

NOTICE
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2013 IL App (4th) 130724-U

NO. 4-13-0724

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 23, 2013
Carla Bender
4th District Appellate
Court, IL

In re: D.W., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Sangamon County
v.)	No. 08JA187
BRIAN WINKLER,)	
Respondent-Appellant.)	Honorable
)	Steven H. Nardulli,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Knecht and Holder White concurred in the judgment.

ORDER

¶ 1 *Held:* This court lacks jurisdiction to consider respondent's appeal where he failed to timely file a petition for leave to appeal pursuant to Illinois Supreme Court Rule 306(b)(1) (eff. Feb. 16, 2011).

¶ 2 Following a July 2013 permanency review hearing, the trial court found it was in the best interest of D.W. (born September 16, 1998) to leave the permanency goal as guardianship. Respondent, Brian Winkler, D.W.'s father, appeals, arguing the court's finding was against the manifest weight of the evidence. We dismiss for lack of jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 The facts necessary to the disposition of this appeal are as follows.

¶ 5 During the July 10, 2013, permanency review hearing, respondent presented evidence and argued the permanency goal should be changed to return home.

¶ 6 The July 11, 2013, docket entry shows the following entry by the trial court:

"This matter is before the court with regard to the long-term goal. It is the opinion of the court that it is in the best interests of [D.W.] that the permanency goal remain 'Guardianship.' The court finds that the living environment of the Respondent's residence, coupled with the lack of progress in establishing a stronger relationship between the father and daughter, and the long-term acclimation of [D.W.] to her current living arrangement cause the court to reach this conclusion."

¶ 7 On July 15, 2013, the trial court signed its formal written order reiterating the permanency goal was to remain guardianship.

¶ 8 On August 29, 2013, respondent filed his petition for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. Feb. 16, 2011).

¶ 9 On September 24, 2013, we allowed respondent's petition for leave to appeal.

¶ 10 This appeal followed.

¶ 11 II. ANALYSIS

¶ 12 Although the parties have not raised the question of this court's jurisdiction, we have "an independent duty to consider issues of jurisdiction, regardless of whether either party has raised them." *People v. Smith*, 228 Ill. 2d 95, 104, 885 N.E.2d 1053, 1058 (2008). For the following reasons, we find this court lacks jurisdiction to consider respondent's appeal.

¶ 13 "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. *Smith*, 228 Ill. 2d at 104, 885 N.E.2d at 1058. The time for filing a notice of appeal is governed by supreme court rules. See *Chand v. Schlimme*, 138 Ill. 2d 469, 476, 563 N.E.2d 441, 444 (1990). Our supreme court has emphasized its rules are not aspirational or simply suggestions. *Rodriguez v. Sheriff's Merit Comm'n of Kane County*, 218 Ill. 2d 342, 353, 843 N.E.2d 379, 385 (2006). Instead, supreme court rules " 'have the force of law, and the presumption must be that they will be obeyed and enforced as written.' " (Internal quotation marks omitted.) *Rodriguez*, 218 Ill. 2d at 353, 843 N.E.2d at 385 (quoting *Roth v. Illinois Farmers Insurance Co.*, 202 Ill. 2d 490, 494, 782 N.E.2d 212, 215 (2002)). The supreme court has also emphasized "the appellate court does not have the authority to excuse the filing requirements of the supreme court rules governing appeals." *Secura*, 232 Ill. 2d at 217-18, 902 N.E.2d at 667.

¶ 14 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." *In re Curtis B.*, 203 Ill. 2d 53, 60, 784 N.E.2d 219, 223 (2002). However, a party may file a petition for leave to appeal a permanency order pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. Feb. 16, 2011). Rule 306(a)(5) provides "[a] party may petition for leave to appeal to the Appellate Court *** (5) from interlocutory orders affecting the care and custody of unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules." Ill. S. Ct. R. 306(a)(5) (eff. Feb. 16, 2011). However, Illinois Supreme Court Rule 306(b)(1) (eff. Feb. 16, 2011) requires a Rule 306(a)(5) petition for interlocutory appeal *shall* be filed in the appellate

court within 14 days of the entry or denial of the order from which review is being sought. Ill. S. Ct. R. 306(b)(1) (eff. Feb. 16, 2011).

¶ 15 In this case, respondent's petition for interlocutory appeal stated the trial court entered a formal written order on August 15, 2013, stating the permanency goal was to remain guardianship. However, a review of the record shows the court issued a docket entry setting the permanency goal as guardianship on July 11, 2013, and directed the assistant State's Attorney to prepare a written order. On July 15, 2013, that permanency order was signed. This matter was called for a status hearing on August 15, 2013. In a written order, the court noted it *had* found it was in the minor's best interest that her permanency goal remain guardianship and that respondent wished to appeal. On August 29, 2013, respondent filed a petition for leave to appeal in this court.

¶ 16 Respondent's petition stated on August 11, 2013, a docket entry reflecting the trial court's ruling was made. In fact, that docket entry was made on *July* 11, 2013. The petition next states on August 15, 2013, the court entered a formal written order regarding permanency. However, the record reflects the formal written order was entered on *July* 15, 2013.

¶ 17 As stated, Illinois Supreme Court Rule 306(b)(1) (eff. Feb. 16, 2011) requires the interlocutory petition and supporting record and legal memorandum, if any, *shall* be filed in the appellate court within 14 days of the entry or denial of the order from which review is being sought. Here, that order was entered, at the latest, on July 15, 2013. The petition for leave to appeal was not filed until August 29, 2013, clearly more than 14 days after the permanency order was entered.

¶ 18 Further, the record shows the August 15, 2013, order was a status order. There was

no intervening petition to change the permanency order filed between July 15, 2013, when the formal written order regarding permanency was signed and the August 15, 2013, status hearing.

¶ 19 Because the dates of the docket entry and formal order were incorrect in the petition for leave to appeal, this court's order allowing the petition was improvidently granted. Accordingly, we vacate that order and dismiss this appeal.

¶ 20 III. CONCLUSION

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

¶ 22 Appeal dismissed.