

David WHITHAM *v.*
ARKANSAS DEPARTMENT of HUMAN SERVICES

08-752

286 S.W.3d 685

Supreme Court of Arkansas
Opinion delivered September 4, 2008

APPEAL & ERROR — MOTION FOR RULE ON CLERK GRANTED — ATTORNEY ADMITTED ERROR. — Appellant's motion for rule on clerk was granted where his attorney candidly admitted fault for late tender of the record.

Motion for Rule on Clerk; granted.

Deborah Sallings, for appellant.

No response.

PER CURIAM. Appellant David Whitham, by and through his attorney, has filed a motion for rule on the clerk. His attorney, Deborah Sallings, states in the motion that the record was tendered late due to an error on her part.

This court clarified its treatment of motions for rule on clerk and motions for belated appeals in *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). There we said 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. We explained:

Where an appeal is not timely perfected, either the party or attorney filing the appeal is at fault, or there is good reason that the appeal was not timely perfected. The party or attorney filing the appeal is therefore faced with two options. First, where the party or attorney filing the appeal is at fault, fault should be admitted by affidavit filed with the motion or in the motion itself. There is no advantage in declining to admit fault where fault exists. Second, where the party or attorney believes that there is good reason the appeal was not perfected, the case for good reason can be made in the motion, and this court will decide whether good reason is present.

Id., 146 S.W.3d at 891 (footnote omitted). While this court no longer requires an affidavit admitting fault before we will consider the

motion, an attorney should candidly admit fault where he has erred and is responsible for the failure to perfect the appeal. *See id.*

[1] In accordance with *McDonald v. State, supra*, Ms. Sallings has candidly admitted fault. We have previously afforded indigent parents appealing termination of parental rights similar protections as those provided indigent criminal defendants. *Childers v. Ark. Dep't of Human Servs.*, 361 Ark. 227, 205 S.W.3d 795(2005); *Bogachoff v. Ark. Dep't of Human Servs.*, 360 Ark. 259, 200 S.W.3d 884 (2005). The motion is, therefore, granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

Motion granted.
