

SUPREME COURT OF ARKANSAS

Betty Ann Parker v. David Allen Sebourn, 351 Ark. 453

95 S.W.3d 762 (2003) · No. No. 02-803 · Decided January 23, 2003

SUMMARY

The Supreme Court of Arkansas affirmed the denial of Betty Ann Parker’s motion to set aside an order terminating her parental rights. The court held that the motion, filed nearly four years after the termination order, was untimely under Arkansas Rule of Civil Procedure 60 because no applicable exception was asserted. A concurrence agreed on procedural grounds, while a dissent argued that the chancery court lacked authority to grant a private litigant’s request to terminate parental rights.

CASE DETAILS

COURT	Supreme Court of Arkansas
WRITING FOR THE COURT	W.H. "Dub" Arnold, Chief Justice; Donald L. Corbin, Justice; Tom Glaze, Justice; Imber, Justice
JURISDICTION	Arkansas
DECIDED	January 23, 2003
DOCKET	No. 02-803
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the denial of the appellant's motion to set aside an order terminating her parental rights.
STANDARD OF REVIEW	The court reviewed whether the motion to set aside was procedurally barred under Arkansas Rule of Civil Procedure 60 and whether the chancery court was wholly without subject-matter jurisdiction.
PRECEDENTIAL VALUE	Published Arkansas Supreme Court opinion; majority holding is precedential.
PARTIES	Betty Ann Parker v. David Allen Sebourn

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Parker's nearly four-year-old motion to set aside the parental-rights termination order was timely under Arkansas Rule of Civil Procedure 60.
2. Whether the asserted lack of subject-matter jurisdiction excused Parker's failure to challenge the termination order within the time permitted by Rule 60.
3. Whether the termination statute, as applied, violated Arkansas public policy against bastardization of children.

HOLDINGS

1. A motion to modify or vacate the judgment filed nearly four years after entry is untimely when the movant does not invoke any applicable exception under Rule 60(c).
2. An untimely jurisdictional challenge is not excused unless the lower court lacked jurisdiction in any and all circumstances; because Arkansas Code Annotated section 16-13-304(d) gave the chancery court concurrent jurisdiction over termination cases, the court was not wholly without subject-matter jurisdiction.
3. The court did not reach the merits of Parker's argument that the termination order violated Arkansas public policy because the appeal was procedurally barred.

KEY QUOTATIONS

"We hold that appellant's motion to set aside, filed nearly four years after the order of termination was entered, was untimely and affirm the trial court's denial of the motion." (95 S.W.3d at 763)

"We have further held that it is only when the lower court lacks jurisdiction in any and all circumstances that the challenging party will be excused from objecting to the jurisdiction in the trial court." (95 S.W.3d at 764)

FACTUAL BACKGROUND

David Allen Sebourn petitioned the Lonoke County Chancery Court to terminate Betty Ann Parker's parental rights to Megan Sebourn, alleging that he and Parker were the child's parents, had never married, and that he had sole care and custody. The court appointed a guardian ad litem and entered an order terminating Parker's parental rights based on the pleadings, Parker's consent, the guardian ad litem's oral report, and other evidence. Parker waited nearly four years before moving to set aside the termination order, asserting that the chancery court lacked subject-matter jurisdiction and that the termination violated public policy.

PROCEDURAL HISTORY

David Sebourn filed a petition in the Lonoke County Chancery Court seeking termination of Betty Parker's parental rights. The chancery court appointed a guardian ad litem and entered an order terminating Parker's parental rights in September 1998. Parker did not appeal that order, but nearly four years later moved to set it

aside on subject-matter-jurisdiction and public-policy grounds. The trial court denied the motion, and the Supreme Court of Arkansas affirmed.

DISPOSITION

affirmed

CASES CITED

- Summers v. Griffith, 317 Ark. 404, 878 S.W.2d 401 (1994)
- J.W. Reynolds Lumber Co. v. Smackover State Bank, 310 Ark. 342, 836 S.W.2d 853 (1992)
- Chapin v. Stuckey, 286 Ark. 359, 692 S.W.2d 609 (1985)
- Crittenden County v. Williford, 283 Ark. 289, 675 S.W.2d 631 (1984)
- Blackwood v. Floyd, 342 Ark. 498, 29 S.W.3d 694 (2000)
- State v. Dawson, 343 Ark. 683, 38 S.W.3d 319 (2001)
- Ark. Dep't of Human Servs. v. State, 319 Ark. 749, 894 S.W.2d 592 (1995)
- Ark. Dep't of Human Servs. v. Thomas, 71 Ark. App. 348, 33 S.W.3d 514 (2000)
- State v. Circuit Court of Lincoln County, 336 Ark. 122, 984 S.W.2d 412 (1999)
- Arkansas Pub. Defender Comm'n v. Greene County Cir. Court, 343 Ark. 49, 32 S.W.3d 470 (2000)
- Pope v. Pope, 213 Ark. 321, 210 S.W.2d 319 (1948)
- Howell v. Howell and Stevens v. Stevens, 213 Ark. 298, 208 S.W.2d 22 (1948)
- Office of Child Support Enforcement v. Harnage, 322 Ark. 461, 910 S.W.2d 207 (1995)
- M.T. v. Arkansas Dep't of Human Servs., 58 Ark. App. 302, 952 S.W.2d 177 (1997)