

Woodruff T. SPARACIO *v.* STATE of Arkansas

CR. 07-1025

266 S.W.3d 751

Supreme Court of Arkansas
Opinion delivered November 1, 2007

APPEAL & ERROR — MOTION TO WITHDRAW — TRIAL COURT LACKED JURISDICTION TO SET ASIDE ORDER APPOINTING COUNSEL — MOTION HELD IN ABEYANCE. — Where appellant's attorney had filed a notice of appeal, the trial court lacked jurisdiction to grant a subsequent motion to set aside the order appointing him as counsel; as appellant's attorney had not yet been relieved as counsel, he remained counsel of record, and the supreme court therefore directed him to file a motion for rule on clerk on appellant's behalf; counsel's motion to withdraw was held in abeyance until such time as the motion for rule on clerk was filed.

Motion to Withdraw as Counsel; Motion for Rule on Clerk; motion to withdraw as counsel held in abeyance; motion for rule on clerk denied.

Thurman Ragar, Jr., for appellant.

No response.

PER CURIAM. Attorney Thurman Ragar, Jr., has filed a motion to be relieved from representing appellant Woodruff Thomas Sparacio on appeal. Sparacio was convicted of two counts of rape in Crawford County on May 26, 2007. On June 6, 2007, Sparacio's trial attorney, Naif Khoury, moved to withdraw as

counsel. The trial court granted that motion and appointed Ragar that same day. Also on June 6, 2007, Ragar filed a notice of appeal on Sparacio's behalf. Following the June 6 notice of appeal, attorney Dana Reece filed a motion to set aside the order appointing Ragar as counsel. The trial court granted her motion on June 16, 2007. On October 3, 2007, Reece filed the instant motion for rule on clerk,¹ and on October 5, 2007, Ragar filed a motion to withdraw as attorney on direct appeal.

We are unable to consider Reece's motion at this time. Under Ark. R. App. P.–Crim. 16(a), once the notice of appeal has been filed, "the appellate court shall have exclusive jurisdiction to relieve counsel and appoint new counsel." Thus, because Ragar had filed a notice of appeal on June 6, 2007, the trial court lacked jurisdiction to grant Reece's subsequent motion to set aside the order appointing Ragar as counsel. Consequently, because Reece was never properly appointed as counsel, she did not represent Sparacio, and this court will not consider a motion for rule on clerk filed by her at this stage of the proceedings.

[1] As Ragar has not yet been relieved as counsel, he remains counsel of record, and we therefore direct him to file a motion for rule on clerk on Sparacio's behalf. We will hold Ragar's motion to withdraw as counsel in abeyance until such time as he has filed the motion for rule on clerk. Further, should Reece wish to represent Sparacio on appeal, she may file a motion with this court for appointment as counsel.

¹ Reece's motion for rule on clerk asserts that the order extending the time for lodging the record did not comply with Ark. R. App. P.–Civ. 5.