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ARKANSAS COURT OF APPEALS

No. CACR07-929

KELLY HARRISON CAMPBELL, APPELLANT V. STATE OF ARKANSAS, APPELLEE	**Opinion Delivered** 14 APRIL 2010 APPEAL FROM THE LONOKE COUNTY CIRCUIT COURT, [NO. CR2006-494-(1-6)] THE HONORABLE JOHN W. COLE, JUDGE MOTION GRANTED

PER CURIAM

After full briefing and a few days before a scheduled oral argument, Kelly Harrison Campbell moved to dismiss her appeal. We granted her motion on 12 January 2010. Campbell's appointed counsel, Jerry J. Sallings and Gary D. Marts, Jr., of Wright, Lindsey & Jennings LLP, now move for $41,121.00 in attorney's fees and $7,520.87 in out-of-pocket expenses. Counsel filed their motion on 18 March 2010—sixty-four days after we entered the dismissal order.

1. The first question is whether the motion is timely. The governing rule says that appointed counsel's fee "motion shall be filed not later than 30 days after the issuance of the mandate." Ark. Sup. Ct. R. 6-6(c). The Supreme Court has been clear about requiring compliance with this deadline. *E.g.*, *Bell v. State*, 326 Ark. 1097,

1098–99, 935 S.W.2d 539, 540 (1996) (per curiam). Prompt fee motions ensure that the appellate court can decide these issues while "the case is fresh in our minds[,]" and can manage our limited budget to pay appointed counsel. *Ibid.*

In this case, the Clerk did not issue a mandate. Instead the Clerk issued a "Formal Order" dismissing the case. This kind of order, we have learned, is the Clerk's current practice in cases like this one, cases which are disposed of without an opinion. In years past, however, there was a mandate issued in every case. The Clerk changed the practice at the Supreme Court's direction several years ago.

Our rules are less than clear on the deadline for a fee motion in these circumstances. The fee-related provision of Rule 6-6(c) speaks only of a mandate, not an order. The Rule about the mandate points in two directions: it requires a mandate in all cases; but then it references "the decision" in the case and petitions for rehearing and review, all of which sound like some disputed issue was decided in an opinion. Ark. Sup. Ct. R. 5-3(a). Our granting Campbell's motion to dismiss her own appeal was a decision in the broadest sense of that word. There was, however, no decision about the merits or our jurisdiction or any dispute of any kind. We simply granted Campbell's request to abandon her appeal.

Notwithstanding its title as a "Formal Order," was the document in substance a mandate? Sort of. The Supreme Court has approved this definition. "A 'mandate'

is the official notice of the action of the appellate court, directed to the court below, advising that court of the action taken by the appellate court, and directing the lower court to have the appellate court's judgment duly recognized, obeyed, and executed." *Dolphin v. Wilson*, 335 Ark. 113, 118, 983 S.W.2d 113, 115 (1998) (internal quotation omitted). The order here gave the circuit court, and the parties, notice about what had happened on appeal. But the order lacked any directions to the circuit court because Campbell's voluntary dismissal left the case as if she had not appealed at all. *E.g.*, *Williams v. U.S.*, 553 F.2d 420, 422 (5th Cir. 1977).

We conclude that all of this creates too much uncertainty to hold appointed counsel to Rule 6-6(c)'s thirty-day deadline in a case like this one where no formal mandate issued to the circuit court. The sixty-four days between the order and the motion was not an unreasonably long time. This case is still fresh in our minds. We therefore hold that the motion was timely.

2. On the merits, we grant the motion for expenses and fees, though not in full. This was a huge case. The trial lasted thirty-four days; the resulting record was more than 10,000 pages long. Counsel and their law firm—whom we thank for accepting this appointment—ably briefed the appeal, and were prepared to argue it orally before Campbell abandoned her effort to overturn her convictions. The billing records documenting time spent and expenses are in good order. We award

$22,500.00 for fees and costs. While far short of the total requested, this amount is more than sixteen times the amount our budget allows us to award in the routine criminal appeal. This multiplier reflects the complexity of this record and the issues presented by the record. This amount is also the most that our budget allows us to pay in this case while maintaining enough money to pay appointed counsel in routine cases for the rest of this fiscal year.

Motion granted.

HART and GLOVER, JJ., not participating.