

Cite as 2009 Ark. 461

SUPREME COURT OF ARKANSAS

No. 09-998

DAVID ASHCROFT

APPELLANT

VS.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered October 1, 2009MOTION TO DISMISS
DENIED; MOTION FOR BELATED
APPEAL GRANTED**PER CURIAM**

Appellee, the Arkansas Department of Human Services, moves the court to dismiss appellant David Ashcroft's appeal of an order adjudicating his children dependent-neglected. DHS asserts that Ashcroft failed to file a timely notice of appeal from the order.

The Pulaski Circuit Court entered the dependency-neglect order on July 8, 2009. Ashcroft filed a motion for new trial on July 20, and on August 17 he filed his first notice of appeal, which was unsigned. On August 20, the circuit court denied Ashcroft's new trial motion. Ashcroft then filed a second—unsigned—notice of appeal on August 21. On September 8, DHS lodged a partial record with the clerk and filed its motion to dismiss the appeal. Ashcroft filed a third notice of appeal on September 11, which he signed.

In its motion to dismiss, DHS argues that neither of the two notices of appeal filed by Ashcroft that are contained in the partial record were signed as required by Arkansas Supreme Court Rule 6-9(b)(1)(B), a rule that has been strictly enforced by this court. *See Martin v. Ark.*

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Dep't of Health & Human Servs., 369 Ark. 477, 255 S.W.3d 830 (2007) (per curiam). In his response, Ashcroft admits that his first two notices failed to include his signature, but he claims that his third notice of appeal was timely because pursuant to Rule 4(b) of the Arkansas Rules of Appellate Procedure—Civil, he was allowed additional time to file his notice of appeal from the denial of his motion for new trial. He maintains that his timely filed post-trial motion for new trial tolled the time for filing a notice of appeal until twenty-one days from the entry of the order disposing of that motion. In its reply, DHS maintains that Ashcroft failed to supplement the record to include his third notice of appeal and that, even if Rule 4(b) applies, his third notice was also untimely because it was filed on the twenty-second day after his new trial motion was denied.

Rule 6-9 sets twenty-one days as the time within which the notice of appeal must be filed in cases involving dependency neglect. Ark. Sup. Ct. R. 6-9(b)(1) (2009). In addition, Rule 6-9(b)(4) states that “[t]he time in which to file a notice of appeal or a notice of cross-appeal and the corresponding designation of record will not be extended.” The express purpose of Rule 6-9(b) is to expedite the appellate process in dependency-neglect cases. *Ratliff v. Ark. Dep't of Health & Human Servs.*, 371 Ark. 534, 268 S.W.3d 322 (2007) (per curiam). Although Rule 4(b)(1) of the Arkansas Rules of Appellate Procedure—Civil allows the deadline for a notice of appeal to be extended where certain post-trial motions have been filed, we have held that we will not extend that rule to dependency-neglect cases because doing so would vitiate the purpose of Rule 6-9(b). *Ratliff*, 371 Ark. at 535, 268 S.W.3d at

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323. Therefore, to be considered timely, Ashcroft should have filed a signed notice of appeal by July 29.

Because expedition of the appellate process is our stated goal in dependency-neglect cases, we have held that granting the motion to dismiss and requiring appellant's counsel to file a motion for belated appeal would only further delay the appeal. *Id.* at 535–36, 268 S.W.3d at 323–24. Therefore, we will deny DHS's motion to dismiss and treat Ashcroft's response as a motion for belated 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:

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). While this court no longer requires an affidavit admitting fault before we will consider the motion, an attorney should candidly admit fault where he or she has erred and is responsible for the failure to perfect the appeal. *Ratliff*, 371 Ark. at 536, 268 S.W.3d at 324. 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

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attorney error, a copy of the opinion will be forwarded to the Committee on Professional Conduct. *Id.*

As it is plain from the motion and response that relief is proper, we grant Ashcroft's motion for belated appeal. Because we grant the motion for belated appeal, we deny DHS's motion to dismiss. Furthermore, it is clear that Ashcroft's counsel committed error in perfecting the appeal in this case and he admits fault in filing the first two unsigned notices of appeal. Therefore, we refer him to the Committee on Professional Conduct for appropriate action.

Motion to dismiss denied; motion for belated appeal granted.