

SUPREME COURT OF ARKANSAS

No. CA12-12

JIMMY MANN

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered March 1, 2012

MOTION FOR BELATED APPEAL
GRANTED; MOTION TO DISMISS
DENIED.

PER CURIAM

Appellee, the Arkansas Department of Human Services (DHS), asks the court to dismiss appellant Jimmy Mann’s appeal of an order denying his petition to intervene in the dependency-neglect case. DHS asserts that Mann failed to file a timely notice of appeal from the order and failed to personally sign the notice of appeal. We treat this a motion for belated appeal, which we grant, and we deny DHS’s motion to dismiss.

The Mississippi County Circuit Court entered the order denying Mann’s petition to intervene on September 28, 2011. Mann filed his unsigned notice of appeal belatedly on October 21, 2011. Mann lodged the record with our clerk on January 5, 2012. On January 10, 2012, DHS filed a motion to dismiss appeal. Mann filed a response to motion to dismiss appeal or, in the alternative, a motion for belated appeal on January 26, 2012.

In its motion to dismiss, DHS argues that the notice of appeal filed by Mann was untimely under Arkansas Supreme Court Rule 6-9(b)(1) and was not signed as required by Arkansas Supreme Court Rule 6-9(b)(1)(B). Arkansas Supreme Court Rule 6-9(b)(1) has

been strictly enforced by this court. See *Smith v. Ark. Dep't of Human Servs.*, 371 Ark. 425, 266 S.W.3d 694 (2007) (per curiam). 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) (2011). 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. See *Ashcroft v. Ark. Dep't of Human Servs.*, 2009 Ark. 461 (per curiam).

To be timely, Mann should have filed a signed notice of appeal by October 19, 2011. 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.* Accordingly, we deny DHS’s motion to dismiss and treat Mann’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. *Id.* (citing *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004)). In *Ashcroft*, we extended our reasoning for treatment of motions for rule on clerk and motions for belated appeal in criminal cases to dependency-neglect 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 2 (quoting *McDonald*, 356 Ark. at 116, 146 S.W.3d at 891). 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.*

As it is plain from the motion and response that relief is proper, we grant Mann'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 Richard Rhodes, Mann's counsel, committed error in perfecting the appeal in this case, and he admits fault in filing the late and 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.