2015 IL App (4th) 140914-U

NO. 4-14-0914

FILED
February 19, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: M.M., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 10JA120
CHRISTOPHER MARCH,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Respondent father failed to file a proper notice of appeal within 30 days of the order terminating his parental rights; this court has no jurisdiction over respondent father's appeal.

¶ 2 On June 18, 2014, the trial court entered an order terminating the parental rights of respondent father, Christopher March, to M.M. (born December 24, 2008). That same day, respondent filed a motion asking the court to direct the clerk of the circuit court to file his notice of appeal. Notice of appeal, however, was not filed until October 21, 2014. Respondent contends (1) this court has jurisdiction to consider his claim, and (2) the trial court's order is against the manifest weight of the evidence. We dismiss the appeal.

¶ 3 I. BACKGROUND

¶ 4 In September 2010, the State petitioned for a finding of neglect, alleging M.M.,

who resided with her mother, Shelly Jones, was not receiving necessary and proper care and her environment was injurious to her welfare. The State also filed an allegation of abuse, alleging M.M. was at a substantial risk of physical injury by other than accidental means. In October 2010, respondent was given custody of M.M. Custody, however, was removed from respondent in July 2011, after respondent admitted using cocaine and alcohol while caring for M.M. In August 2011, the trial court found M.M. neglected.

¶ 5 In May 2012, the State filed a motion to terminate the parental rights of Jones and respondent. The trial court granted the motion as to both parents. In June 2013, this court affirmed as to the mother. Regarding respondent, this court affirmed the finding of unfitness, but we reversed and remanded the best-interest finding as to M.M. *In re M.M.*, 2013 IL App (4th) 130060-U, ¶ 101.

¶ 6 In June 2014, the trial court held a second hearing on M.M.'s best interest. Respondent did not appear.

¶ 7 At the hearing, Katie Worland, a foster-care case manager with Webster Cantrell Hall (Webster Cantrell), testified she was the caseworker from May 2013 until May 2014. According to Worland, the goals for respondent included maintaining stable housing and employment, participating in substance-abuse treatment, and maintaining visits with M.M. Respondent's key problem was his inability to remain sober. Since January 2014, 50 drug screens were scheduled for respondent. He missed 30. Of the 20 he completed, 12 were negative. Six tested positive for cocaine.

¶ 8 Worland testified respondent attended group-therapy sessions. He regularly attended his group meetings at Heritage Behavioral Health Center (Heritage), but he missed the

most recent meeting. Respondent had not missed a "methadone group" meeting since his referral.

¶ 9 According to Worland, respondent was not working. Respondent had, at some point, worked at the Salvation Army in Decatur, but his employment was terminated after a positive drug screen. Respondent also worked as a janitor at Heritage. Over the two-week period he held the job, he worked only five days. Respondent's employment was terminated for "no-calls, no show." Respondent was referred to Youth Advocate for housing. He was provided an apartment, in which he continued to reside.

¶ 10 Worland testified she had no contact with respondent since May 2014, when an order of protection was entered, stopping contact with respondent. The order of protection was entered after respondent's counselor at Heritage informed Worland that respondent was making threats to kill Worland. The counselor reported respondent was in the crisis-detoxification unit at Heritage due to a possible misuse of methadone or due to drug use.

¶ 11 When asked about the appellate court's concern over the foster parents' "rocky times," Worland reported no additional problems. The foster parents attended marriage counseling to resolve their issues, and M.M. was placed back in their care. M.M. was "great." She was "very healthy, smart." M.M. called her foster parents "mommy" and "daddy." She bonded with them and felt safe. M.M. called respondent "daddy Chris." She shared a bond with respondent. There were no problems when M.M. and respondent visited.

¶ 12 Worland opined M.M. needed stability, and the foster parents provided that for her. The foster parents met her medical and educational needs.

¶ 13 Mamie Hayes, a foster-care case assistant for Webster Cantrell, testified she

supervised visits between M.M. and respondent since October 2013. In April 2014, Hayes witnessed an incident during a visit. Respondent was distracted, searching his home for a $20 bill he misplaced. M.M. played in the living room, while respondent continued the search. Respondent was "just everywhere." Hayes did not know how to approach him. They ended the in-home visit and moved to the activity room. In that environment, where others were present, respondent "acted better." This event was "out of the ordinary" for respondent.

¶ 14 According to Hayes, during the visits, respondent would talk to her more than he should. Hayes would redirect him to visit with M.M. Hayes learned respondent did not like Worland.

¶ 15 Lindsay Sites, a foster-care supervisor at Webster Cantrell, testified she spoke with respondent after the May 2014 incident. Sites informed respondent he was no longer allowed at Webster Cantrell due to his threatening behavior and that his visits with M.M. had been suspended. Respondent was not happy with these changes. Respondent reiterated he would not surrender his parental rights. When informed the case was moving toward termination, respondent stated, "do what you got to do," and walked away.

