

Cite as 2023 Ark. App. 25

ARKANSAS COURT OF APPEALS

No. CV-22-515

ARKANSAS BLUE CROSS
AND BLUE SHIELD

APPELLANT

V.

FREEWAY SURGERY CENTER; SCOTT
SCHLESINGER, M.D.; FAIR PARK
SURGERY CENTER; CENTERVIEW
SURGERY CENTER; SOUTH
ARKANSAS SURGERY CENTER;
ADVANCED AMBULATORY SURGERY
CENTER; EXECUTIVE PARK
SURGERY CENTER OF FORT SMITH;
GASTROENTEROLOGY AND
SURGERY CENTER OF ARKANSAS;
MOUNTAIN HOME SURGERY
CENTER; HARRISON SURGERY
CENTER; BOZMAN-HOF EYE
CENTER; PHYSICIANS DAY A/K/A
MCFARLAND EYE CENTER; SPRING
CREEK SURGERY CENTER; TAYLOR
PLASTIC SURGERY; SURGERY
CENTER OF NORTHEAST TEXAS;
ADVANCED INTERVENTIONAL PAIN
MANAGEMENT; PRECISION
SURGICAL OF NORTHWEST
ARKANSAS; EXECUTIVE SURGERY
CENTER OF LITTLE ROCK; CENTRAL
ARKANSAS SURGERY CENTER A/K/A
ARKANSAS SPINE AND PAIN; AND
ARKANSAS CENTER FOR SURGICAL
EXCELLENCE

APPELLEES

AND

ALAN MCCLAIN, ARKANSAS
INSURANCE COMMISSIONER
INTERESTED PARTY

Opinion Delivered January 25, 2023

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, FIFTH
DIVISION
[NO. 60CV-21-2725]

HONORABLE WENDELL GRIFFEN,
JUDGE

MOTION TO DEEM THE RECORD
COMPLETE IS GRANTED; BRIEFING
SCHEDULE ORDERED; SHOW-CAUSE
ORDER ISSUED

PER CURIAM

Arkansas Blue Cross and Blue Shield moves this court to enforce a writ of certiorari we issued to court reporter Neva Warford to complete the transcript of an oral argument held before the circuit court—a command we first made four months ago. Alternatively, the parties jointly move that we set a briefing schedule based on the “record pleadings” already on file with this court’s clerk and deem the tardy transcript inessential to the appeal under Ark. R. App. P.–Civ. 6(c). Because Warford’s failure to comply with the original writ and subsequent extensions is good cause to accept the parties’ Rule 6 alternative, we grant that request and direct the clerk to set a briefing schedule forthwith. And for the reasons provided below, we order Neva Warford to appear before this court on 7 February 2023, at 9:30 a.m., in the courtroom of the Arkansas Supreme Court and Court of Appeals (Justice Building, 625 Marshall Street, Little Rock, AR 72201), and show cause why she should not be held in contempt for failing to comply with the original writ of certiorari and extensions.

Arkansas Blue Cross and Blue Shield has been trying to appeal an eight-page order entered more than one year ago. On 16 August 2022, as the deadline to lodge the record in this court approached after seven months of extensions by the circuit court, it simultaneously filed in this court a partial record and petition for a writ of certiorari directing court reporter Warford to complete the transcript portion of the record in this civil appeal. We granted the petition on September 7 and ordered, by way of a writ of certiorari, that the supplemental record be completed and filed within thirty days.

When the thirtieth day arrived, Warford had not completed her task, so Blue Cross and Blue Shield moved, on October 7, to enforce the writ. We granted that motion on October 25 and allowed Warford thirty days.¹ But no transcript was prepared. So Blue Cross and Blue Shield returned on November 22 with another request that we enforce the writ. In response, this court extended Warford’s deadline to 6 January 2023 and expressly told her that it was a final extension.² Again, she failed to comply, which required Blue Cross and Blue Shield to file another motion—and the parties to pivot to Ark. R. App. P.–Civ. 6(c) as a last-ditch effort to “complete” the record and move this appeal forward.

Despite Blue Cross and Blue Shield’s continued efforts and this court’s prior commands, the designated transcript has remained unavailable for filing because Warford has seemingly ignored this court’s orders. Having received no communication from

¹The docket entry (26 October 2022) states:

Appellant’s motion to enforce writ of certiorari and extend time is granted. Gruber, J., not participating.

Electronic supplemental record is due in thirty days (November 25, 2022). The clerk is directed to set a briefing schedule after the writ is returned and the electronic supplemental record is filed.

This court has now granted the court reporter two extensions from the record’s original due date of August 18, 2022.

