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ARKANSAS COURT OF APPEALS

No. CV-19-632

	Opinion Delivered: January 15, 2020
STEPHEN C. WEBB APPELLANT	APPEAL FROM THE SALINE COUNTY CIRCUIT COURT [NO. 63CV-17-935]
V.	
SEX OFFENDER ASSESSMENT COMMITTEE APPELLEE	HONORABLE GARY ARNOLD, JUDGE MOTION TO SETTLE THE RECORD DENIED

PER CURIAM

We have pending before this court a motion to settle the record filed by the appellant Stephen C. Webb. For the reasons set forth in this per curiam, we deny the motion.

In February 2014, Webb was convicted in Texas of a single count of indecency with a child. Webb subsequently moved to Arkansas and completed a sex-offender assessment. In February 2017, the Arkansas Sex Offender Assessment Committee (SOAC), the appellee herein, notified Webb of a level 2 community-notification assignment. Webb disputed the assignment and requested an administrative review. In August 2017, the SOAC issued its final administrative order upholding the assignment. Webb filed a timely appeal with the Saline County Circuit Court. The circuit court affirmed the administrative decision. Webb then initiated this appeal of the circuit court's order

affirming his community-notification level. In his notice of appeal, Webb designated the entire circuit court record as the record on appeal.

In August 2019, after the record was lodged, Webb filed a motion to supplement the record. In this motion, he contended that although he designated the entire circuit court record as the record on appeal, the administrative record was not included in the circuit court's transmittal of the record to our clerk's office. We treated Webb's motion as one to settle the record and issued a writ requiring the circuit clerk to certify and transmit a true and complete transcript of the record and proceedings. The circuit clerk returned the writ, indicating that the administrative record was never filed in the circuit court; as a result, the record was complete as previously submitted.

The SOAC then filed a motion to settle the record. The SOAC admitted that the administrative record had not been filed in the circuit court due to an "inadvertent oversight" and requested that we issue another writ directing the circuit clerk to file the administrative record, certify it, and supplement the record on appeal. We denied the SOAC's motion.

Webb has now filed the current motion to settle the record, requesting that we order the SOAC to submit a certified copy of the administrative record directly to this court. Webb contends that this court is, or may consider itself to be, the "reviewing court" pursuant to Arkansas Code Annotated section 25-15-212(d)(1) (Supp. 2019). Thus, the SOAC administrative record may be filed directly with this court, bypassing the circuit court. We disagree. Arkansas Code Annotated section 25-15-212(d)(1) provides, "Within

thirty (30) days after service of the petition or within such further time as the court may allow but not exceeding an aggregate of ninety (90) days, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review." We conclude from a clear reading of the statute that the "reviewing court" is the lower court and not this court; further, we conclude that it has been more than ninety days from the service of the petition. Thus, this statute does not provide a mechanism to provide the relief appellant requests.

Likewise, our rules also do not permit the supplementation of the record in this manner. Our ability to settle and supplement the record is governed by Rule 6(e) of the Arkansas Rules of Appellate Procedure–Civil which provides:

> *Correction or Modification of the Record.* If any difference arises as to whether the record truly discloses what occurred in the circuit court, the difference shall be submitted by motion to, and settled by, that court and the record shall be made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the circuit court before the record is transmitted to the appellate court, or the appellate court on motion made no later than 30 days after the appellee's brief is filed in the appellate court, or on its own initiative, may direct that the omission or misstatement shall be corrected, and if necessary, that a supplemental record be certified and transmitted. All other questions as to form and content of the record shall be presented to the appellate court. No correction or modification of the record shall be made without prior notice to all parties.

Ark. R. App. P.–Civ. 6(e) (2019).

Under Rule 6(e), the circuit court may settle any difference that "arises as to *whether the record truly discloses what occurred in circuit court.*" Ark. R. App. P. Civ.–6(e) (emphasis added). Here, the administrative record was never filed in the circuit court and,

presumably, was never considered by the court before entering its decision. As such, there is no difference to settle with the circuit court. The record on appeal truly discloses what occurred in the circuit court. We cannot grant the motion because to do so would be tantamount to introducing evidence into the appellate record that was not introduced at trial. We are prohibited from taking such action. *Tackett v. First Sav. of Ark.*, 306 Ark. 15, 810 S.W.2d 927 (1991) (discussing Ark. R. App. P. 6(e), the predecessor to our current Ark. R. App. P.–Civil 6(e)).

We are cognizant that our denial of this motion leaves the record before us devoid of the administrative record. Nevertheless, the parties must present their arguments on the basis of the record currently before us. Our ruling, however, does not foreclose the parties from arguing the effect, if any, that the failure to file the administrative record may have.

Motion to settle the record denied.

SWITZER, J., not participating.