¶ 16 On June 18, 2014, the trial court entered a written order terminating respondent's parental rights to M.M. That day, respondent filed a motion asking the trial court to direct the circuit clerk to file a notice of appeal of the termination order and to appoint counsel for respondent on appeal. On October 21, 2014, the clerk of the circuit court filed his notice of appeal.

¶ 17 II. ANALYSIS

¶ 18 Respondent begins by arguing his notice of appeal was timely filed. In support,

respondent cites one case, *In re Tyrese J.*, 376 Ill. App. 3d 689, 700, 876 N.E.2d 1068, 1077 (2007), for the proposition a notice of appeal is to be liberally construed. Respondent argues the motion for the filing of a notice of appeal mentions the order terminating his parental rights. He contends he should not be penalized for the trial court's failure to act on his motion for an appeal. The State provided no argument on this issue.

¶ 19 "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). If a party fails to perfect a proper notice of appeal, the court of review lacks jurisdiction and the appeal must be dismissed. *People v. Smith*, 228 Ill. 2d 95, 104, 885 N.E.2d 1053, 1058 (2008).

¶ 20 With its rules governing appeals, the Illinois Supreme Court requires strict compliance. *Mitchell v. Fiat-Allis, Inc.*, 158 Ill. 2d 143, 150, 632 N.E.2d 1010, 1012 (1994). Neither an appellate court nor a trial court may excuse compliance with the requirements of those rules. *Id.* This mandate persists even when actions by the circuit court may have contributed to or caused the delay. See *id.* (declining to apply equitable principles to prevent unfairness to a litigant whose "attorney relied on the circuit court's incorrect directive"). In such situations, courts have observed it is the responsibility of the attorney and the party to monitor cases closely enough to prevent error. See *id.* at 151, 632 N.E.2d at 1013; see also *Town of Normal v. Board of Regents, Regency Universities*, 107 Ill. App. 3d 120, 124, 437 N.E.2d 406, 409 (1982) (concluding the respondent and his counsel, not the trial court nor anyone else, had "the responsibility to check and verify that notice of appeal was timely filed").

¶ 21 Our decision in *In re K.A.*, 335 Ill. App. 3d 1095, 1100, 782 N.E.2d 937, 941

(2003), is instructive on the strictness of the Illinois Supreme Court's mandate despite its harsh results. In *K.A.*, the trial court entered an order granting the State's petition to terminate the respondent father's parental rights. *Id.* at 1097, 782 N.E.2d at 939. The respondent father filed a motion to vacate the order of termination, which the trial court heard and took under advisement. *Id.* at 1097-98, 782 N.E.2d at 939. At the same hearing, the court "stated it would notify all parties and bring them back to court to announce its ruling orally." *Id.* at 1098, 782 N.E.2d at 939. However, the court entered a written order denying the posttrial motion and failed to provide notice or a copy of the order to the parties involved. *Id.* As a result, the appeals were untimely. *Id.* at 1100, 782 N.E.2d at 941. This court noted its preference to dispose of a case involving parental rights on its merits, but found it was constrained by *Mitchell* from doing so even when the untimely notice of appeal was due to the trial court's misdirection. *Id.*

¶ 22 Rule 303(a)(1) requires, in civil cases, notices of appeal be filed with the clerk of the circuit court within 30 days of the final judgment. Ill. S. Ct. Rule 303(a)(1) (eff. Jun. 4, 2008). Here, the "notice of appeal" was filed by the clerk of the circuit court more than three months after the final judgment. It does not comply with Rule 303(a)(1).

¶ 23 Respondent's brief touches on the argument this court should liberally construe his motion as a notice of appeal. Unfortunately, the motion cannot be so construed.

¶ 24 Respondent's "motion" does not satisfy the requirements for a notice of appeal, and it is thus not a "notice of appeal." Respondent's motion contains neither a statement declaring an "Appeal to the [Fourth District Appellate] Court" nor a declaration of the court from which the appeal was taken. See Ill. S. Ct. Rule 303(b)(1)(i) (eff. June 4, 2008). Respondent's motion is not designated as necessary to comply with Illinois Supreme Court Rule 303(b)(iii)

(eff. Jun. 4, 2008), which mandates notices of appeal be designated as "Notice of Appeal," "Joining Prior Appeal," "Separate Appeal," or "Cross-Appeal." Moreover, the motion does not comply with Rule 303(c)'s service requirements, including filing a notice of filing with the court of review. Ill. S. Ct. Rule 303(c) (eff. June 4, 2008).

¶ 25 Moreover, respondent's reliance on the proposition of liberal construction is misplaced. This general proposition applies to questions of whether the issue appealed is specified in the notice of appeal (see generally *Tyrese J.*, 376 Ill. App. 3d at 700, 876 N.E.2d at 1077)), and not whether another court filing may serve as a notice of appeal.

¶ 26 There was not a timely and proper notice of appeal. This court lacks jurisdiction over respondent's appeal. We acknowledge the harshness of this result, but there is no remedy to permit a review on the merits. The appeal is dismissed.

¶ 27 III. CONCLUSION

¶ 28 We dismiss respondent's appeal.

¶ 29 Appeal dismissed.