

Woodruff Thomas SPARACIO *v.* STATE of Arkansas

CR 07-1025

277 S.W.3d 566

Supreme Court of Arkansas
Opinion delivered February 28, 2008

MOTIONS — MOTION FOR APPOINTMENT OF COUNSEL — REMANDED TO SETTLE THE RECORD. — Where in the motion for appointment of counsel, counsel for appellant stated that appellant had retained counsel, but in paragraph two sought to be appointed, the supreme court remanded the matter to the trial court to settle the record because the issue of whether counsel had been retained was unclear.

Motion for Appointment of Counsel; Pro Se Motion for Appointment of Counsel; remanded to settle the record.

PER CURIAM. Counsel for Appellant, Dana Reece, filed a motion for appointment as counsel on January 25, 2008. For the reasons explained below, we remand to settle the record.

The trial court relieved trial counsel on June 6, 2007, and appointed Thurman Ragar, who filed the notice of appeal in this case. It is apparent that Appellant retained Dana Reece on or before June 6, 2007. Reece then filed a motion to set aside the

order appointing Ragar. On October 3, 2007, Reece filed a motion for rule on clerk, and on October 5, 2007, Ragar filed a motion to withdraw as counsel. On November 1, 2007, we denied Reece's motion, finding that the trial court was without jurisdiction to relieve Ragar. Ragar next filed a motion for rule on clerk as well as a motion to withdraw as counsel, which we granted. In a *per curiam* opinion dated January 10, 2008, we stated, "According to the record and motions filed by Ragar and Reece, Reece was retained by Sparacio to represent him on appeal." *Sparacio v. State*, 372 Ark. 114, 270 S.W.3d 840 (2008). We directed Reece to file an entry of appearance, and we suggested in a footnote that if Appellant is now indigent, he should file a motion for appointment of counsel and a current affidavit of indigency. Both are before us now.

[1] However, in the January 25, 2008, motion for appointment as counsel, Reece states in paragraph one "that Appellant has *retained* Dana Reece . . . to represent him on appeal" (emphasis added). In paragraph two, Reece seeks to be appointed. Because the issue of whether Reece has been retained is unclear, we remand to the trial court to settle the record on this issue.

Remanded to settle the record.