

FIFTH DIVISION
May 4, 2012

No. 1-11-3532

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).

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF JAYLA M. and JANIYA M.,

Minors-Respondents-Appellees,

(THE PEOPLE OF THE STATE OF ILLINOIS,

Petitioner-Appellee,

v.

PATRICE M.,

Proposed Intervenor-Appellant).

) Appeal from
) the Circuit Court
) of Cook County
)
)
) 08 JA 178
) 08 JA 179
)
) Honorable
) Demetrios Kottaras,
) Judge Presiding
)

JUSTICE McBRIDE delivered the judgment of the court.
Justices J. Gordon and Howse concurred in the judgment.

O R D E R

HELD: The trial court's denial of the appellants' motion to intervene was affirmed where the appellant failed to present record to support their claim of error.

¶ 1 Appellant, Patrice M., appeals from an order of the circuit court of Cook County denying their motion to intervene. For the reasons that follow, we affirm.

¶ 2 The following background information is taken from a previous order involving one the

minors, Janiya M. See *In the Interest of J.M.*, No. 1-09-2153 (2010) (unpublished order pursuant to Supreme Court Rule 23). That order reveals that Janiya was born on October 7, 2006, and that her sister, Jayla, was born on November 19, 2007. The minors' biological mother passed away on October 7, 2009. Darius M. is the biological father of Janiya and Deandre H. is the biological father of Jayla. In 2009, before the biological mother passed away, an adjudicatory hearing was held after which the trial court found that Jayla was physically abused and neglected and that Janiya was neglected and subject to a substantial risk of physical injury. Following a dispositional hearing, the court adjudicated both minors wards of the court and placed them under the guardianship of the DCFS administrator. On appeal, this court affirmed the trial court's finding that Janiya was neglected due to an injurious environment and abused due to a substantial risk of physical injury.

¶ 3 Appellant Patrice M. is the maternal grandmother of the minors. It is undisputed that in April of 2010, the appellant filed a motion to intervene in the minors' case. On May 18, 2010, the trial court denied that motion. On August 18, 2011, counsel for the appellant filed a motion to intervene. The trial court denied that motion on November 4, 2011.

¶ 4 On appeal from that judgment, appellant claims it would be in the best interest of the minors that she be allowed to intervene in the case and to participate in all custodial matters involving the minors.

¶ 5 Initially, the Office of the Cook County Public Guardian and the State's Attorney's office assert that this court lacks jurisdiction to consider the appellant's appeal because her notice of appeal was filed more than 30 days after the date of judgment being appealed from.

¶ 6 While this appeal was pending, we considered a motion to dismiss the appeal for lack of jurisdiction filed by the Cook County Public Guardian. The motion asserted that the appellant filed two notices of appeal after the trial court entered the order denying her motion to intervene. The motion claimed that the first notice of appeal was invalid because it was not filed with the Clerk of the Appellate Court and that the second notice of appeal was untimely. This court concluded that our jurisdiction was proper and denied the motion to dismiss.

¶ 7 We again conclude that we have jurisdiction to consider this appeal. The record shows that the trial court entered the order denying the appellants' motion to intervene on November 4, 2011. The notice of appeal was required to be filed within 30 days of the entry of that order, which makes the notice of appeal due on December 4, 2011. However, December 4, 2011, was a Sunday and therefor the notice of appeal was due on or before December 5, 2011. The record contains two notices of appeal filed by the appellants. The first notice has a filing stamp of December 5 by the civil appeals division of the circuit court and it also bears a filing stamp of December 6 by the juvenile child protection division . That notice of appeal indicates that the date of the judgment being appealed from was November 4, 2011, and sought relief in the form of the right to intervene as a party. The second notice of appeal was file-stamped by the juvenile child protection division on December 7, 2011.

¶ 8 We find that the notice of appeal filed on December 5, 2011, was valid. Therefore, the notice of appeal was timely filed because it was filed within 30 days of the date of the judgment being appealed from. Accordingly, although we have an obligation consider our jurisdiction, we again conclude that our jurisdiction is proper and we proceed to the merits of this appeal.

¶ 9 The appellant contends that the trial court erred in denying her motion to intervene. We review the trial court's ruling on a motion to intervene for an abuse of discretion. *In re S.G.*, 401 Ill. App. 3d 775, 784 (2010).

¶ 10 In this case, the record does not contain a copy of appellants motion to intervene or a transcript of the hearing during which the trial court denied that motion. The record also does not contain a copy of the motion to intervene that the appellant filed in April of 2010. As the appellant, she has the burden of providing a sufficiently complete record to support a claim of error. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Absent such a record, a reviewing court will presume that the trial court's ruling was in conformity with the law and had a sufficient basis, and any doubts arising from the incompleteness of the record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392; *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005).

¶ 11 Here, without a copy of the motion to intervene or a transcript from the hearing on that motion, we have no way to evaluate the grounds upon which appellant sought to intervene or whether the trial court abused its discretion in concluding that the appellant had not presented any new facts in support of her motion or in denying the motion to intervene.

¶ 12 We also note that the appellant filed a reply in this case on April 26, 2012. That brief puts forth numerous factual assertions that were not raised in the appellant's opening brief and are unsupported by citations to the record. Supreme Court Rule 341(h)(7) provides that "[p]oints not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing." Ill. S.Ct. R. 341(h)(7) (eff. July 1, 2008). The rule further requires appellate briefs

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to contain the contentions of the appellant, with "citation of the authorities and the pages of the record relied on." Ill. S.Ct. R. 341(h)(7) (eff. July 1, 2008). Accordingly, we do not consider the arguments raised in the reply brief that were not contained in the opening brief and that are unsupported by citations to the record.

¶ 13 Because we have not been presented with an adequate record on appeal, we must presume that the trial court's ruling was in conformity with the law and had a sufficient basis.

Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 14 Affirmed.