

Melissa HOLCOMB *v.* R.F. HOLCOMB

97-972

966 S.W.2d 257

Supreme Court of Arkansas
Opinion delivered April 9, 1998

APPEAL & ERROR — MOTION TO DISMISS APPEAL GRANTED — CASE
REMANDED FOR RESOLUTION OF ISSUES. — Granting appellee's
motion for dismissal of the appeal, the supreme court reinvested
jurisdiction in the probate court for that court to resolve the issue of
a settlement agreement between the parties, to resolve the conflict-
ing allegations of the parties, and to decide any remaining issues of
fact and law.

Motion to Dismiss Appeal granted; appeal dismissed; case
remanded.

Tom F. Donovan, for appellant.

Boyce R. Davis, for appellee.

PER CURIAM. Appellee R.J. Holcomb, by and through his
attorney Boyce R. Davis, moves for dismissal of the above-cap-
tioned appeal from an order entered by the Washington County
Probate Court on March 21, 1997, and an order overruling recon-

sideration entered on April 28, 1997. The cause involves the guardianship of two minor children, Ryan Mart Holcomb and Zachary Alexander Holcomb. Appellant Melissa Holcomb, the children's natural mother, filed notice of this appeal on both May 27, 1997, and again on July 3, 1997.

In support of his motion to dismiss, Appellee states that on January 5, 1998, the parties agreed to a settlement pursuant to a November 12, 1997 hearing. The settlement agreement included, *inter alia*, dismissal of this appeal. Appellee attached the trial court's January 5, 1998 order to his motion for dismissal. He attached the transcript of the November 12, 1997 hearing to his first amended motion for dismissal filed on March 25, 1998. Appellee alleges that Appellant failed to initiate dismissal of the appeal as stipulated in the agreement between the parties.

Appellant, by and through her attorney Tom F. Donovan, argues that we should deny this motion because Donovan was not a party to the January 5, 1998 agreement, having entered his first appearance for Appellant on March 31, 1997. Attorney James Hornsey, who represented Appellant at the November 12, 1997 hearing, signed the January 5, 1998 agreement for Appellant. In support of her argument to deny the motion for dismissal, Appellant alleges that significant issues of law remain to be decided, and further, that the trial court lost jurisdiction in this case after notice of this appeal was filed, thereby voiding all subsequent orders by the probate court.

[1] We reinvest jurisdiction in the probate court in order for that court to resolve the issue of the January 5, 1998 agreement between the parties. We further remand this case in order for the probate court to resolve the conflicting allegations of the parties and to decide any remaining issues of fact and law. *Gullett v. Gullett*, 251 Ark. 497, 473 S.W.2d 180 (1971); *McCluskey v. Kerlen*, 4 Ark. App. 334, 631 S.W.2d 18 (1982).

Motion granted; appeal dismissed; case remanded.

GLAZE, J., would submit and ask for briefs.