

Clif TURNAGE *v.* STATE of Arkansas

CR 84-49

675 S.W.2d 625

Supreme Court of Arkansas
Opinion delivered September 17, 1984

[Rehearing denied October 22, 1984.]

1. **APPEAL & ERROR — WHEN JUDGMENT IS FINAL AND APPEALABLE.** — A judgment, to be final and appealable, must dismiss the parties from the court and conclude the controversy.
2. **APPEAL & ERROR — INTERLOCUTORY ORDER NOT APPEALABLE — REMEDY.** — An order by the circuit judge requiring that appellant pay four filing fees for appealing to the circuit court from conviction on a charge of contributing to the delinquency of four minors is merely interlocutory and is not appealable; appellant's remedy is to pay the costs as demanded, seek to have them retaxed under the statute, Ark. Stat. Ann. § 27-2320 (Repl. 1979), and take an appeal if desired after the case has proceeded to a final judgment.

Appeal from Drew Circuit Court; *Paul K. Roberts*, Judge; dismissed.

John F. Gibson, Jr., for appellant.

Steve Clark, Atty. Gen., by: *Alice Ann Burns*, Dep. Atty. Gen., for appellee.

GEORGE ROSE SMITH, Justice. This appeal, brought to us under Rule 29(1)(c), must be dismissed for want of a final order.

Clif Turnage was arrested and charged in the Monticello municipal court with contributing to the delinquency of four different minors. After having been convicted and fined \$109 on each charge, Turnage appealed to the circuit court, where he argued that the clerk's fee for filing the record should be only \$15 for a single appeal and not \$60 for four appeals, as the clerk insisted. Turnage's motion to require the clerk to file the record for a \$15 fee was overruled by the circuit judge, who held that Turnage must pay \$15 for each of four appeals. Turnage appeals from that order, the charges not yet having been tried in the circuit court.

The trial judge's order is clearly not a final judgment, for the case is still awaiting trial on the merits in the circuit court. A judgment, to be final and appealable, must dismiss the parties from the court and conclude the controversy. *McIlroy Bank & Trust v. Zuber*, 275 Ark. 345, 629 S.W.2d 304 (1982); *Alexander v. State*, 260 Ark. 785, 261 Ark. 26, 545 S.W.2d 606 (1976). This order is merely interlocutory. Turnage's remedy is to pay the costs as demanded, seek to have them retaxed under the statute, Ark. Stat. Ann. § 27-2320 (Repl. 1979), and take an appeal if desired after the case has proceeded to a final judgment.

Appeal dismissed.
