

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2019 IL App (4th) 190312-U

NO. 4-19-0312

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

October 16, 2019
Carla Bender
4th District Appellate
Court, IL

<i>In re</i> H.M., a Minor,)	Appeal from
)	Circuit Court of
(The People of the State of Illinois,)	Vermilion County
Petitioner-Appellee,)	No. 17JA06
v.)	
Sarah M.,)	Honorable
Respondent-Appellant).)	Thomas M. O'Shaughnessy,
)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court. Justices Steigmann and Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court dismissed, concluding this court lacks jurisdiction to consider respondent's appeal.

¶ 2 On April 16, 2019, the trial court terminated the parental rights of respondent, Sarah M., as to her child H.M. (born August 19, 2015). Following a May 17, 2019, permanency review hearing, the court filed a permanency order on May 20, 2019, setting a permanency goal of adoption. On May 22, 2019, respondent filed a notice of appeal from the May 20, 2019, permanency order. On appeal, respondent argues the court erred in finding respondent to be an unfit parent and terminating her parental rights. We dismiss for lack of jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 In January 2017, the State filed a petition for adjudication of wardship, alleging H.M. was neglected pursuant to the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS

405/2-3(1)(b) (West 2016)), where her environment was injurious to her welfare due to respondent's drug use and untreated mental-health issues. After a shelter care hearing, the trial court granted the Department of Children and Family Services (DCFS) temporary custody of H.M. (H.M.'s father is deceased.)

¶ 5 In June 2017, the trial court entered an adjudicatory order finding H.M. neglected. In a July 2017 dispositional order, the trial court (1) found respondent unfit, (2) made H.M. a ward of the court, and (3) granted DCFS guardianship and custody.

¶ 6 In August 2018, the State filed a motion seeking termination of respondent's parental rights alleging respondent (1) failed to maintain a reasonable degree of interest, concern, or responsibility; (2) failed to make reasonable efforts in the nine-month period following the adjudication of neglect—specifically, November 13, 2017, to August 13, 2018; (3) failed to make reasonable progress in the same nine-month period following adjudication of neglect; and (4) had been subjected to habitual drunkenness or addiction to drugs.

¶ 7 After a December 2018 fitness hearing, the trial court found respondent unfit. The case proceeded to an April 2019 best-interest hearing, where the court found it in H.M.'s best interest to terminate respondent's parental rights. On April 16, 2019, the court entered an order terminating respondent's parental rights.

¶ 8 At a May 17, 2019, permanency review hearing, the trial court set a permanency goal of adoption. At the hearing, respondent's trial counsel requested the judge appoint respondent appellate counsel and grant leave to file a late notice of appeal since more than 30 days had passed since the court terminated respondent's parental rights. The court appointed attorney Kimberly Blakely on appeal. On May 20, 2019, the court filed a permanency order.

Two days later, on May 22, 2019, respondent filed a notice of appeal from the May 20, 2019, permanency order.

¶ 9 This appeal followed

¶ 10 II. ANALYSIS

¶ 11 On appeal, respondent argues the trial court erred in finding respondent to be an unfit parent and terminating her parental rights. However, we find this court lacks jurisdiction to consider respondent's appeal.

¶ 12 "The timely filing of a notice of appeal is both jurisdictional and mandatory." *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213, 902 N.E.2d 662, 664 (2009). Unless the appealing party has properly filed a notice of appeal, a reviewing court lacks jurisdiction over the appeal and must dismiss it. *People v. Smith*, 228 Ill. 2d 95, 104, 885 N.E.2d 1053, 1058 (2008). A notice of appeal must be filed within 30 days after entry of a final judgment. Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017). If a party fails to do so, it has up to 30 days following the expiration of the date for filing a notice of appeal to seek leave to file a late notice of appeal. Ill. S. Ct. R. 303(d) (July 1, 2017).

