

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARY Y. FARLEY, <sup>1</sup>	§	
	§	No. 368, 2000
Respondent Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Family Court
	§	of the State of Delaware
DEPARTMENT OF SERVICES	§	in and for New Castle County
FOR CHILDREN, YOUTH AND	§	File No. 00-02-03TN
THEIR FAMILIES, DIVISION	§	
OF FAMILY SERVICES,	§	
	§	
Petitioner Below,	§	
Appellee.	§	

Submitted: December 5, 2000

Decided: December 15, 2000

Before **VEASEY**, Chief Justice, **WALSH, HOLLAND, BERGER** and **STEELE**, Justices, constituting the Court *en Banc*.

O R D E R

This 15<sup>th</sup> day of December, 2000, upon consideration of the Family Court's decision on remand and the supplemental submissions of the parties, it appears to the Court that:

1) Mary A. Farley filed an untimely notice of appeal from two Family Court orders terminating her parental rights in her three minor children. Farley's counsel claims not to have received copies of the Family Court orders, but the Family Court

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<sup>1</sup>A pseudonym assigned by this Court pursuant to Rule 7(d).

determined on remand that the orders were mailed out, and that Family Court personnel were not responsible for any confusion on the part of Farley's counsel.

2) The Department of Services for Children, Youth and their Families, Division of Family Services has renewed its motion to dismiss the appeal, arguing that the 30 day appeal period is jurisdictional and, since the late filing was not attributable to court personnel, the appeal period may not be waived or enlarged.<sup>2</sup>

3) For many years, it has been the practice in Family Court to appoint counsel for indigent parents in proceedings for the termination of parental rights. This practice arose following decisions of the United States Supreme Court and this Court holding that a parent's interest in his/her child is a fundamental one that "undeniably warrants deference and, absent a powerful countervailing interest, protection."<sup>3</sup> For similar reasons, this Court has promulgated a rule requiring counsel for the parent to advise the parent of his/her right to appeal; docket an appeal if the parent so desires; and prepare and file all documents relating to the

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<sup>2</sup> *Bey v. State*, Del. Supr., 402 A.2d 362, 363 (1979).

<sup>3</sup> *Matter of Carolyn S.S.*, Del. Supr., 498 A.2d 1095, 1097 (1984)(quoting *Lassiter v. Department of Social Services*, 452 U.S. 18, 27 (1981)(Internal citation omitted.).

appeal. Only after completing those tasks may the attorney be permitted to withdraw as counsel, upon good cause shown and in the interest of justice.<sup>4</sup>

4) In criminal appeals, this Court has held that an attorney's failure to file a timely appeal for a client who wanted to appeal constitutes ineffective assistance of counsel. In appropriate cases, this Court has provided a remedy for such a failure on the attorney's part by remanding the matter to the trial court for resentencing in order to provide a new 30 day appeal period.<sup>5</sup>

5) While a termination of parental rights proceeding does not require the level of due process mandated in a criminal proceeding, our Rules governing an attorney's obligation to perfect an appeal in either case are virtually identical.<sup>6</sup> We conclude, therefore, that a parallel remedy is appropriate in cases where a parent wishes to appeal a decision terminating parental rights, but the parent's attorney fails to file a timely appeal. This remedy is available only if the delay in filing an appeal has not prejudiced the appellees or the children who are the subject of the termination proceeding.

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<sup>4</sup>Supr.C.R. 26.1

<sup>5</sup> *Eley v. State*, Del. Supr., 2000 WL 275593.

<sup>6</sup> *Cf.* Supr.C.R. 26(a) and Supr.C.R. 26.1(a).

6) In this case, the untimely appeal was filed only five days after the expiration of the 30 day appeal period and it does not appear that there has been any substantial change in the children's circumstances, such as adoption. Accordingly, we conclude that a remand is appropriate for the entry of new orders terminating parental rights.

NOW, THEREFORE, IT IS ORDERED that this matter is REMANDED to the Family Court for the entry of new orders terminating the parental rights of Mary A. Farley. Jurisdiction is not retained.

BY THE COURT:

/s/ Carolyn Berger  
Justice