

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 09/30/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IRENE V.,)
) 1 CA-JV 10-0079
)
Appellant,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Ariz. R.P. Juv. Ct.
ARIZONA DEPARTMENT OF ECONOMIC) 103(G); ARCAP 28)
SECURITY, ERICK M., JESUS V.,)
)
Appellees.)
)
)
)

Appeal from the Superior Court of Maricopa County

Cause No. JD506451

The Honorable Linda A. Akers, Judge

AFFIRMED

Sandra L. Massetto
Attorney for Appellant

Phoenix

Terry Goddard, Attorney General
By Kathleen Skinner, Assistant Attorney General
Attorneys for Appellee/Arizona Department of Economic Security

Mesa

T H O M P S O N, Judge

¶1 Irene V. (Irene) appeals from the juvenile court's order denying her request for extension of time to file notice of appeal. For the following reasons, we affirm.

¶2 In October of 2009, the juvenile court held a contested severance hearing on ADES's motion to terminate Irene's parental rights to Erick M. (Erick) and Jesus V. (Jesus). On the last day of the hearing, the juvenile court took the severance under advisement and ordered the parties to file written closing arguments by November 6, 2009. ADES, the children's guardian ad litem, and Irene all filed written closing arguments on November 6, 2009. In addition, ADES filed and distributed to the other parties its proposed Findings of Fact, Conclusions of Law and Order on November 6. Judge Akers signed ADES's Findings of Fact, Conclusions of Law and Order. The order was filed on November 25, 2009. Subsequently, Judge Akers signed a minute entry ruling entitled "Under Advisement Ruling." The minute entry was signed on December 2, 2009, and was filed on December 4.

¶3 Irene's trial counsel filed an untimely notice of appeal on December 14, 2009. In our case number 1 CA-JV 09-0231, Irene's appellate counsel was notified of the jurisdictional defect and informed that she could seek to have the untimely filing excused by the juvenile court pursuant to

Rule 108 (B), Arizona Rules of Procedure for the Juvenile Court. This court suspended the appeal in 1 CA-JV 09-0231, and revested jurisdiction in the trial court to permit the trial court to rule on Irene's motion. On February 1, 2010, Irene filed a Request for Clarification Regarding Ruling with the juvenile court. In her motion, Irene did not argue that excusable neglect caused the untimely filing of her notice of appeal, but instead asked the court to clarify that the findings of fact, conclusions of law and order "should have in fact been filed contemporaneously with the Minute Entry ruling on December 4, 2009." The juvenile court granted the request for clarification and ordered nunc pro tunc correcting the minute entry ruling to delete the portion of the minute entry referring to the findings of fact being filed contemporaneously with the minute entry order. Subsequently, Irene filed a motion with this court requesting that the Court find that it had jurisdiction over 1 CA-JV 09-0231. Counsel was again notified that this court lacked jurisdiction and given another opportunity to seek to have the untimely filing excused by the juvenile court pursuant to Rule 108(B). Irene's trial counsel filed a motion with the juvenile court entitled "Request for Determination of 'Final

Order' or in the Alternative Extension of Time for Filing Notice of Appeal."¹ Judge Akers denied the motion.

¶4 On April 23, 2010, another panel of this court denied Irene's motion to find jurisdiction and dismissed Irene's appeal in 1 CA-JV09-0231 for lack of jurisdiction, stating:

Rule 104(A), Ariz. R.P. Juv. Ct., provides that a notice of appeal must be filed with the clerk of the superior court no later than 15 days after the final order is filed with the clerk. The juvenile court's final order terminating appellant Irene V.'s parental rights was filed on November 25, 2009. Appellant could therefore have filed a timely notice of appeal no later than December 10, 2009. Because her notice of appeal was not filed until December 14, 2009, and the juvenile court has denied her request for extension of time for filing the notice of appeal, this court lacks jurisdiction to consider her appeal. See generally *In re Appeal in Pima County Juv. Action No. B-9385*, 138 Ariz. 291, 294-95, 674 P.2d 845, 848-49 (1983).

