

**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).

NO. 4-10-0757

Order Filed 3/7/11

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

In re: R.H.-O., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 09JA55
CARENA HAMBRICK,	)	
Respondent-Appellant.	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

JUSTICE MYERSCOUGH delivered the judgment of the court.  
Justice Turner concurred in the judgment.  
Justice Appleton specially concurred.

**ORDER**

*Held:* Because respondent did not file a timely notice of appeal or a timely motion for leave to file a late notice of appeal, this court lacks jurisdiction to address the appeal.

Respondent, Carena Hambrick, appeals the trial court's adjudicatory and dispositional orders. Because respondent failed to file a timely notice of appeal or a timely motion for leave to file a late notice of appeal, this court dismisses the appeal for lack of jurisdiction.

I. BACKGROUND

Respondent and Jasper Osler are the parents of R.H.-O., born July 31, 1997. Osler is not a party to this appeal.

In August 2009, the State filed a petition alleging R.H.-O. was a neglected minor. In October 2009, the trial court

adjudicated R.H.-O. neglected. At the December 2009 dispositional hearing, the court made R.H.-O. a ward of the court and placed custody of him with the guardianship administrator of the Department of Children and Family Services.

In March 2010 and September 2010, the trial court entered permanency orders.

On September 15, 2010, respondent filed in the trial court a motion to file a notice of appeal *nunc pro tunc*. The motion asserted that, although respondent was not present in court at the dispositional hearing, she told her attorney of her desire to appeal shortly thereafter. The motion further asserted that on December 22, 2009, counsel communicated the request to appeal to the court's clerk.

On September 17, 2009, the trial court entered a docket entry noting "the more appropriate action" was for counsel to seek leave to file a late notice of appeal in the appellate court. The court appointed counsel for the purpose of seeking leave.

On October 1, 2010, respondent filed in this court a motion for leave to file a late notice of appeal pursuant to Supreme Court Rule 303(d) (eff. May 30, 2008). Respondent attached to the motion the copy of an e-mail dated December 22, 2009, from respondent's counsel to "Juli Kibler" stating:

"My client has contacted me, to let me know

she wishes to appeal. Therefore, I am asking the judge to direct the clerk to file notice of appeal, and to appoint appellate counsel."

On October 8, 2010, this court granted the motion for leave to file a late notice of appeal. On October 12, 2010, the notice of appeal was filed.

## II. ANALYSIS

Although neither party raised the issue of jurisdiction on appeal, this court has a duty to examine its jurisdiction and dismiss an appeal if jurisdiction is lacking. People v. Trimarco, 364 Ill. App. 3d 549, 550, 846 N.E.2d 1008, 1010 (2006). Therefore, after receiving the parties' briefs in this appeal, this court directed the parties to file supplemental briefs addressing jurisdiction. Having received and reviewed those briefs, we conclude this court lacked jurisdiction to grant respondent leave to file a late notice of appeal.

Supreme Court Rule 660(b) (eff. Oct. 1, 2001) provides that in proceedings under the Juvenile Court Act of 1987 (705 ILCS 405/1-1 through 7-1 (West 2008)), other than delinquent-minor proceedings, appeals from final judgments are governed by the rules applicable to civil cases. Supreme Court Rule 303(a)(1) (eff. May 30, 2008) provides that a notice of appeal must be filed with the clerk of the circuit court within 30 days after entry of the final judgment appealed from. See *In re*

*Janira T.*, 368 Ill. App. 3d 883, 891, 859 N.E.2d 1046, 1054 (2006) (the dispositional order, not the adjudicatory order, is the final, appealable order).

Supreme Court Rule 303(d) (eff. May 30, 2008) provides for an extension of time to file the notice of appeal in certain circumstances:

"On motion supported by a showing of reasonable excuse for failure to file a notice of appeal on time \*\*\* filed in the reviewing court within 30 days after expiration of the time for filing a notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing." Ill. S. Ct. R. 303(d) (eff. May 30, 2008).

Compliance with Rules 303(a)(1) and 303(d) is mandatory and jurisdictional. *Gaynor v. Walsh*, 219 Ill. App. 3d 996, 1004, 579 N.E.2d 1223, 1228 (1991) (finding the appellate court lacked the power to grant a motion for leave to file a late notice of appeal after the time for filing such motion had expired).

Respondent's appeal of the adjudicatory and dispositional orders was due within 30 days of the entry of the dispositional order--Monday, January 4, 2010. A motion for leave

to file a late notice of appeal was therefore due 30 days thereafter--February 3, 2010. Respondent did not file her motion for leave to file a late notice of appeal until nearly eight months later--October 1, 2010. Although this court granted that motion, we lacked the jurisdiction to do so. See, e.g., *In re C.S.*, 294 Ill. App. 3d 780, 787, 691 N.E.2d 161, 165 (1998) (finding the respondent's delay in filing the notice of appeal went beyond the 30-day requirement in Rule 303 and the period set for filing a late notice of appeal under Rule 303(d); therefore, the appellate court lacked jurisdiction over the appeal of the adjudicatory and dispositional orders).

In her supplemental brief, respondent argues that on December 22, 2009, her trial counsel e-mailed the clerk for the trial judge, requesting that he direct the circuit clerk to file a notice of appeal. Respondent argues the failure to file a notice of appeal was not due to respondent's failure to do so but the trial court's failure to direct the circuit clerk to file the notice of appeal as requested by counsel.

The record, however, does not reflect that the trial court ever received respondent's request to direct the circuit clerk to file the notice of appeal. In fact, the record does not reflect whether the court's clerk ever received the e-mail attached to the motion for leave to file the late notice of appeal filed in this court.

The supreme court has previously found that the appellate court lacks jurisdiction over an untimely appeal, even where, due to clerical oversight, counsel never received actual notice of the trial court's order. *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143, 151, 632 N.E.2d 1010, 1013 (1994) (wherein counsel did not receive notice of the trial court's order). Similarly here, even if counsel's request that a notice of appeal be filed was valid, counsel had an obligation to monitor the case. See *Mitchell*, 158 Ill. 2d at 151, 632 N.E.2d at 1013. Because the motion for leave to file a late notice of appeal--filed in October 2010--was untimely, this court lacked jurisdiction to grant it. For these reasons, we dismiss the appeal for lack of jurisdiction. We note the supreme court may exercise its supervisory authority and direct this court to address the appeal on the merits.

### III. CONCLUSION

For the reasons stated, we dismiss the appeal for lack of jurisdiction.

Dismissed.

JUSTICE APPLETON, specially concurring:

While I concur with the majority, I write separately to note the absence of proper jurisdiction in the trial court. We are without jurisdiction in this case due to the untimeliness of the notice of appeal.

As was clear in the trial court record, respondent mother had given temporary guardianship of R.H.-O. to her aunt, Kimberly Muhammad, on June 16, 2009, which continued in existence at the time these proceedings commenced. By the plain language of section 2-15(1) of the Juvenile Court Act of 1987 (705 ILCS 405/2-15(1) (West 2008)), the summons required to be issued and served "shall be directed to the minor's legal guardian or custodian." The temporary guardian, Muhammad, was therefore not only entitled to notice of the proceedings, but it was a jurisdictional defect not to have served her with summons as the child's legal guardian. The failure of service, of what is by statute a necessary party, deprived the trial court of jurisdiction to proceed. *In re S.L.S.*, 181 Ill. App. 3d 453, 456 (1989).