

Cite as 2010 Ark. 212

SUPREME COURT OF ARKANSAS

No. 10-368

MISTY PORTER,

APPELLANT,

VS.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILDREN,

APPELLEES,

Opinion Delivered May 6, 2010

MOTION TO DISMISS APPEAL

MOTION TO DISMISS APPEAL
GRANTED AS TO O.R.; MOTION
TO DISMISS APPEAL DENIED AS TO
S.P., J.P., AND M.P.**PER CURIAM**

Arkansas Department of Health and Human Services moves to dismiss appeals by Misty Porter from two orders terminating parental rights in Little River County Circuit Court case Number JV-2007-61-2. An initial petition for termination of parental rights was filed on July 17, 2008. This petition concerned Porter's children S.P., J.P., and M.P. O.R. was subsequently born to Porter in August 2008, and the action was amended to terminate parental rights to O.R. as well.

On September 8, 2008, the circuit court terminated the parental rights of "Misty Porter, Obie Riley, and Robert Jackson" to S.P., J.P., and M.P.¹ Porter filed a timely pro se notice of appeal on September 24, 2008. On December 9, 2008, the circuit court terminated the parental rights of Porter and Riley in their child, O.R. Porter also filed a

¹ The record provided does not reveal who is the father of which child.

Cite as 2010 Ark. 212

timely pro se notice of appeal to this order. Porter was represented by appointed counsel with respect to S.P., J.P., and M.P. She elected to represent herself with respect to the termination of her parental rights in O.R.

A record has not been lodged in either appeal. Each was due seventy days from the date of the filing of the first notice of appeal. *See* Ark. Sup. Ct. R. 6-9(d). The state moves to dismiss for failure to perfect the appeals. Because counsel was appointed with respect to S.P., J.P., and M.P., and was not appointed with respect to O.R., our analysis and the outcome will differ between the two appeals.

Because Porter represented herself in the termination-of-parental-rights proceedings regarding O.R., she was obligated to comply with proper procedure. A pro se status does not constitute good cause for failure to comply with required procedures. *See Leavy v. Norris*, 324 Ark. 346, 348, 920 S.W.2d 842, 842 (1996). Because Porter failed to lodge the record as required by Arkansas Supreme Court Rule 6-9(d), the appeal with respect to O.R. is dismissed.

As to the appeal from the order terminating parental rights to S.P., J.P., and M.P., counsel was appointed by the circuit court. The partial record provided does not reveal which attorney of the Ronald L. Davis Law Firm was appointed to represent Porter. In any event, the partial record does reveal that counsel was relieved by the circuit court on November 3, 2008. However, the notice of appeal had already been filed as of that date. Where an appellant has filed a timely notice of appeal, and the court-appointed attorney has

Cite as 2010 Ark. 212

failed to timely file the record, a motion for rule on clerk is available. See *Waddle v. State*, 356 Ark. 501, 156 S.W.2d 226 (2004). While this is a civil proceeding regarding parental rights, this court has held that indigent parents in termination-of-parental-rights proceedings enjoy some protections afforded criminal defendants, including appointment of counsel. See *White v. Arkansas Dep't of Health & Human Servs.*, 2009 Ark. 173, 300 S.W.3d 499.

Once counsel has been appointed in a case where the right to appointed counsel exists, and the notice of appeal has been filed, this court has exclusive jurisdiction to relieve counsel and appoint new counsel. See Ark. R. App. P.–Crim. 16(a). Because counsel was not relieved by this court, counsel remains counsel of record on appeal, and because a motion for rule on clerk is available, the motion to dismiss appeal as to S.P., J.P., and M.P. is denied. Counsel of record has thirty days to file a motion for rule on clerk as to the appeal with respect to S.P., J.P., and M.P.