²The docket entry (7 December 2022) states:

Appellant’s second motion to enforce writ of certiorari and extend time. Granted final extension of thirty days (January 6, 2023). Barrett and Hixson, JJ., would issue a show-cause order to the court reporter. Gruber, J., not participating.

This court has now granted the court reporter three extensions from the record’s original due date of August 18, 2022.

Warford to explain the repeated delay and perceived insubordination, good cause exists for this show-cause order. See *James Tree & Crane Serv., Inc. v. Fought*, 2015 Ark. 6 (show-cause order issued to court reporter); see also *Woolford v. State*, 2022 Ark. App. 463 (show-cause order issued to court reporter Neva Warford).

Given the recent history with a court reporter's repeated inability to comply with this court's writs and orders, *Woolford*, 2022 Ark. App. 463, we point out, for example, that the Regulations of the Board of Certified Court Reporter Examiners provide for penalties as severe as revoking a reporter's certification for shirking his or her duties. Regs. Ark. Bd. Certified Ct. Rep. Examiners § 19.³ If that were not enough, the Arkansas Code of Judicial Conduct requires judges to ensure their employees do not interfere with the timely administration of justice. See, e.g., Ark. Code Jud. Conduct R. 2.12(A) (Supervisory Duties). To that end, this court's clerk routinely sends our writs and related orders to the

³Section 19 states in part:

[T]he Board may issue an admonition or revoke or suspend any certificate issued after proper notice and hearing, on the following grounds:

.....

c. any intentional violation of, noncompliance with or gross negligence in complying with any rule or directive of the Supreme Court of Arkansas, any other court of record within this State, or this Board.

d. fraud, dishonesty, gross incompetence or habitual neglect of duty.

e. unprofessional conduct, which shall include, but not be limited to:

1. failing to deliver a transcript to a client or court in a timely manner as determined by statute, court order, or agreement[.]

court reporter to whom they are primarily directed *and* to the presiding circuit judge. Here, the writ and orders that have been issued to Warford and the presiding judge since September 2022 are attached to this order.

NEVA WARFORD IS FURTHER NOTIFIED that her failure to appear on 7 February 2023, at 9:30 a.m., could result in the issuance of a bench warrant for her arrest, with directions to the appropriate law enforcement authority to arrange for her delivery to this court so a show-cause hearing can be conducted as soon as possible.

Motion to deem the record complete is granted; briefing schedule ordered; show-cause order issued.

BROWN, J., dissents without opinion.

GRUBER, J., not participating.

OFFICE OF THE CLERK
ARKANSAS COURT OF APPEALS
625 MARSHALL STREET
LITTLE ROCK, AR 72201

SEPTEMBER 7, 2022

RE: COURT OF APPEALS CASE NO. CV-22-515

ARKANSAS BLUE CROSS BLUE SHIELD V. ALAN MCCLAIN, INSURANCE COMMISSIONER; FREEWAY SURGERY CENTER; SCOTT SCHLESINGER, M.D.; FAIR PARK SURGERY CENTER; CENTERVIEW SURGERY CENTER; SOUTH ARKANSAS SURGERY CENTER; ADVANCED AMBULATORY SURGERY CENTER; EXECUTIVE PARK SURGERY CENTER OF FORT SMITH; GASTROENTEROLOGY AND SURGERY CENTER OF ARKANSAS; MOUNTAIN HOME SURGERY CENTER; HARRISON SURGERY CENTER; BOOZMAN-HOF EYE CENTER; PHYSICIAN'S DAY A/K/A MCFARLAND EYE CENTER; SPRING CREEK SURGERY CENTER; TAYLOR PLASTIC SURGERY; SURGERY CENTER OF NORTHEAST TEXAS; ADVANCED INTERVENTIONAL PAIN MANAGEMENT; PRECISION SURGICAL OF NORTHWEST ARKANSAS; EXECUTIVE SURGERY CENTER OF LITTLE ROCK; CENTRAL ARKANSAS SURGERY CENTER A/K/A ARKANSAS SPINE AND PAIN; AND ARKANSAS CENTER FOR SURGICAL EXCELLENCE

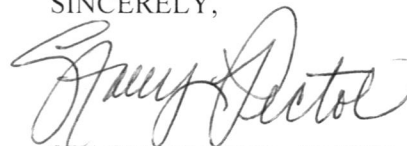
THE ARKANSAS COURT OF APPEALS ISSUED THE FOLLOWING ORDERS TODAY IN THE ABOVE STYLED CASE:

“APPELLANT’S PETITION FOR WRIT OF CERTIORARI TO COMPLETE THE RECORD IS GRANTED. GRUBER, J., NOT PARTICIPATING.”

