

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2021 CJ 1036

STATE OF LOUISIANA IN THE INTEREST OF
J.P., M.N., AND T.N.^[1]

JUDGMENT RENDERED: DEC 22 2021

Appealed from
The Seventeenth Judicial District Court
Parish of Lafourche • State of Louisiana
Docket Number J-13937 • Division D

The Honorable Christopher J. Boudreaux, Presiding Judge

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BEFORE: MCCLENDON, WELCH, AND THERIOT, JJ.

¹ In order to protect the identity of the minor children, we refer to the minor children and their mother by their initials throughout this opinion. See Uniform Rules—Courts of Appeal, Rule 5-1 and 5-2.

WELCH, J.

In this child in need of care proceeding, A.P., the mother of three minor children, appeals a judgment that dismissed her appeal of an April 27, 2021 judgment terminating her parental rights on the basis that the appeal was untimely. We affirm and issue this memorandum opinion in compliance with Uniform Rules—Courts of Appeal, Rule 2-16.1(B).

A.P. is the mother of three minor children: J.P., M.N., and T.N. The three children were placed into the custody of the State of Louisiana, Department of Children and Family Services (“DCFS”) on October 16, 2018. On October 2, 2020, DCFS petitioned the juvenile court seeking to have A.P.’s parental rights terminated.² Pursuant to a judgment signed by the juvenile court on April 27, 2021, A.P.’s parental rights were terminated. Notice of signing of judgment was issued and mailed to A.P. and her counsel of record by the clerk of court on April 28, 2021.³

On June 14, 2021, A.P. filed a motion to appeal the April 27, 2021 judgment terminating her parental rights. In response, DCFS filed a motion to dismiss the appeal on the basis that it was untimely under La. Ch.C. art. 332. In response to DCFS’s motion to dismiss, counsel for A.P. claimed that neither she nor A.P. had received the notice of signing of judgment. Counsel for A.P. further claimed that, upon learning that the judgment terminating A.P.’s parental rights had been signed, she requested the clerk of court re-issue a notice of signing of judgment and the clerk of court subsequently re-issued the notice of signing of judgment on May 28, 2021, which she received on June 1, 2021.⁴ Thus, counsel for A.P. argued that

² DCFS also sought the termination of the parental rights of the fathers of the children; however, there are no issues in this appeal concerning the fathers or their parental rights.

³ The record reflects that the notice of signing of judgment that was mailed to A.P. was returned to the clerk of court.

⁴ The record before us does not contain the notice of signing of judgment that was purportedly re-issued by the clerk of court on May 28, 2021.

based on the re-issued notice of signing of judgment, A.P.'s motion to appeal the April 27, 2021 judgment terminating her parental rights was timely. On June 18, 2021, the juvenile court signed an order dismissing A.P.'s appeal as untimely and A.P. now appeals the dismissal of her appeal of the April 27, 2021 judgment.

Appeals regarding the termination of parental rights are governed by La. Ch.C. art. 332. **State ex rel. C.P.**, 2000-2703 (La. 1/17/01), 777 So.2d 470, 471. Louisiana Children's Code article 332 provides, in pertinent part, that "appeals shall be taken within fifteen days from the mailing of notice of the judgment" and that "[n]otice of judgment ... shall be as provided in [La. C.C.P. art.] 1913." Louisiana Code of Civil Procedure article 1913(A) provides, in pertinent part, that "notice of the signing of a final judgment ... is required in all contested cases, and shall be mailed by the clerk of court to the counsel of record for each party, and to each party not represented by counsel." "The clerk [of court] shall file a certificate in the record showing the date on which, and the counsel and parties to whom, notice of the signing of the judgment was mailed." La. C.C.P. art. 1913(D).

In accordance with these provisions, the record contains the clerk of court's certificate showing that notice of the April 27, 2021 judgment terminating A.P.'s parental rights was issued and mailed on April 28, 2021 to A.P. and to her counsel of record. Thus, under La. Ch.C. art. 332, A.P. had to file her motion to appeal within fifteen days of April 28, 2021 or by May 13, 2021. Since A.P. did not file her motion to appeal the April 27, 2021 judgment until June 14, 2021, her appeal was untimely under La. Ch. C. art. 332. Although A.P. argues that her appeal of the April 27, 2021 judgment was timely because neither she nor her counsel received the notice of signing of judgment issued on April 28, 2021 and the appeal was filed within the appropriate delay after the clerk of court re-issued the notice of signing of judgment on May 28, 2021, which her counsel received on June 1, 2021, we find no merit to these arguments.

In evaluating the timeliness of an appeal in a termination of parental rights case, La. C.C.P. art. 1913, made applicable by La. Ch.C. art 332(B), requires only the *mailing* of a notice of judgment and the date of service, delivery, or *receipt of the notice is not determinative*. **State ex rel. C.P.**, 777 So.2d at 472. The record herein reflects that notice of the April 27, 2021 judgment was issued and mailed to A.P. and her counsel of record by the clerk of court on April 28, 2021, and the certificate of mailing was filed in the record. A.P. has not alleged that the notices to her and her counsel of record of the signing of the April 27, 2021 judgment were not mailed on April 28, 2021 by the clerk of court (as indicated on the notice of judgment)⁵ or that it was not mailed to the correct address for her or her counsel of record. Furthermore, the record before us does not contain a notice of signing of the April 27, 2021 judgment that was purportedly re-issued by the clerk of court on May 28, 2021. This Court can only base its decision on what appears in the record and is entitled to rely on the clerk's certificate of mailing. **Carter v. C & M Freightliner, LLC**, 2011-2184 (La. App. 1st Cir. 8/15/12), 97 So.3d 1191, 1195. If a date of mailing is definitively established from a certificate of notice that has been filed in the record, there is compliance with La. C.C.P. art. 1913. **Id.**

Accordingly, we find that the juvenile court correctly concluded that A.P.'s motion to appeal the April 27, 2021 judgment terminating her parental rights was untimely and affirm the June 18, 2021 dismissal of that appeal. All costs of this appeal are assessed to the mother, A.P.

AFFIRMED.

⁵ We note that the postmark on the envelope for the notice of signing of judgment that was mailed to A.P. and that was returned to the clerk of court does indeed reflect that it was mailed on April 28, 2021.