

SUPREME COURT OF ARKANSAS

S.F. and D.F. v. Arkansas Department of Health & Human Services

370 Ark. 475 (2007) (Ark. 2007) · No. No. 07-735 · Decided September 6, 2007

SUMMARY

The Supreme Court of Arkansas granted S.F. and D.F.'s motion for a belated appeal after their notice of appeal was not signed as required by Arkansas Supreme Court Rule 6-9(b)(2)(D). The court attributed the error to counsel, denied the motion to dismiss, granted anonymity protections, and forwarded the opinion to the Committee on Professional Conduct.

CASE DETAILS

COURT	Supreme Court of Arkansas
JURISDICTION	Arkansas
DECIDED	September 6, 2007
DOCKET	No. 07-735
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Appellants sought relief after the clerk refused to accept their appellate record because their notice of appeal did not comply with Arkansas Supreme Court Rule 6-9(b)(2)(D). The court treated the motion for rule on clerk as a motion for belated appeal.
STANDARD OF REVIEW	The court examined the motion, affidavits, record, and notice of appeal to determine whether relief from failure to perfect the appeal was proper based on attorney error or good reason.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court per curiam opinion
PARTIES	S.F., D.F. v. Arkansas Department of Health & Human Services

TOPICS

- appellate procedure
- family law procedure
- parental rights
- standard of review

PRACTICE AREAS

- appellate procedure
- family law
- parental rights

QUESTIONS PRESENTED

1. Whether appellants were entitled to a belated appeal when their notice of appeal was deficient because neither appellant signed it as required by Arkansas Supreme Court Rule 6-9(b)(2)(D).
2. Whether the circuit court's adjudication order was an appealable order under Arkansas Supreme Court Rule 6-9(a)(1)(A).

HOLDINGS

1. When the record and motion establish that an attorney's error caused the failure to perfect an appeal, and the attorney admits the error, the court may grant relief through a belated appeal. Because neither appellant signed the notice of appeal as required by Rule 6-9(b)(2)(D), the court granted the motion for belated appeal.
2. An adjudication order is an appealable order under Arkansas Supreme Court Rule 6-9(a)(1)(A).

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.” (464)

“The notice of appeal and designation of the record shall be signed by the appellant, if an adult, and appellant's counsel.” (464)

FACTUAL BACKGROUND

On May 22, 2007, the circuit court adjudicated G.A., the appellants' adopted child, dependent-neglected. The appellants' attorney filed a notice of appeal on their behalf, but neither appellant signed the notice. The attorney admitted that the failure to obtain the appellants' signatures was his error.

PROCEDURAL HISTORY

The circuit court entered an order adjudicating the appellants' adopted child dependent-neglected on May 22, 2007. Appellants filed a notice of appeal on June 5, 2007, but neither appellant signed it. When the clerk refused the tendered record, appellants moved for a rule on clerk and admitted that their attorney was at fault. The Supreme Court of Arkansas granted a belated appeal, denied the motion to dismiss, and granted anonymity.

DISPOSITION

writ_granted

CASES CITED

- McDonald v. State, 356 Ark. 106, 146 S.W.3d 883 (2004)
- Flannery v. Arkansas Department of Health & Human Services, 368 Ark. 31, 242 S.W.3d 619 (2006) (per curiam)

OPINION

PER CURIAM.

261 S.W.3d 462 (2007) S.F. and D.F., Appellants, v. ARKANSAS DEPARTMENT OF HEALTH & HUMAN SERVICES, Appellee. No. 07-735. Supreme Court of Arkansas. September 6, 2007. *463 Jeff Rosenzweig, Little Rock, for appellants. Sharon Bray Taylor, attorney ad litem of minor child. Gray Allen Turner, Dept. of Human Servs., Office of Chief Counsel, for appellee. PER CURIAM.

Appellants S.F. and D.F., by and through their attorney, Jeff Rosenzweig, have filed a motion for rule on clerk, after their record was refused due to their notice of appeal's noncompliance with Ark. Sup.Ct. R. 6-9(b)(2)(D).

We therefore treat the instant motion as one for a belated appeal. On May 22, 2007, the circuit court entered an order adjudicating G.A., the Appellants' adopted child, dependent-neglected. On June 5, 2007, Mr. Rosenzweig filed a notice of appeal; however, the notice of appeal was not signed by Appellants as required by Rule 6-9(b)(2)(D).

On July 11, 2007, Mr. Rosenzweig tendered the record, which was refused by the clerk of this court because of the noncompliance with Rule 6-9(b)(2)(9).[1] In the motion for rule on clerk, Mr. Rosenzweig admits that it was his fault that Appellants failed to sign the original notice of appeal. Relief from the failure to perfect an appeal is provided as part of the appellate procedure granting the right to an appeal.

McDonald v. State, 356 Ark. 106, 146 S.W.3d 883 (2004). In McDonald, we clarified our treatment of motions for rule on clerk and motions for belated appeal in criminal cases, explaining: *464 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. at 116, 146 S.W.3d at 891 (footnote omitted). When it is plain from the motions, affidavits, and record that relief is proper based on error or good reason, the relief will be granted.

Id. If there is attorney error, a copy of the opinion will be forwarded to the Committee on Professional Conduct. Id. While the instant case is not a criminal case, we have afforded indigent parents appealing from a termination of parental rights similar protections as those afforded indigent criminal defendants. See, e.g., Flannery v. Ark. Dep't of Health & Human Servs., 368 Ark.

31, 242 S.W.3d 619 (2006) (per curiam). It is plain from the instant motion that there was error on the part of Mr. Rosenzweig. A review of the notice of appeal reveals that neither of the Appellants signed it. Rule 6-9(b)(2)(D) is clear: The notice of appeal and designation of the record shall be signed by the appellant, if an adult, and 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. Because the notice of appeal lacked the signature of each Appellant, it was deficient. Pursuant to McDonald, 356 Ark. 106, 146 S.W.3d 883, we grant Appellants' motion for belated appeal and forward a copy of this opinion to the Committee on Professional Conduct.

Motion for belated appeal granted. Motion to dismiss denied. Motion for anonymity granted. IMBER, J., not participating. NOTES [1] Prior to the filing of the instant motion, Appellee Arkansas Department of Health and Human Services filed a motion to dismiss Appellants' appeal because of the failure of Appellants to sign the notice of appeal. DHHS also averred that dismissal was warranted because the adjudication order was not a final, appealable order.

Pursuant to Ark. Sup.Ct. R. 6-9(a)(1)(A), an adjudication order is an appealable order. Thus, DHHS's motion to dismiss is denied as of this date, but its motion for anonymity to protect the identity of Appellants and the minor child is granted. See S.F. and D.F. v. Arkansas Dep't of Health & Human Servs., No. 07-630.