“APPELLANT’S SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO COMPLETE THE RECORD IS MOOT. GRUBER, J., NOT PARTICIPATING.”

WRIT ISSUED; RETURNABLE IN THIRTY DAYS (OCTOBER 7, 2022). THE CLERK IS DIRECTED TO SET A BRIEFING SCHEDULE AFTER THE WRIT IS RETURNED AND THE ELECTRONIC SUPPLEMENTAL RECORD IS FILED.

SINCERELY,



STACEY PECTOL, CLERK

CC: STEVEN W. QUATTLEBAUM AND JOSEPH R. FALASCO
BOOTH RAND
DANIEL W. VAN HORN
NEVA J. WARFORD, OFFICIAL COURT REPORTER (W/ORIGINAL WRIT)
HONORABLE WENDELL GRIFFEN, JUDGE (W/COPY OF WRIT)
PULASKI COUNTY CIRCUIT CLERK (W/ORIGINAL WRIT)
(60CV-21-2725)

WRIT RETURNABLE IN 30 DAYS ON OCTOBER 7, 2022

CERTIORARI FOR COMPLETE ELECTRONIC RECORD

STATE OF ARKANSAS)
COURT OF APPEALS)
60CV-21-2725)

COURT OF APPEALS CASE NO. CV-22-515
THE STATE OF ARKANSAS

TO THE CLERK AND COURT REPORTER, GREETINGS:

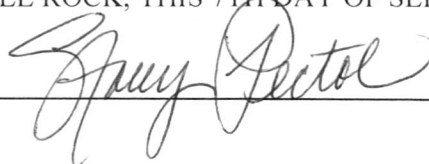
WHEREAS, IN A CASE PENDING IN SAID PULASKI COUNTY CIRCUIT COURT,
STATE OF ARKANSAS, WHEREIN

ARKANSAS BLUE CROSS AND BLUE SHIELD, APPELLANT AND

ALAN MCCLAIN, INSURANCE COMMISSIONER; FREEWAY SURGERY CENTER;
SCOTT SCHLESINGER, M.D.; FAIR PARK SURGERY CENTER; CENTERVIEW
SURGERY CENTER; SOUTH ARKANSAS SURGERY CENTER; ADVANCED
AMBULATORY SURGERY CENTER; EXECUTIVE PARK SURGERY CENTER OF FORT
SMITH; GASTROENTEROLOGY AND SURGERY CENTER OF ARKANSAS; MOUNTAIN
HOME SURGERY CENTER; HARRISON SURGERY CENTER; BOOZMAN-HOF EYE
CENTER; PHYSICIAN'S DAY A/K/A MCFARLAND EYE CENTER; SPRING CREEK
SURGERY CENTER; TAYLOR PLASTIC SURGERY; SURGERY CENTER OF
NORTHEAST TEXAS; ADVANCED INTERVENTIONAL PAIN MANAGEMENT;
PRECISION SURGICAL OF NORTHWEST ARKANSAS; EXECUTIVE SURGERY CENTER
OF LITTLE ROCK; CENTRAL ARKANSAS SURGERY CENTER A/K/A ARKANSAS
SPINE AND PAIN; AND ARKANSAS CENTER FOR SURGICAL EXCELLENCE,
APPELLEES

JUDGMENT WAS RENDERED, AND APPELLANT PRAYED AN APPEAL FROM SAID
JUDGMENT TO THE COURT OF APPEALS. YOU ARE, THEREFORE, HEREBY COMMANDED
THAT YOU CERTIFY TO OUR COURT OF APPEALS, FORTHWITH, A FULL, TRUE AND
COMPLETE ELECTRONIC TRANSCRIPT OF THE RECORD AND PROCEEDINGS OF SAID
COURT OF PULASKI COUNTY CIRCUIT COURT, THAT OUR COURT OF APPEALS, UPON
CONSIDERATION OF A COMPLETE RECORD, MAY CAUSE TO BE DONE THEREIN WHAT
SHOULD BE DONE. HEREOF FAIL NOT AND MAKE DUE RETURN OF THIS WRIT UNDER
YOUR OFFICIAL SEAL.

IN TESTIMONY WHEREOF, I, STACEY PECTOL, CLERK OF THE
SUPREME COURT AND COURT OF APPEALS, HEREUNTO SET MY
HAND AND AFFIX THE SEAL OF SAID COURT, AT MY OFFICE IN THE
CITY OF LITTLE ROCK, THIS 7TH DAY OF SEPTEMBER, 2022.



