COURT OF ARKANSAS

No. 10-1285

CURTIS L. BOWMAN; BOWMAN LAW
FIRM, P.A.; J. ALLEN CARNEY; J.
ALLEN CARNEY, P.A.; DARRIN L.
WILLIAMS; DARRIN L. WILLIAMS, P.A.;
JOSEPH H. “HANK” BATES; HANK
BATES, P.A.; MARCUS N. BOZEMAN;
MARCUS N. BOZEMAN, P.A.; RANDALL
K. PULLIAM; RANDALL K. PULLIAM,
P.A.; AND CARNEY WILLIAMS BATES
BOZEMAN & PULLIAM, PLLC,
APPELLANTS,

VS.

CENTENNIAL BANK,

APPELLEE,

Opinion Delivered February 3, 2011

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
NO. 2009-6761,
HON. TIM FOX, JUDGE,

MOTION FOR RULE ON CLERK

GRANTED.

PER CURIAM

Appellants Curtis L. Bowman; Bowman Law Firm, P.A.; J. Allen Carney; J. Allen Carney, P.A.; Darrin L. Williams; Darrin L. Williams, P.A.; Joseph H. “Hank” Bates; Hank Bates, P.A.; Marcus N. Bozeman; Marcus N. Bozeman, P.A.; Randall K. Pulliam; Randall K. Pulliam, P.A.; and Carney Williams Bates Bozeman & Pulliam, PLLC, have filed a motion for rule on clerk, or in the alternative, motion for belated filing of record on appeal to file their record and have their appeal docketed. On August 10, 2010, appellants filed a timely notice of appeal and stated that “the record on appeal shall consist of all pleadings, orders, and

other documents on file in this case.” Appellants also stated that they had “ordered the preparation of the record and [had] made financial arrangements of the preparation thereof.” On October 13, 2010, prior to the expiration of the time to file the record on appeal, appellants filed a motion for extension of time to file record on appeal stating, as is relevant, that “a portion of the stenographically reported material has been designated and the court reporter advises an extension of time is necessary and needed for preparation of the record for filing on appeal.” The extension was requested until December 14, 2010. On October 18, 2010, the trial court entered an order extending the time to lodge the record until December 14, 2010, stating, as is relevant, that an extension was necessary for the court reporter to include the stenographically reported material. On December 7, 2010, appellants filed a second motion for extension of time to lodge the record asserting, as is relevant, that “a portion of the circuit clerk’s file has been designated and the transcript clerk needs an extension of time for preparation of the record for filing on appeal.” Appellants requested until December 20, 2010, to lodge the record. The motion was granted by the trial court on December 9, 2010, giving appellants until December 20, 2010, to file the record stating, as is relevant, that the extension was necessary for the transcript clerk in the circuit clerk’s office to include the requested documentation.

The record was tendered by appellants on December 16, 2010. However, they were notified by the Arkansas Supreme Court Clerk that the order granting extension did not comply with the language of Ark. R. App. P.–Civ. 5(b)(1), which provides:

(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.

In this case, appellants' motions and the court's orders state that "a portion of the circuit clerk's file has been designated and the transcript clerk needs an extension of time for preparation of the record for filing on appeal." Rule 5(b) is for those instances when the court reporter needs additional time to include stenographically reported material—not when the transcript clerk, who is an employee of the circuit clerk's office, needs additional time to prepare the record.

As the notice of appeal was timely filed pursuant to Ark. Sup. Ct. R. 2-2(b), we treat the motion as a motion for rule on clerk to lodge the record. *See Ray v. State*, 348 Ark. 304, 73 S.W.3d 594 (2002) (per curiam). This court has 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

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formality. See *Charles R. Griffith Farms, Inc. v. Grauman*, 373 Ark. 410, 284 S.W.3d 68 (2008) (per curiam); *Lancaster v. Carter*, 372 Ark. 181, 271 S.W.3d 522 (2008) (per curiam).

However, as the notice of appeal was timely filed, the motions for extension were timely filed, and the orders granting same were timely entered, we find there is good cause to grant the motion for rule on clerk. Because Ark. R. App. P.–Civ. 5 fails to address a situation when the circuit clerk needs additional time to compile the record, we refer the question of what further procedure should be provided to the Arkansas Supreme Court Committee on Civil Procedure.

Motion for rule on clerk is granted.

HANNAH, C.J., and DANIELSON, J., concur.

DANIELSON, J., concurring. Based on the facts before us, I would hold that extraordinary circumstances exist in the present case, and I would grant the motion on that basis.

In appellants' motion, they assert that after filing a timely notice of appeal, they timely moved the circuit court for, and received, an extension of time in which to file the record, based upon the court reporter's requiring an extension of time in which to complete the record. Prior to the expiration of time granted by that extension, they again moved the circuit court for a second extension of time. The basis for this extension, as asserted in their motion, was that the "transcript clerk" needed an extension of time in which to prepare the

record. That motion was granted by the circuit court, and the time for filing the record was extended until December 20, 2010. On December 16, 2010, the record was not filed but tendered by our Clerk because the motion failed to comply with Rule 5. Specifically, the record was rejected on the basis that, while Rule 5 provides for extensions when needed by a court reporter, the rule does not provide for extensions based on a transcript clerk's need for additional time. Accordingly, appellants filed the instant motion.¹

In criminal cases, pursuant to Arkansas Rule of Appellate Procedure—Criminal 2(e), a petitioner may seek to appeal an order, in some circumstances, despite having failed to comply with the time requirements imposed by the rules governing criminal appeals; however, no comparable rule exists to perfect an appeal in civil cases. This court has recognized some circumstances where an exception was appropriate, such as in cases involving the termination of parental rights where a right to appeal is implicated. *See Childers v. Arkansas Dep't of Human Servs.*, 360 Ark. 517, 202 S.W.3d 529 (2005) (per curiam) (refusing to dismiss an appeal in a termination-of-parental-rights case where the parent had failed to lodge a timely record); *Linker-Flores v. Arkansas Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004) (holding that indigent parents have a right to appeal from a judgment terminating parental rights). In addition, we have acknowledged that extraordinary circumstances may exist in other situations not involving the termination of parental rights. *See, e.g., Thomas v. Arkansas*

¹Appellants' motion states that counsel for appellee has no objection to the instant motion for rule on clerk.

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State Plant Bd., 254 Ark. 997-A, 497 S.W.2d 9 (1973) (finding extraordinary circumstances and unavoidable casualty to exist where a tornado destroyed counsel's home and law office, thus warranting the granting of a motion for rule on clerk in a civil case).

Arkansas Rule of Appellate Procedure—Civil 5 permits extensions of time to be granted, when certain requirements are met, where the “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)(E) (2010). Here, the circuit court found that the extension was necessary “for the transcript clerk in the Circuit Clerk’s office to include the requested documentation in the record on appeal.”

While an extension necessary for the circuit clerk to prepare the record is not specifically provided for by the rule, our rules require the record in a civil case be prepared by the clerk of the circuit court with a duly acknowledged certificate. *See* Ark. Sup. Ct. R. 3-1, 3-2, 3-3 (2010). Just as in the case of a court reporter, I can see where the occasion might arise, as it did in the instant case, in which a circuit clerk needs an extension of time in which to prepare and certify a record. For this reason, I would grant the instant motion because to do otherwise would be unduly harsh. I would further refer the matter to the Arkansas Supreme Court Committee on Civil Practice for reconciliation of the rule with this opinion. For these reasons, I respectfully concur.

HANNAH, C.J., joins.