¶ 13 Here, respondent filed a notice of appeal identifying the judgment appealed from as the May 20, 2019, permanency-review hearing order. However, respondent's entire brief challenges the order terminating her parental rights. Specifically, in her statement of jurisdiction respondent states, "The dispositional order entered by the court on April 16, 2019, constitutes a final and appealable order pursuant to Supreme Court Rule 303." However, respondent failed to file a notice of appeal within 30 days of the trial court's April 16, 2019, order terminating respondent's parental rights.

¶ 14 Respondent filed a notice of appeal on May 22, 2019, six days after the deadline to file a notice of appeal challenging the order terminating her parental rights. Specifically, respondent needed to file a notice of appeal from the April 16, 2019, termination order no later than May 16, 2019. Also, at the permanency review hearing on May 17, 2019, the trial judge and the parties discussed respondent seeking leave to file a late notice of appeal. Because respondent failed to file a timely notice of appeal from the termination order or file a motion for leave to file a late notice of appeal, this court lacks jurisdiction to review the termination order.

¶ 15 We also note that respondent filed her May 22, 2019, notice of appeal from the May 20, 2019, permanency order after the trial court entered an order terminating respondent's parental rights. Therefore, respondent lacked standing to appeal the permanency order where she was no longer a party to the case. See *In re T.P.*, 381 Ill. App. 3d 226, 228-29, 887 N.E.2d 443, 444-45 (2008).

¶ 16 Moreover, the May 20, 2019, permanency order was not a final order appealable under Illinois Supreme Court Rule 304(b)(1) (eff. Mar. 8, 2016). *In re Curtis B.*, 203 Ill. 2d 53, 59-60, 784 N.E.2d 219, 223 (2002). A permanency order is not a final order for appeal purposes because "all of the rights and obligations set forth in the permanency order must remain open for reexamination and possible revision until the permanency goal is achieved." *Id.* at 60. Rather, a final order terminates the litigation between the parties on the merits or disposes of the rights of the parties, on either the entire controversy or a separate part. *Id.* at 59. However, a party may file a petition for leave to appeal a permanency order pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. Nov. 1, 2017) ("A party may petition for leave to appeal to the Appellate Court *** (5) from interlocutory orders affecting the care and custody of or the allocation of parental responsibilities for unemancipated minors or the relocation (formerly known as removal) of

unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules.").

¶ 17 Here, the permanency order set a permanency goal of adoption. However, the goal had not yet been achieved where H.M.'s foster parents had yet to adopt her. See *In re Faith B.*, 216 Ill. 2d 1, 17, 832 N.E.2d 152, 161 (2005) (A permanency order is not a final judgment until the goal has been reached). Respondent never filed a petition for leave to appeal a permanency order pursuant to Rule 306(a)(5). See *In re Curtis B.*, 203 Ill. 2d at 61-63.

¶ 18 In examining this case, we are troubled by the missteps by appellate counsel for respondent. The record shows that during the May 17, 2019, permanency hearing, the parties were aware of the issue related to filing a notice of appeal from the termination and suggests respondent's trial counsel contacted respondent's appellate counsel. Nonetheless, at no time did counsel seek leave to file a late notice of appeal.

¶ 19 Appellate counsel, in the jurisdiction section of respondent's brief, failed to address the timing issue related to the notice of appeal. Even more, in the face of the State's brief pointing out the timing issue, counsel neglected to file a reply brief. This level of representation falls short of what is expected.

¶ 20 As we discussed above, we conclude this court lacks jurisdiction to review the April 16, 2019, order terminating respondent's parental rights and respondent lacks standing to appeal the May 20, 2019, permanency order. For the reasons stated, we lack jurisdiction to consider the merits of this case. Accordingly, we dismiss this appeal.

¶ 21 **III. CONCLUSION**

¶ 22 For the foregoing reasons, we dismiss this case for lack of jurisdiction.

¶ 23 Appeal dismissed.