

SUPREME COURT OF ARKANSAS

No. CV-15-426

DAVID LEE PADGETT, AN
INCAPACITATED PERSON, BY
FLOYCE TAYLOR, THE GUARDIAN
OF HIS PERSON

APPELLANT

V.

BETTYE R. PADGETT

APPELLEE

Opinion Delivered June 4, 2015

MOTION FOR RULE ON CLERK

REMANDED.**PER CURIAM**

Appellant, David Lee Padgett, an incapacitated person, by Floyce Taylor, the guardian of his person, by and her through his attorney, Jonathan D. Jones, has filed a motion for rule on clerk, to file the record and have his appeal docketed. The clerk refused to docket the appeal because the circuit court's order granting an extension of time to lodge the record on appeal did not contain the requisite language of Arkansas Rule of Appellate Procedure—Civil 5(b)(1) (2014).

Rule 5(b)(1) provides as follows:

(b) *Extension of time.*

(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;

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(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 or for the circuit clerk to compile the record.

In this case, the circuit court's order lacks any finding relating to subsection (b)(1)(C) that the parties have had the opportunity to be heard on the motion, either at a hearing or by responding in writing. This court has made it clear that there must be strict compliance with Rule 5(b) and that we do not view the granting of an extension as a mere formality. *See Looney v. Bank of W. Memphis*, 368 Ark. 639, 249 S.W.3d 126 (2007) (per curiam). When an order fails to comply with Rule 5(b), we may remand the matter to the circuit court for compliance with the rule. *See Charles R. Griffith Farms, Inc. v. Grauman*, 373 Ark. 410, 284 S.W.3d 68 (2008) (per curiam).

Upon a remand for compliance with Rule 5(b)(1), the circuit court shall determine whether the rule was complied with at the time the original motion for extension of time was filed and granted. *See Wyre v. Wyre*, 2009 Ark. 245, 307 S.W.3d 30 (per curiam). The circuit court should not permit the parties the opportunity to correct any deficiencies, but instead should make the findings required by the Rule as if they were being made at the time of the original motion. *See id.* Should the requirements not have been met at the time of the initial motion for extension and order, the circuit court's order upon remand should so reflect and be returned to this court. *See id.*

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Because the order in this case does not contain all of the findings required by the Rule, and because there must be strict compliance with the Rule, we remand the matter to the circuit court for compliance with Rule 5(b)(1).

Remanded.