

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)

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