

SUPREME COURT OF ARKANSAS

No. CV-17-245

CHELSEA HARLEY

APPELLANT

V.

WYNDHAM DEMPSTER

APPELLEE

Opinion Delivered: February 22, 2018

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
NO. 60DR-07-5833

HONORABLE HOBSON VANN
SMITH, JUDGE

DISMISSED; COURT OF
APPEALS' OPINION VACATED.

JOSEPHINE LINKER HART, Associate Justice

We took this matter on a petition for review filed by Appellee, Wyndham Dempster. We dismiss this appeal and reinstate the decision of the circuit court.

Chelsea Harley (“Harley”) and Wyndham Dempster (“Dempster”) have two children together. On December 13, 2007, the Office of Child Support Enforcement initiated an action in Pulaski County Circuit Court to collect child support from Mr. Dempster. The case style listed OCSE as “Plaintiff,” Dempster as “Defendant,” and Harley as “Assignor.” The circuit court entered a support order on January 31, 2008.

On July 14, 2011, a letter from OCSE was filed in the circuit court reflecting a header of: “Assignment of Child Support Rights.” The body of the letter contained two separate messages, each with a box that could be “checked.” The message with the “checked” box read as follows:

The custodial parent in the above styled cause of action is a recipient of cash or medical assistance from the State of Arkansas. All child support collected by your office in this cause of action must be paid over to the Arkansas Child Support Clearinghouse.

The message with the “unchecked” box read as follows:

The custodial parent in the above styled cause of action has executed a contract with the Office of Child Support Enforcement for child support enforcement services. Pursuant to Arkansas Code, all child support payments collected by your office in this cause of action must be forwarded to the Arkansas Child Support Clearinghouse.

Subsequently, on March 19, 2015, OCSE filed a “Motion to Modify Support and for Judgment for Past Due Child Support.” The Motion alleged that Dempster’s income had increased as to warrant a material change of circumstances, and that Dempster had accrued an arrearage of \$26,036 in past due child support. The circuit court scheduled a hearing on OCSE’s Motion for July 8, 2015.

After the hearing, the circuit court ruled to give Dempster a \$9,465 credit toward his arrearages for a period of time during which he and Harley were living together, as well as a \$6,000 credit for payments made by Dempster’s parents toward the children’s schooling, leaving a total arrearage of \$7,079.00. Harley then filed a Notice of Appeal on August 14, 2015.

On December 7, 2016, the Arkansas Court of Appeals issued a 5-4 opinion dismissing Harley’s appeal for lack of standing. Harley filed a Petition for Rehearing, which the Court of Appeals granted. On March 8, 2017, the Court of Appeals issued a substituted opinion by a panel of nine judges. Four of those judges felt that Harley had standing to bring the appeal and that the circuit court should be reversed on the merits. Two other judges did not address whether Harley had standing to bring the appeal, and felt that the

circuit court should be affirmed on the merits. The three other judges did not address the merits, but felt that Harley lacked standing to bring the appeal based upon the contents of the record. For whatever reason, the Court of Appeals' March 8, 2017 substituted opinion reflected a disposition of "reversed and remanded." Dempster then filed a petition for review, which this court granted. However, Harley then failed to timely file a brief for this court's consideration.

When the Supreme Court grants a petition for review following a decision of the Court of Appeals, the Supreme Court treats the appeal as if it were filed in the Supreme Court originally. Ark. Sup. Ct. R. 2-4; *Robinson v. State*, 348 Ark. 280, 72 S.W.3d 827 (2002). "When the Supreme Court grants a petition for review, the Clerk shall promptly notify all counsel and parties appearing pro se. Within two weeks of the notification, eighteen additional copies of the briefs previously submitted to the Court of Appeals shall be filed with the Clerk." Ark. Sup. Ct. R. 2-4(e).

Here, Harley failed to timely file a brief for this court's consideration. Harley's obligation to do so is made clear by Rule 2-4(e). Additionally, this court's June 1, 2017 letter order directed the parties to refer to Rule 2-4 regarding briefing schedules in cases where petitions for review have been granted, and specified that the briefs for this case would be due on June 15, 2017. As such, even if Harley's appeal would not be barred for lack of standing (an issue which this court does not address), there still would be no argument for reversal on the merits for this court to consider. We therefore dismiss this appeal, vacate the Court of Appeals' decision, and reinstate the decision of the circuit court.

Dismissed; Court of Appeals' opinion vacated.

GOODSON and WYNNE, JJ., concur.

ROBIN F. WYNNE, Justice, concurring. I agree with the majority that, without an appellant's brief before us, there is no argument for reversal on the merits and the appeal should be dismissed. I concur in the decision because I believe appellant should have been granted an opportunity to file her brief. Although appellant failed to timely submit her brief to us, she filed a motion to file belated brief that was denied. The issue of appellant's standing created sharp divisions on our court of appeals, as is apparent from the opinions that court issued in this case. I would have granted appellant's motion for belated brief and resolved the standing issue in this appeal.

GOODSON, J., joins.