

Cite as 2009 Ark. 402

**SUPREME COURT OF ARKANSAS**

No. CR09-942

JOSEPH AKIN

APPELLANT

Opinion Delivered September 9, 2009

MOTION FOR RULE ON CLERK

V.

STATE OF ARKANSAS

APPELLEE

MOTION GRANTED.

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**PER CURIAM**

Appellant, Joseph Akin, by and through his attorney, Debra J. Reece, has filed the instant motion for rule on clerk. Appellant’s notice of appeal was filed on May 13, 2009, making the record due in this court by August 11, 2009. Appellant tendered the record on August 21, 2009, contemporaneously with this motion for rule on clerk. In seeking this court’s leave to file the record, Ms. Reece accepts full responsibility for miscalculating the deadline for filing the record.

This court clarified its treatment of motions for rule on clerk 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.” *Id.* 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



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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.* at 116, 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. *See McDonald*, 356 Ark. 106, 146 S.W.3d 883.

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

Motion for rule on clerk granted.