

SUPREME COURT OF ARKANSAS

No. CV-12-992

KAYLA MCPHERSON

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered May 30, 2013

MOTION FOR BELATED APPEAL

MOTION GRANTED.**PER CURIAM**

Appellant Kayla McPherson, by and through her attorney, Charles D. Hancock, has filed a motion for belated appeal in this termination-of-parental-rights case. We grant appellant's motion.

On September 25, 2012, the circuit court's order terminated McPherson's parental rights to her three minor children. On October 11, 2012, appellant timely filed a notice of appeal, and she filed an amended notice of appeal on November 1, 2012. However, while counsel signed the notice of appeal and amended notice of appeal, neither contained appellant's signature. The clerk then accepted the record and submitted the case to the court of appeals. In *McPherson v. Arkansas Department of Human Services*, 2013 Ark. App. 238, the court of appeals dismissed the appeal for lack of jurisdiction because appellant did not comply with Arkansas Supreme Court Rule 6-9(b)(1)(B) (2012). In the instant motion for belated appeal, counsel claims that appellant wished to appeal but that he lost contact with her after the circuit court entered the termination order. Counsel states that he later communicated

with appellant after the time to file the notices had expired.

Relief from the failure to perfect an appeal is provided as part of the appellate procedure granting the right to an appeal. *McDonald v. State*, 356 Ark. 106, 146 S.W.3d 883 (2004). 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 as follows:

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. *Id.* When it is plain from the motion, affidavits, and record that relief is proper under either rule based on error or good reason, the relief will be granted. *Id.* If there is attorney error, a copy of the opinion will be forwarded to the Committee on Professional Conduct. *Id.* Although the instant case is not a criminal matter, 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 Smith v. Ark. Dep’t of Health & Human Servs.*, 371 Ark. 425, 266 S.W.3d 694 (2007).

Here, counsel does not admit fault, and it is not apparent from the record that there

was error on counsel's part, considering his assertion that he lost contact with appellant.¹ We would typically remand this matter to the circuit court for a determination of fault. However, we have repeatedly expressed the need for termination-of-parental-rights cases to proceed on an expedited basis. *Ratliff v. Ark. Dep't of Health & Human Servs.*, 371 Ark. 534, 268 S.W.3d 322 (2007); *Linker-Flores v. Ark. Dep't of Human Servs.*, 364 Ark. 224, 217 S.W.3d 107 (2005). Because we recognize the time-sensitive nature of these appeals, we decline to remand this matter to the circuit court. Rather, in light of the unique facts before us, including counsel's assertions that appellant wished to appeal, that counsel lost contact with appellant, that our clerk improvidently filed the instant appeal, and that the court of appeals has already considered the case, we find good cause to grant the motion.

Motion granted.

Charles D. Hancock, for appellant.

Tabitha Baertels McNulty, County Legal Operations, and *Chrestman Group, PLLC*, by:
Keith Chrestman, for appellees.

¹Arkansas Supreme Court Rule 6-9(b)(1)(B) (2012) provides as follows:

The notice of appeal and designation of the record shall be signed by the appellant, if an adult, and appellant's counsel. The notice shall set forth the party or parties initiating the appeal, the address of the party or parties, and specify the order from which the appeal is taken.

Here, appellant's notices of appeal contained counsel's signature but lacked her signature. In light of Rule 6-9, we would caution the Bar to take care in obtaining a client's signature well in advance of the appeal deadline in future cases.