CLERK

ORIGINALS TO CLERK AND COURT REPORTER (W/COPY OF PETITION)

CC: STEVEN W. QUATTLEBAUM AND JOSEPH R. FALASCO
BOOTH RAND
DANIEL W. VAN HORN
HONORABLE WENDELL GRIFFEN, JUDGE (W/COPY OF PETITION)

CIRCUIT CLERK'S RETURN

STATE OF ARKANSAS,

COUNTY OF _____, I, _____ CLERK OF THE COURT OF PULASKI COUNTY CIRCUIT COURT, HEREBY CERTIFY THAT (PLEASE CHECK ONLY ONE OF THE FOLLOWING TWO OPTIONS):

1. I HAVE MADE AND CERTIFIED A FULL, TRUE AND COMPLETE RECORD OF DIMINUTION WITHIN SUGGESTED, WHICH IS HERETO ATTACHED.
2. I HAVE NO DOCUMENTS RESPONSIVE TO THE WRIT; THEREFORE, I HAVE ATTACHED NO DOCUMENTS TO THIS RETURN.

IN TESTIMONY WHEREOF, I HERETO SET MY HAND AS CLERK, AND AFFIX THE SEAL OF SAID COURT OF PULASKI COUNTY CIRCUIT COURT, THIS _____ DAY OF _____, A.D. 20_____.

CLERK

COURT REPORTER'S RETURN

STATE OF ARKANSAS,

COUNTY OF _____, I, _____ OFFICIAL COURT REPORTER, HEREBY CERTIFY THAT (PLEASE CHECK ONLY ONE OF THE FOLLOWING TWO OPTIONS):

1. I HAVE MADE AND CERTIFIED A FULL, TRUE AND COMPLETE TRANSCRIPT OF DIMINUTION WITHIN SUGGESTED, WHICH IS HERETO ATTACHED.
2. I HAVE NO DOCUMENTS RESPONSIVE TO THE WRIT; THEREFORE, I HAVE ATTACHED NO DOCUMENTS TO THIS RETURN.

IN TESTIMONY WHEREOF, I HERETO SET MY HAND AS COURT REPORTER, AND AFFIX MY SEAL, THIS _____ DAY OF _____, A.D. 20_____.

COURT REPORTER

FORMAL ORDER

STATE OF ARKANSAS,)
) SCT.
COURT OF APPEALS)

BE IT REMEMBERED, THAT A SESSION OF THE COURT OF APPEALS BEGUN AND HELD IN THE CITY OF LITTLE ROCK, ON OCTOBER 26, 2022, AMONGST OTHERS WERE THE FOLLOWING PROCEEDINGS, TO-WIT:

COURT OF APPEALS CASE NO. CV-22-515

ARKANSAS BLUE CROSS AND BLUE SHIELD APPELLANT

V. APPEAL FROM PULASKI COUNTY CIRCUIT COURT, FIFTH DIVISION - 60CV-21-2725

ALAN MCCLAIN, INSURANCE COMMISSIONER; FREEWAY SURGERY CENTER; SCOTT SCHLESINGER, M.D.; FAIR PARK SURGERY CENTER; CENTERVIEW SURGERY CENTER; SOUTH ARKANSAS SURGERY CENTER; ADVANCED AMBULATORY SURGERY CENTER; EXECUTIVE PARK SURGERY CENTER OF FORT SMITH; GASTROENTEROLOGY AND SURGERY CENTER OF ARKANSAS; MOUNTAIN HOME SURGERY CENTER; HARRISON SURGERY CENTER; BOOZMAN-HOF EYE CENTER; PHYSICIAN'S DAY A/K/A MCFARLAND EYE CENTER; SPRING CREEK SURGERY CENTER; TAYLOR PLASTIC SURGERY; SURGERY CENTER OF NORTHEAST TEXAS; ADVANCED INTERVENTIONAL PAIN MANAGEMENT; PRECISION SURGICAL OF NORTHWEST ARKANSAS; EXECUTIVE SURGERY CENTER OF LITTLE ROCK; CENTRAL ARKANSAS SURGERY CENTER A/K/A ARKANSAS SPINE AND PAIN; AND ARKANSAS CENTER FOR SURGICAL EXCELLENCE APPELLEES

APPELLANT'S MOTION TO ENFORCE WRIT OF CERTIORARI AND EXTEND TIME IS GRANTED. GRUBER, J., NOT PARTICIPATING.

ELECTRONIC SUPPLEMENTAL RECORD IS DUE IN THIRTY DAYS (NOVEMBER 25, 2022). THE CLERK IS DIRECTED TO SET A BRIEFING SCHEDULE AFTER THE WRIT IS RETURNED AND THE ELECTRONIC SUPPLEMENTAL RECORD IS FILED.