Irene filed a petition for review in 1 CA-JV 09-0231 which is pending in the Arizona Supreme Court.

¶5 Irene filed a notice of appeal from the juvenile court's April 8, 2010 minute entry denying her request for extension of time for filing notice of appeal. Because that minute entry was

¹ Irene's counsel filed the motion with the Honorable Norman Davis, presiding judge of Maricopa County Superior Court. The motion was then transferred to The Honorable Eddward Ballinger, Jr., presiding judge of the Maricopa County Juvenile Court. Judge Ballinger transferred the motion to Judge Akers for determination.

unsigned, we suspended the current appeal to allow the juvenile court to sign the minute entry. Irene then filed a notice of appeal from the signed minute entry.

¶6 In this appeal, Irene argues that the juvenile court erred by denying her request to excuse the untimely filing of her notice of appeal for excusable neglect. We review the denial of a motion to extend the deadline for the filing of an appeal for an abuse of discretion. *Haroutunian v. ValueOptions, Inc.*, 218 Ariz. 541, 544, ¶6, 189 P.3d 1114, 1117 (App. 2008). Rule 108(B) provides:

Any requests for extensions of time for filing pleadings, motions, or other documents with the clerk of the superior court under the provisions of Rules 103 through 105 of these rules shall be made to the presiding judge of the juvenile court and shall be governed by the provisions of Rule 6(b), Ariz. R. Civ. P.; provided, however, that the time specified in Rule 104(A) for filing a notice of appeal or cross-appeal may not be extended, **but where the failure to timely file was the result of excusable neglect, the juvenile court may excuse the untimely filing upon motion made after the expiration of the specified period.**

(Emphasis added). Neglect may be excusable in a delayed appeal where (1) the party did not receive notice of the final order, (2) the party promptly filed a motion for relief, (3) the party exercised due diligence in attempting to be informed of the decision, and (4) there is no prejudice to the other party.

City of Phoenix v. Geyler, 144 Ariz. 323, 328, 697 P.2d 1073, 1078 (1985) (quoting *Rodgers v. Watt*, 722 F.2d 456, 460 (9th Cir. 1983)).

¶7 We find no abuse of discretion. Although Irene argues that her trial counsel "did not remember seeing a copy of the November 25, 2009 signed Findings of Fact, Conclusions of Law and Order," the record reflects that counsel had notice. The Findings of Fact, Conclusions of Law and Order was mailed to Irene's counsel on November 6, 2009. The Findings of Fact, Conclusions of Law and Order, once signed by the court, met the requirements of a final order and had the effect of severing Irene's parental rights to Erick and Jesus. The additional minute entry filed on December 4, 2009 was redundant. Further, the minute entry put counsel on inquiry notice that the juvenile court had filed a written order. See *Pima County Juvenile Action No. S-933*, 135 Ariz. 278, 279, 660 P.2d 1205, 1206 (1982) (counsel has a duty to check court records to determine the exact date of entry of a final order so he can preserve his client's right to appeal).

¶8 Furthermore, we find no abuse of discretion in the juvenile court's transfer of Irene's motion to Judge Akers. Although Rule 108(B) states that a request for extension of time for filing pleadings, motions, or other documents under Rules

103 through 105 shall be made to the presiding judge of the juvenile court, there is no authority for the proposition that the presiding judge lacks the authority to transfer a motion for an extension of time to another judge to rule on. See *In re: Victor P.*, 190 Ariz. 354, 355, 947 P.2d 928, 929 (App. 1997) (presiding juvenile court judge transferred motion to excuse untimely notice of appeal to juvenile court judge who heard the case).

¶9 For the foregoing reasons, we find no error in the juvenile court's decision denying Irene's request for extension of time to file the notice of appeal.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

DONN KESSLER, Presiding Judge

/s/

DANIEL A. BARKER, Judge