

SUPREME COURT OF ARKANSAS

Flannery v. Arkansas Department of Health & Human Services

368 Ark. 31 (2006) (Ark. 2006) · No. No. 06-1081 · Decided November 9, 2006

SUMMARY

The Supreme Court of Arkansas granted Kelly Flannery’s motion for a belated appeal from an order terminating his parental rights. The court held that counsel’s failure to notify Flannery of his right to appeal constituted good reason for permitting the late appeal and set a deadline for filing the appellate record.

CASE DETAILS

COURT	Supreme Court of Arkansas
JURISDICTION	Arkansas
DECIDED	November 9, 2006
DOCKET	No. 06-1081
DISPOSITION	other
PROCEDURAL POSTURE	Appellant sought leave to file a belated appeal from an order terminating his parental rights. After remand for factual findings concerning notice, the Supreme Court of Arkansas granted the motion.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court per curiam opinion
PARTIES	Kelly Flannery v. Arkansas Department of Health and Human Services

TOPICS

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

PRACTICE AREAS

- family law
- appellate procedure
- parental rights

QUESTIONS PRESENTED

- Whether the appellant had good reason for failing to timely perfect an appeal from an order terminating his parental rights.
- Whether the absence of notice of the right to appeal justified granting a motion for belated appeal.

HOLDINGS

1. A trial court's finding that counsel failed to inform a party of the right to appeal an order terminating parental rights constitutes good reason to grant a motion for belated appeal.

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.” (620)

FACTUAL BACKGROUND

The circuit court terminated Flannery's parental rights. Although Flannery was notified by letter of the termination order, the circuit court found that he was not informed of his right to appeal. The order was filed on March 28, 2006, and mailed to Flannery by counsel on June 26, 2006.

PROCEDURAL HISTORY

Flannery moved for permission to pursue a belated appeal from the termination-of-parental-rights order. The Supreme Court previously remanded the matter to the circuit court to determine when Flannery received notice of the termination order and whether he was informed of his right to appeal. The circuit court found that Flannery was notified of the order but was not notified of his right to appeal, and the Supreme Court then granted the belated appeal.

DISPOSITION

other

REMAND INSTRUCTIONS

Flannery was permitted to file the record with the clerk by January 18, 2007; the clerk was directed to set a briefing schedule.

CASES CITED

- Flannery v. Arkansas Department of Health & Human Services, 367 Ark. 473, 241 S.W.3d 251 (2006) (per curiam)
- McDonald v. State, 356 Ark. 106, 146 S.W.3d 883 (2004)
- Tyler v. Arkansas Department of Human Services, 366 Ark. 413, 235 S.W.3d 901 (2006) (per curiam)

OPINION

PER CURIAM.

242 S.W.3d 619 (2006) Kelly FLANNERY, Appellant, v. ARKANSAS DEPARTMENT OF HEALTH AND HUMAN SERVICES, Appellee. No. 06-1081. Supreme Court of Arkansas. November 9, 2006. Appellant, pro se. Arkansas Department of Human Services, Office of Chief

Counsel, by Gray Allen Turner, for appellee. PER CURIAM. Appellant Kelly Flannery filed a motion seeking leave to file a belated appeal from an order terminating his parental rights.

This court entered an order remanding the case to the circuit court for a factual determination as to when Flannery was notified of the court order terminating his parental rights and whether he was notified of his right to appeal. *Flannery v. Arkansas Dep't of Health & Human Servs.*, 367 Ark. 473, 241 S.W.3d 251 (2006) (per curiam). Upon remand, the trial court ruled that Flannery was notified by letter that the court had terminated his rights and that such order was filed with the clerk on March 28, 2006, and mailed to Flannery by his counsel on June 26, 2006.

The court further found that Flannery was not notified of his right to appeal the termination order. Because the court found that Flannery was, not notified of his right to appeal, the motion for belated appeal is now granted. *620 In *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004), this court clarified its treatment of motions for rule on clerk and motions for belated appeals in criminal cases.

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 116, 146 S.W.3d at 891.

We further explained: 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 whether good reason is present. *Id.* (footnote omitted); see also *Tyler v. Arkansas Dep't of Human Servs.*, 366 Ark. 413, 235 S.W.3d 901.

(2006) (per curiam) (granting motion for belated appeal from order terminating parental rights). Here, the trial court's finding that Flannery's counsel failed to inform him of his right to appeal the termination of his parental rights is good reason to grant Flannery's motion for belated appeal. Pursuant to Ark. Sup.Ct. R. 6-9(d); the record on appeal in dependency-neglect cases shall be filed with the clerk of this court within seventy days of the filing of the notice of appeal.

Accordingly, Flannery has until January 18, 2007, to file the record with the clerk of this court. The clerk will then set a briefing schedule. Motion for belated appeal granted.

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