

Virginia Totten WERTS *v.*  
ARKANSAS DEPARTMENT of HUMAN SERVICES

06-1296

246 S.W.3d 438

Supreme Court of Arkansas  
Opinion delivered January 4, 2007

APPEAL & ERROR — MOTION FOR BELATED APPEAL — ATTORNEY ADMITTED FAULT — MOTION GRANTED. — Where appellant's attorney failed to file a brief or request an extension by the date on which the brief was due and admitted that the failure resulted from errors on his part, the supreme court granted the appellant's motion for belated appeal.

Motion for Belated Appeal, granted.

*Glen Hoggard*, for appellant.

No response.

**P**ER CURIAM. Appellant Virginia Totten Werts brings this petition for review of the court of appeals's dismissal of her appeal of an order terminating her parental rights. The court of appeals dismissed the appeal due to appellant's failure to file a brief; thus, we will treat this petition as a motion for belated appeal. The record in this case was lodged on November 21, 2005; however, Werts's counsel, Glen Hoggard, failed to file a brief or request an extension by the date on which the brief was due. Counsel Hoggard admits in this petition that the failure to file a brief or request an extension resulted from errors on his part.

In *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004), this court clarified its treatment of motions for rule on clerk and motions for belated appeals in criminal cases. There, we stated that there are only two possible reasons for an appeal not being timely perfected: either the party or attorney filing the appeal is at fault, or, there is "good reason." 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.* at 117, 146 S.W.3d at 892. If there is attorney error, a copy of the opinion will be forwarded to the Committee on Professional Conduct. *Id.*

While the instant case is not a criminal case, we have afforded indigent parents appealing from a termination of parental

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rights similar protections as those afforded indigent criminal defendants. See, e.g., *Flannery v. Ark. Dep't of Health & Human Servs.*, 368 Ark. 31, 242 S.W.3d 619 (2006) (granting motion for belated appeal where appellant's counsel failed to inform appellant of his right to appeal the parental-termination order); *Tyler v. Ark. Dep't of Human Servs.*, 366 Ark. 413, 235 S.W.3d 901 (2006) (granting motion for rule on clerk in parental-termination case where attorney admitted error); *Moore v. Ark. Dep't of Human Servs.*, 363 Ark. 205, 212 S.W.3d 1 (2005) (same).

[1] Here, it is clear from the petition that there were errors on Hoggard's part. Hoggard candidly admitted fault in failing to perfect the appeal. Pursuant to *McDonald, supra*, and *Flannery, supra*, we grant Werts's motion for belated appeal. Werts's appellate brief shall be filed no later than ten days following the issuance of this opinion. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

Motion for belated appeal granted.

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