

Keela MCGAHEY v. STATE of Arkansas

CR 04-1041

201 S.W.3d 416

Supreme Court of Arkansas

Opinion delivered January 20, 2005

APPEAL & ERROR — FINDING OF FACT ON ATTORNEY ERROR. — SHOW CAUSE ORDER ISSUED — Where the findings of the circuit court revealed attorney error on the part of appellant's former counsel, in that he failed to secure the record for appellant's appeal, and the trial court further ruled that there was no motion or order in the file that indicated that he had requested or had been relieved as attorney of record for appellant, counsel was ordered to appear to show cause as to why he should not be held in contempt for his conduct in representing appellant in failing to secure the record for appellant's appeal.

Findings of Fact on Attorney Error, show cause order issued.

Jimmy Doyle, for appellant

No response.

PER CURIAM. Appellant Keela McGahey filed a motion for rule on the clerk, which we granted in *McGahey v State*, 359 Ark. 252, 195 S.W.3d 922 (2004). In *McGahey*, we stated that “the motion and accompanying record fail[ed] to reveal plainly whether there was an attorney’s error,” on the part of appellant’s former counsel, Mr. Jimmy Doyle. We remanded the matter of attorney error to the circuit court to make findings of fact. *Id*

On November 19, 2004, an order from the Desha County Circuit Court containing those findings was filed with our court. At the hearing, evidence was presented that is consistent with *McGahey, supra*, where we stated:

On May 15, 2003, the court reporter forwarded a letter to Mr. Doyle, outlining the parties’ conversation regarding payment of the record. On June 20, 2003, the court reporter again forwarded a letter to Mr. Doyle, notifying him that the time for filing the record had passed. The court reporter also noted the possibility of appellant being declared indigent.

Mr. Doyle sent a letter dated February 9, 2004, to appellant, requesting that she sign an affidavit to receive the record as a pauper. Appellant signed and returned the affidavit to Mr. Doyle on February 18, 2004.

Id. The trial court further ruled that there was no motion or order in the file that indicates that Mr. Doyle requested or was relieved as attorney of record for appellant.

[1] Mr. Doyle was ordered to appear at 9:00 a.m., on Thursday, January 13, 2005; however, at that time, service had not yet been perfected. We order Mr. Doyle to appear before this court at 9:00 a.m., on Thursday, January 27, 2005, to show cause as to why he should not be held in contempt for his conduct in representing appellant in failing to secure the record for appellant’s appeal. Mr. Doyle’s failure to appear will result in a bench warrant for his arrest.

It is so ordered.