THIS COURT HAS NOW GRANTED THE COURT REPORTER TWO EXTENSIONS FROM THE RECORD'S ORIGINAL DUE DATE OF AUGUST 18, 2022.

IN TESTIMONY, THAT THE ABOVE IS A TRUE COPY OF THE ORDER OF SAID COURT OF APPEALS, RENDERED IN THE CASE HEREIN STATED, I, KYLE E. BURTON, CLERK OF SAID COURT OF APPEALS, HEREUNTO SET MY HAND AND AFFIX THE SEAL OF SAID COURT OF APPEALS, AT MY OFFICE IN THE CITY OF LITTLE ROCK, THIS 26TH DAY OF OCTOBER, 2022.



CLERK

ORIGINAL TO CLERK

CC: STEVEN W. QUATTLEBAUM AND JOSEPH R. FALASCO

BOOTH RAND
DANIEL W. VAN HORN
NEVA J. WARFORD, OFFICIAL COURT REPORTER
HONORABLE WENDELL GRIFFEN, JUDGE

FORMAL ORDER

STATE OF ARKANSAS,)
) SCT.
COURT OF APPEALS)

BE IT REMEMBERED, THAT A SESSION OF THE COURT OF APPEALS BEGUN AND HELD IN THE CITY OF LITTLE ROCK, ON DECEMBER 7, 2022, AMONGST OTHERS WERE THE FOLLOWING PROCEEDINGS, TO-WIT:

COURT OF APPEALS CASE NO. CV-22-515

ARKANSAS BLUE CROSS AND BLUE SHIELD APPELLANT

V. APPEAL FROM PULASKI COUNTY CIRCUIT COURT, FIFTH DIVISION - 60CV-21-2725

ALAN MCCLAIN, INSURANCE COMMISSIONER; FREEWAY SURGERY CENTER; SCOTT SCHLESINGER, M.D.; FAIR PARK SURGERY CENTER; CENTERVIEW SURGERY CENTER; SOUTH ARKANSAS SURGERY CENTER; ADVANCED AMBULATORY SURGERY CENTER; EXECUTIVE PARK SURGERY CENTER OF FORT SMITH; GASTROENTEROLOGY AND SURGERY CENTER OF ARKANSAS; MOUNTAIN HOME SURGERY CENTER; HARRISON SURGERY CENTER; BOOZMAN-HOF EYE CENTER; PHYSICIAN'S DAY A/K/A MCFARLAND EYE CENTER; SPRING CREEK SURGERY CENTER; TAYLOR PLASTIC SURGERY; SURGERY CENTER OF NORTHEAST TEXAS; ADVANCED INTERVENTIONAL PAIN MANAGEMENT; PRECISION SURGICAL OF NORTHWEST ARKANSAS; EXECUTIVE SURGERY CENTER OF LITTLE ROCK; CENTRAL ARKANSAS SURGERY CENTER A/K/A ARKANSAS SPINE AND PAIN; AND ARKANSAS CENTER FOR SURGICAL EXCELLENCE APPELLEES

APPELLANT'S SECOND MOTION TO ENFORCE WRIT OF CERTIORARI AND EXTEND TIME. GRANTED FINAL EXTENSION OF THIRTY DAYS (JANUARY 6, 2023). BARRETT AND HIXSON, JJ., WOULD ISSUE A SHOW-CAUSE ORDER TO THE COURT REPORTER. GRUBER, J., NOT PARTICIPATING.

THIS COURT HAS NOW GRANTED THE COURT REPORTER THREE EXTENSIONS FROM THE RECORD'S ORIGINAL DUE DATE OF AUGUST 18, 2022.

IN TESTIMONY, THAT THE ABOVE IS A TRUE COPY OF THE ORDER OF SAID COURT OF APPEALS, RENDERED IN THE CASE HEREIN STATED, I, KYLE E. BURTON, CLERK OF SAID COURT OF APPEALS, HEREUNTO SET MY HAND AND AFFIX THE SEAL OF SAID COURT OF APPEALS, AT MY OFFICE IN THE CITY OF LITTLE ROCK, THIS 7TH DAY OF DECEMBER, 2022.



CLERK

ORIGINAL TO CLERK

CC: STEVEN W. QUATTLEBAUM AND JOSEPH R. FALASCO
BOOTH RAND
DANIEL W. VAN HORN
NEVA J. WARFORD, OFFICIAL COURT REPORTER
HONORABLE WENDELL GRIFFEN, JUDGE