
Jessica PACHECO *v.* ARKANSAS DEPARTMENT of HEALTH
and HUMAN SERVICES

08-1188

288 S.W.3d 644

Supreme Court of Arkansas
Opinion delivered October 30, 2008

MOTIONS — MOTION FOR BELATED APPEAL — GRANTED IN
TERMINATION-OF-INDIGENT-PARENTAL-RIGHTS MATTER WHERE
ATTORNEY CANDIDLY ADMITTED FAULT. — In accordance with
McDonald v. State, appellant's attorney candidly admitted fault in
failing to perfect appeal of termination of indigent parent's parental
rights; appellant's motion was therefore granted.

Motion for Belated Appeal; granted.

Iris L. Muke, for appellant.

No response.

PER CURIAM. Appellant Jessica Pacheco, by and through
her attorney, Iris L. Muke, has filed a motion to file a
belated notice of appeal. The circuit court's order terminating Pacheco's
parental rights was filed July 17, 2008. Pursuant to Arkansas
Supreme Court Rule 6-9(b)(2) (2008), Pacheco's notice of appeal was
required to be filed no later than July 31, 2008, but was not filed until
the next day, August 1, 2008. Ms. Muke states that, due to her lack of
diligence, Pacheco's notice of appeal was untimely filed.

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).

[1] 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.* While the instant case is not a criminal case, we have afforded indigent parents appealing from a termination of parental rights similar protections to those afforded indigent criminal defendants by applying the *McDonald* standard. *See, e.g., Smith v. Arkansas Dep't of Health & Human Servs.*, 371 Ark. 425, 266 S.W.3d 694 (2007) (granting a motion for belated appeal in a termination-of-parental-rights case).

In accordance with *McDonald v. State, supra*, Ms. Muke has candidly admitted fault. The motion is, therefore, granted. A copy of this opinion will be forwarded to the Committee on Professional Conduct.

Motion granted.
