

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

In the Matter of: T.M.
and S.R.

Court of Appeals Nos. L-10-1245
L-10-1246

Trial Court Nos. JC 10204755
JC 09195018

DECISION AND JUDGMENT

Decided: November 8, 2010

* * * * *

Stephen D. Long, for appellants.

Jill E. Wolff, for appellee.

* * * * *

PER CURIAM.

{¶ 1} This matter is before the court on appellant's, T.M., motion for delayed appeal. Appellant seeks to appeal the August 16, 2010 judgment of the Lucas County Court of Common Pleas, Juvenile Division, terminating his parental rights and privileges

with respect to his minor daughter, T.M. Appellee has not filed a response to appellant's motion within the time provided by App.R. 15.

{¶ 2} The ultimate question before the court is "Do the delayed appeal provisions of App.R. 5 apply to termination of parental rights cases?"

{¶ 3} App.R. 5 provides:

{¶ 4} "(A) Motion by defendant for delayed appeal.

{¶ 5} "(1) After the expiration of the thirty day period provided by App.R. 4(A) for the filing of a notice of appeal as of right, an appeal may be taken by a defendant with leave of the court to which the appeal is taken in the following classes of cases:

{¶ 6} "(a) Criminal proceedings;

{¶ 7} "(b) Delinquency proceedings; and

{¶ 8} "(c) Serious youthful offender proceedings."

{¶ 9} Termination of parental rights cases are not among the classes of cases specified under App.R. 5. Appellant cites to *In re Westfallen Children*, 5th Dist. No. 2006 CA 00196, 2006-Ohio-6717, ¶ 3, where the Fifth District Court of Appeals accepted a delayed appeal involving the termination of parental rights and affirmed the juvenile court's termination of rights. Simultaneously, appellant also acknowledges that the Twelfth District Court of Appeals rejected a motion for delayed appeal in a termination of parental rights case, noting the "[delayed appeal] remedy does not exist outside of the criminal context." *In re Phillips*, 12th Dist. CA2003-03-062, 2003-Ohio-5107, ¶ 3.

{¶ 10} We agree with appellant that the relationship between parent and child is constitutionally protected. "[T]he right to raise one's children is an 'essential' and 'basic civil right.'" *In re Murray* (1990), 52 Ohio St.3d 155, 157, quoting *Stanley v. Illinois* (1972), 405 U.S. 645, 651, and *Meyer v. Nebraska* (1923), 262 U.S. 390, 399. "Parents have a 'fundamental liberty interest' in the care, custody, and management of the child." *Id.* at 157, quoting *Santosky v. Kramer* (1982), 455 U.S. 745, 753.

{¶ 11} As in criminal proceedings, juvenile court proceedings also have constitutional protections that require due process. See *Schall v. Martin* (1984), 467 U.S. 253, 263 ("There is no doubt that the Due Process Clause is applicable in juvenile proceedings"). This court has also observed: "Because a parent facing the termination of parental rights has been equated with a criminal facing the death penalty, Ohio courts * * * requir[e] that great care be taken to ensure that due process is afforded parents in parental termination proceedings." *In the Matter of Savannah M.*, 6th Dist. No. L-03-1112, 2003-Ohio-5855, ¶ 32.

{¶ 12} However, we also note that App.R. 5(A) was amended on July 1, 2003. The amendments specifically added "delinquency and serious youthful offender proceedings" to the classes of cases specified in App.R. 5. These amendments were enacted to abrogate the Ohio Supreme Court's decision of *In re Anderson* (2001), 92 Ohio St.3d 63, where the court held that adjudications of delinquency are not judgments to which App.R. 5(A) applies. Staff Notes to App.R. 5(A) (2003).

{¶ 13} Although juvenile parental rights proceedings require due process and share aspects of criminal proceedings, it remains unclear whether App.R. 5 applies to termination of parental rights cases. App.R. 5(A) was amended to include "delinquency and serious youthful offender proceedings," but has not been extended further.

{¶ 14} Given that termination of parental rights cases are not specifically included in the exclusive classes of cases in App.R. 5, we decline to hold that the delayed appeal provision of App.R. 5 extends to cases involving the termination of parental rights. Appellant's motion for delayed appeal is found not well-taken and denied.

{¶ 15} Article IV, Section 3(B)(4) of the Ohio Constitution states:

{¶ 16} "Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination."

{¶ 17} In today's decision we hold that the delayed appeal provisions of App.R. 5(A) do not apply to final judgments involving the termination of parental rights. We find this holding is in conflict with *In re Westfallen Children*, 5th Dist. No. 2006 CA 00196, 2006-Ohio-6717.

{¶ 18} Given this actual conflict between our district and the Fifth Appellate District, we hereby certify the record of this case to the Supreme Court of Ohio for review and final determination on the following question: Do the delayed appeal

provisions of App.R. 5 extend to cases involving the termination of parental rights and privileges?

{¶ 19} The parties are directed to S.Ct.Prac.R. IV for guidance in how to proceed.

It is so ordered.

CASE CERTIFIED.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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