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2016 IL App (3d) 160432-U

Order filed December 14, 2016

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2016

In re M.C.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
a Minor,	)	Rock Island County, Illinois
	)	
(THE PEOPLE OF THE STATE OF	)	
ILLINOIS,	)	
	)	Appeal No. 3-16-0432
Petitioner-Appellee,	)	Circuit No. 15-JD-206
	)	
v.	)	
	)	
ANNIE T.,	)	Honorable
	)	Peter W. Church
Respondent-Appellant).	)	Judge, Presiding

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PRESIDING JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Lytton and Schmidt concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Mother's appeal of order granting guardianship of her son to the Department of Children and Family Services dismissed for lack of appellate jurisdiction.

¶ 2 Minor M.C., the 11-year-old son of petitioner Annie T., was charged in a delinquency petition with one count of resisting a peace officer and sentenced to 18 months' probation. The

trial court also granted guardianship of M.C. to the Department of Children and Family Services (DCFS). Annie appealed the guardianship. We dismiss the appeal for lack of jurisdiction.

¶ 3

### FACTS

¶ 4

Minor M.C., who was born in December 2004, was charged in a delinquency petition with one count of resisting a peace officer. 720 ILCS 5/31-1 (West 2014). A summons was issued for his mother, Annie T., and she appeared in court with M.C. He admitted to the allegations against him. At a dispositional hearing, the trial court adjudicated M.C. delinquent and sentenced him to 18 months' probation. The court also appointed DCFS as M.C.'s guardian and placed him in DCFS's "care, custody and control" but determined M.C. would remain with Annie until DCFS could find a suitable placement for him. In addition, the court found there was an independent basis for the guardianship appointment.

¶ 5

Following the trial court's findings, a discussion ensued between M.C.'s attorney and the trial court. M.C.'s attorney explained that M.C. wished to file a motion to reconsider his sentence and Annie wanted to appeal the guardianship finding. The trial court noted that once Annie appealed, it would not be able to hear M.C.'s motion to reconsider. Counsel for M.C. agreed and the trial court ordered the clerk to prepare the notice of appeal for Annie. The notice of appeal was filed the same day. M.C. thereafter filed a motion to reconsider his sentence, which the trial court heard and denied. No other notices of appeal were filed.

¶ 6

### ANALYSIS

¶ 7

On appeal, Annie argues that the trial court exceeded its authority when it made DCFS M.C.'s guardian without first finding that it was in the best interest of the public that DCFS be awarded guardianship. Annie further argues that her notice of appeal divested the trial court from hearing and deciding M.C.'s motion to reconsider his sentence.

¶ 8 We must first address our jurisdiction to hear this appeal. Juvenile delinquency proceedings are governed by the criminal rules. Ill. S. Ct. R. 660 (eff. Oct. 1, 2001). Under those rules, the appellate court obtains jurisdiction with a timely filed notice of appeal. Ill. S. Ct. R. 606(a) (eff. Dec. 11, 2014). A notice of appeal is timely filed within 30 days of entry of a final judgment or within 30 days of the disposition of a postsentencing motion directed against the judgment. Ill. S. Ct. R. 606(b) (eff. Dec. 11, 2014) Where a postjudgment motion is timely filed, a notice of appeal filed before the trial court has disposed of the postjudgment motion will have no effect. *Id.* The timing requirements of Rule 606(b) apply whether the notice of appeal was filed before or after the postjudgment motion. *Id.*

¶ 9 The appellate court has jurisdiction to review final judgments. *In re D.D.*, 212 Ill. 2d 410, 418 (2004). A final judgment fixes the rights of the parties, determines the litigation on the merits, and leaves only execution of the judgment. *Id.* Where a timely filed postjudgment motion directed against the judgment has been filed, the appellate court is not vested with jurisdiction by the filing of the appeal. *People v. Willoughby*, 362 Ill. App. 3d 480, 482 (2005). A motion to reconsider a sentence is motion that is directed against the judgment. *People v. Everage*, 303 Ill. App. 3d 1082, 1085 (1999). We consider *de novo* whether we have jurisdiction. *People v. Marker*, 233 Ill. 2d 158, 162 (2009).

¶ 10 The State maintains that this court lacks jurisdiction because M.C.'s postsentencing motion rendered ineffective Annie's notice of appeal. We agree. On July 26, 2016, the trial court sentenced M.C. to an 18-month term of probation and awarded guardianship to the DCFS. The same day, Annie filed her notice of appeal and M.C. announced his intent to challenge his sentence. At that time, the sentencing order was not a final order as the parties had 30 days to move for its reconsideration. On August 9, M.C. timely filed a motion to reconsider his sentence,

including the guardianship finding. M.C.'s postsentence motion was directed against the judgment and negated Annie's notice of appeal. The trial court denied M.C.'s motion on August 23, 2016, resulting in the entry of a final and appealable order. Neither M.C. nor Annie filed notices of appeal after the trial court's final order denying M.C.'s motion to reconsider. We find Annie's notice of appeal was premature and without effect. As a result, we lack jurisdiction to hear the appeal and must dismiss it.

¶ 11 For the foregoing reasons, the appeal is dismissed.

¶ 12 Appeal dismissed.