

SUPREME COURT OF ARKANSAS

Hickson v. Arkansas Department of Human Services

182 S.W.3d 483, 357 Ark. 577 (Ark. 2004) · No. No. 04-482 · Decided May 27, 2004

SUMMARY

The Supreme Court of Arkansas denied Mary Hickson's petition for a writ of certiorari to complete the appellate record and dismissed her appeal. The court held that the record was not timely lodged because the second extension order was entered after the first extension period expired, and timely filing of the record is jurisdictional.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Arkansas
DECIDED	May 27, 2004
DOCKET	No. 04-482
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petition for a writ of certiorari to complete the record in a parental-rights termination appeal.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; precedential.
PARTIES	Mary Hickson v. Arkansas Department of Human Services

TOPICS

- appellate procedure
- writ of certiorari
- termination of parental rights
- parental rights
- family law procedure

PRACTICE AREAS

- appellate procedure
- family law
- parental rights

QUESTIONS PRESENTED

- Whether the circuit court's order granting a second extension to lodge the record was effective when entered after the prior extension had expired.
- Whether the Supreme Court of Arkansas could issue a writ of certiorari to complete the record when the record had not been timely lodged.

3. Whether the untimely filing of the record required dismissal of the appeal.

HOLDINGS

1. An order extending the time to lodge the record on appeal is ineffective when it is entered after the period prescribed by the appellate rule or a prior extension order has expired.
2. Timely filing of the record on appeal is a jurisdictional requirement for perfecting an appeal; failure to timely lodge the record requires dismissal.

KEY QUOTATIONS

“This court has made it exceedingly clear 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 formality.” (484)

“We thus dismiss Hickson's appeal, because the timely filing of the record on appeal is a jurisdictional requirement to perfecting an appeal.” (485)

FACTUAL BACKGROUND

On October 1, 2003, the Cleburne County Circuit Court terminated Mary Hickson's parental rights and granted the Arkansas Department of Human Services the power to consent to adoption of her children. Hickson filed a timely notice of appeal, and the record was initially due on January 29, 2004. The circuit court granted a ninety-day extension requested by the court reporter, but Hickson's later motion to enlarge the filing period was not granted until after that extension had expired; the partial record was filed on May 3, 2004, after the court determined it was due.

PROCEDURAL HISTORY

The Cleburne County Circuit Court entered an order terminating Hickson's parental rights and granting the Arkansas Department of Human Services authority to consent to adoption. Hickson timely appealed. Although the circuit court granted the court reporter a ninety-day extension to complete the transcript, a later motion to enlarge the time to lodge the record was granted only after the first extension had expired. The Supreme Court of Arkansas denied Hickson's petition for a writ of certiorari and dismissed the appeal because the record was not timely lodged.

DISPOSITION

dismissed

CASES CITED

- Osburn v. Arkansas Department of Human Services, 341 Ark. 218, 15 S.W.3d 673 (2000)
- Rose Care, Inc. v. Jones, 355 Ark. 682, 144 S.W.3d 738 (2004) (per curiam)
- Coggins v. Coggins, 353 Ark. 431, 108 S.W.3d 588 (2003) (per curiam)
- Murphy v. Dumas, 343 Ark. 608, 36 S.W.3d 351 (2001) (per curiam)
- Seay v. Wildlife Farms, Inc., 342 Ark. 503, 29 S.W.3d 711 (2000)

OPINION

PER CURIAM.

182 S.W.3d 483 (2004) 357 Ark. 577 Mary HICKSON v. ARKANSAS DEPARTMENT OF HUMAN SERVICES. No. 04-482. Supreme Court of Arkansas. May 27, 2004. *484 DeeNita D. Moak, for appellant. No response. PER CURIAM. Petitioner Mary Hickson, by and through her attorney, DeeNita Moak, has filed a petition for a writ of certiorari to complete the record in this case. Her petition, which was filed on May 3, 2004, along with a partial record, states that the court reporter is unable to complete the transcript and thus needs additional time.

The petition also asks this court to issue a writ of certiorari to complete the record, based on Hickson's assertion that the circuit clerk erroneously included information in the partial record that does not comply with Ark. Sup.Ct. R. 3-3.

We deny the petition and dismiss the appeal. Although the petition itself does not contain any pertinent information, like the dates of the judgment and notice of appeal or whether there have been any orders of extension, the partial record reveals the following information.

On October 1, 2003, the Cleburne County Circuit Court entered an order terminating Hickson's parental rights and granting to Respondent Arkansas Department of Human Services the power to consent to the adoption of Hickson's children.

The notice of appeal was timely filed on October 31. Under Ark. R.App. P.-Civ. 5(a), the record was due to be lodged in this court by January 29, 2004. On January 14, 2004, the court reporter filed a motion for a ninety-day extension to complete the transcript.

The trial court entered an order granting the extension on that same date. The order did not, however, provide for a particular due date.[1] Assuming, arguendo, that the order of extension granted the full ninety days as requested in the motion, the record was due to be lodged in this court on or before April 13.

On April 27, 2004, Hickson filed in the trial court a motion to enlarge the time to file the record on appeal. The following day, April 28, the trial court granted the motion, which purported to extend the time to lodge the record to May 31, 2004. This order was of no effect, however, because it was not entered prior to the time that the first period of extension expired.

Rule 5(b)(1) provides that upon a motion by the party, the circuit court may extend the time to lodge the record on appeal, "by order entered before expiration of the period prescribed by subdivision (a) of this rule or a prior extension order[.]" See also *Osburn v. Arkansas Dep't of Human Servs.*, 341 Ark. 218, 15 S.W.3d 673 (2000). This court has made it exceedingly clear 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 formality.

See *Rose Care, Inc. v. Jones*, 355 Ark. 682, 144 S.W.3d 738 (2004) (per curiam); *Coggins v. Coggins*, 353 Ark. 431, 108 S.W.3d 588 (2003) (per curiam); *Murphy v. Dumas*, 343 Ark. 608, 36 S.W.3d 351 (2001) (per *485 curiam); *Seay v. Wildlife Farms, Inc.*, 342 Ark. 503, 29 S.W.3d 711 (2000).

The first order of extension expired, at the latest, on April 13; hence, the second order of extension entered two weeks later on April 28 was of no effect. Hickson was thus required to lodge the record on April 13, 2004. See Ark. R.App. P.-Civ. 5(b)(1).

As stated above, the partial record in this case was not lodged until May 3, 2004. We thus dismiss Hickson's appeal, because the timely filing of the record on appeal is a jurisdictional requirement to perfecting an appeal. See *Rose Care*, 355 Ark. 682, 144 S.W.3d 738; *Coggins*, 353 Ark. 431, 108 S.W.3d 588. NOTES [1] The order of extension did not comply with the requirements of Rule 5(b)(1), in that it did not contain any of the five findings mandated in the rule.

The first required finding, that the appellant has filed a motion explaining the reasons for the extension, could not have been made in this case, as the motion for extension was filed by the court reporter, not the appellant.