

SUPREME COURT OF ARKANSAS

Moore v. Ark. Dep't of Human Servs.

2016 Ark. 2 (2016) · No. CV-15-979 · Decided January 7, 2016

SUMMARY

The Supreme Court of Arkansas granted Evette Moore’s motion for rule on clerk and treated it as a motion for belated appeal. The court accepted counsel’s admission of fault for failing to timely file the record and for noncompliance with Arkansas Supreme Court Rule 6-9(b)(2)(D), and directed that a copy of the opinion be forwarded to the Committee on Professional Conduct.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Arkansas                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Per Curiam                                                                                                                                                                                                                                     |
| JURISDICTION          | Arkansas                                                                                                                                                                                                                                       |
| DECIDED               | January 7, 2016                                                                                                                                                                                                                                |
| DOCKET                | CV-15-979                                                                                                                                                                                                                                      |
| DISPOSITION           | other                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Appellant moved for a rule on the clerk after the record was not timely filed and the notice of appeal did not comply with Arkansas Supreme Court Rule 6-9(b)(2)(D). The Supreme Court treated the motion also as a motion for belated appeal. |
| PRECEDENTIAL VALUE    | Published Arkansas Supreme Court opinion                                                                                                                                                                                                       |
| PARTIES               | Evette Moore v. Arkansas Department of Human Services                                                                                                                                                                                          |

TOPICS

- appellate procedure
- family law procedure
- parental rights

PRACTICE AREAS

- appellate procedure
- family law
- parental rights

QUESTIONS PRESENTED

- Whether the motion for rule on clerk should be granted when counsel admits fault for failing to timely file the record.

2. Whether the motion should also be treated as a motion for belated appeal because of noncompliance with the appellate-rule requirements.
3. Whether the failure of the appellant to sign the notice of appeal under Arkansas Supreme Court Rule 6-9(b)(2)(D) warranted relief.

## HOLDINGS

1. When an appeal is not timely perfected, the appellant or attorney must either candidly admit fault or demonstrate good reason for the untimely perfection. Because counsel admitted fault for the failure to timely file the record, the court granted relief.
2. A motion for rule on clerk addressing counsel's noncompliance with the appellate rules may also be treated as a motion for belated appeal, and the motion should be granted when counsel candidly admits responsibility for the failure to perfect the appeal.
3. The notice of appeal and designation of the record must be signed by an adult appellant and the appellant's counsel. Moore's failure to sign the notice constituted noncompliance, but relief was granted because counsel admitted fault.

## KEY QUOTATIONS

*“Where an appeal is not timely perfected, either the party or attorney filing the appeal is at fault, or there is good reason that the appeal was not timely perfected.”* (2016 Ark. 2, at 1)

*“The notice of appeal and designation of the record shall be signed by the appellant, if an adult, and the appellant’s counsel.”* (2016 Ark. 2, at 2)

## FACTUAL BACKGROUND

The circuit court entered an order granting permanent relative custody of A.M. to Eddie Aldridge. Moore's attorney, Kimberly Eden, did not timely file the record and admitted that the failure resulted from her mistake. Moore also did not sign the notice of appeal, contrary to Arkansas Supreme Court Rule 6-9(b)(2)(D).

## PROCEDURAL HISTORY

The circuit court entered an order granting permanent relative custody of A.M. to Eddie Aldridge. Evette Moore sought appellate review, but the record was not timely filed and her attorney admitted fault for the failure and for noncompliance with the signature requirement for the notice of appeal. The Supreme Court granted the motion for rule on clerk and the motion for belated appeal.

## DISPOSITION

other

## CASES CITED

- S.F. v. Ark. Dep't of Health & Human Servs., 370 Ark. 475, 261 S.W.3d 462 (2007) (per curiam)

- McDonald v. State, 356 Ark. 106, 146 S.W.3d 883 (2004)
- Flannery v. Ark. Dep't of Health & Human Servs., 368 Ark. 31, 242 S.W.3d 619 (2006) (per curiam)

## OPINION

### PER CURIAM.

Cite as 2016 Ark. 2 SUPREME COURT OF ARKANSAS No. CV-15-979 EVETTE MOORE Opinion Delivered January 7, 2016 APPELLANT MOTION FOR RULE ON CLERK V. ARKANSAS DEPARTMENT OF MOTION FOR RULE ON CLERK HUMAN SERVICES GRANTED; MOTION ALSO APPELLEE TREATED AS MOTION FOR BELATED APPEAL AND GRANTED. PER CURIAM Appellant Evette Moore, by and through her attorney, Kimberly Eden, has filed a motion for rule on clerk.

In the present motion, Ms. Eden candidly admits fault for not timely filing the record in this case wherein the circuit court entered an order granting permanent relative custody of A.M. to Eddie Aldridge. Additionally, Ms. Eden admits fault for noncompliance with Arkansas Supreme Court Rule 6-9(b)(2)(D).

As to the latter issue, we treat the present motion as one for a belated appeal. See S.F. v. Ark. Dep't of Health & Human Servs., 370 Ark. 475, 261 S.W.3d 462 (2007) (per curiam). We have clarified our treatment of motions for rule on clerk and motions for belated appeals in McDonald v. State, 356 Ark. 106, 146 S.W.3d 883 (2004). There we stated that there are only two possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal is at fault, or there is "good reason." Id. at 115, 146 S.W.3d at Cite as 2016 Ark.

2 891. Where an appeal is not timely perfected, either the party or attorney filing the appeal is at fault, or there is good reason that the appeal was not timely perfected. The party or attorney filing the appeal is therefore faced with two options.

First, where the party or attorney filing the appeal is at fault, fault should be admitted by affidavit filed with the motion or in the motion itself. There is no advantage in declining to admit fault where fault exists.

Second, where the party or attorney believes that there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide if good reason is present. Id., 146 S.W.3d at 891 (footnote omitted). While this court no longer requires an affidavit admitting fault before we will consider the motion, an attorney should candidly admit fault where he has erred and is responsible for the failure to perfect the appeal.

See id. The instant case is not a criminal case; however, we have afforded indigent parents appealing from a termination of parental rights similar protections as those afforded indigent criminal defendants. S.F., 370 Ark. at 476, 261 S.W.3d at 464 (citing Flannery v. Ark. Dep't of

Health & Human Servs., 368 Ark. 31, 242 S.W.3d 619 (2006) (per curiam)). A review of the notice of appeal reveals that Moore did not sign it.

Rule 6-9(b)(2)(D) states, The notice of appeal and designation of the record shall be signed by the appellant, if an adult, and the appellant's counsel. The notice shall set forth the party or parties initiating the appeal, the address of the party or parties, and specify the order from which the appeal is taken.

In accordance with McDonald v. State, Ms. Eden has candidly admitted fault for failing to timely file the record in this case due to a mistake on her part and for noncompliance with Arkansas Supreme Court Rule 6-9(b)(2)(D). A copy of this opinion will be forwarded to the Committee on Professional Conduct. Motion for rule on clerk granted; motion also treated as motion for belated appeal and granted.