

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D20-1206

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J.R.B., father of N.W.B.,  
a minor child,

Appellant,

v.

DEPARTMENT OF CHILDREN AND  
FAMILIES,

Appellee.

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On appeal from the Circuit Court for Nassau County.  
James H. Daniel, Judge.

August 12, 2020

KELSEY, J.

In this dependency case, the minor child's father attempts to appeal three circuit court orders. We find that the appeal is untimely, and therefore we dismiss it. Because the procedural history is convoluted, we write to explain the dismissal.

The child's mother previously consented to the child's dependency, and DCF then pursued dependency as to the father. The circuit court referred the matter to a magistrate. This was improper—see *A.T.N. v. Fla. Dep't of Children & Family Servs.*, 70 So. 3d 634, 636 (Fla. 1st DCA 2011) (“A general magistrate cannot conduct an adjudicatory hearing under section 39.507, Florida

Statutes (2010).”)—but that is beside the point now. The father’s counsel at first objected to the magistrate’s presiding over an evidentiary hearing, but then acceded, saying, “It’s fine, Your Honor.” Objection to a magistrate’s jurisdiction can be waived, and that was a waiver. *See Goldfarb v. Agran*, 546 So. 2d 24, 25 n.1 (Fla. 3d DCA 1989) (recognizing a litigant can waive objection by “voluntarily participating in the hearing before the general master”); *Cox v. Cox*, 490 So. 2d 1051, 1052 (Fla. 4th DCA 1986) (holding failure to object constituted a waiver of magistrate’s exercise of jurisdiction); *see also* Fla. Fam. L. R. P. 12.490(b)(1) (providing that consent to magistrate’s jurisdiction “may be implied”).

The hearing proceeded before the magistrate and resulted in a report and recommendation that the child be found dependent as to the father. The circuit court rendered an order on November 15, 2019, approving, confirming, and adopting the magistrate’s report and recommendation as an order of the court, finding the child dependent as to the father. This circuit court order was a final and appealable order. *See Demming v. Demming*, 251 So. 3d 284, 286 (Fla. 1st DCA 2018) (holding circuit court’s order that “ratified, approved, and incorporated” magistrate’s report, and “adopted” magistrate’s recommendation, was final, appealable order); *see also Norris v. Norris*, 28 So. 3d 953, 955 (Fla. 2d DCA 2010) (holding circuit court order “specifically designating the report and recommendations as its own order” was an effective order of the court).

But the father did not appeal then. On November 12, 2019, after receiving the magistrate’s report and recommendation and before the circuit court adopted that as an order of the court, the father filed exceptions to the magistrate’s findings. It appears that the circuit court did not receive those exceptions before entering the final, appealable order on November 15, 2019. That turns out to be the pivotal date, because the rendition of a final, appealable order starts the appeal clock and places the burden on the losing party to act timely to preserve the right of appeal. Unless the appeal deadline was tolled, the father had to file his appeal by December 15, 2019, which could be extended only if the last day fell on a weekend or holiday.

Under the Florida Rules of Juvenile Procedure, the appeal deadline was not tolled. In a juvenile case, a party may move for rehearing within 10 days after rendition of an order. *See* Fla. R. Juv. P. 8.265(b)(1). Because of the time-sensitive nature of these juvenile cases, a motion for rehearing does not toll the time for appeal. Fla. R. Juv. P. 8.265(b)(3). Instead, the motion is deemed denied if the circuit court does not rule within 10 days. *Id.* The rule therefore allows 10 days for filing a motion, and 10 days for the court to rule on it or for it to be deemed denied, leaving 10 days in the appeal period in which to file a timely notice of appeal.

On November 19, 2019, the father filed what he titled as a motion to set aside the circuit court's November 15, 2019, order adopting the magistrate's report as an order of the court. For purposes of this analysis we will treat this motion as a motion for rehearing. The father pointed out that he had filed exceptions and the circuit court appeared to have overlooked them. The father's motion, filed four days after the circuit court's order rendered November 15, 2019, was timely under rule 8.265(b)(1). However, the circuit court did not rule within 10 days. So the father's motion, even if treated as a motion for rehearing, was deemed denied as of the tenth day, Friday, November 29, 2019. Because there was no tolling effect, any notice of appeal was due by 30 days after the rendition of the November 15, 2019, order. The last day fell on Sunday, December 15, 2019, making the notice of appeal due on Monday, December 16, 2019. None was filed.

In improperly filed extra-record materials, the father suggests that there was a flurry of communications between his counsel and the circuit court's judicial assistant, copied to DCF, about the overlooking of the father's exceptions. Even if that were properly before us, which it is not (and is hereby stricken along with the father's unauthorized "surresponse" to our order to show cause on jurisdiction), it would change nothing. The law still required the father to preserve his rights to challenge the order rendered November 15, 2019, either by securing a ruling within 10 days after he filed his motion for rehearing, or by timely filing a notice of appeal. That was his one chance to raise the issues he appears to want to raise now. But he did not timely appeal.

For reasons that are not apparent on this record, there was no further relevant activity until the circuit court issued an order on March 5, 2020, denying the father's November 19, 2019, motion to set aside the magistrate's order. The circuit court issued another order on March 11, 2020, rejecting the father's exceptions and reconfirming the finding of the juvenile's dependency as to the father. These two March orders are the second and third identified in the notice of appeal, and they addressed only the matters raised back in November of 2019 before the appeal deadline. The notice of appeal was filed April 3, 2020. Under other circumstances not subject to the Rules of Juvenile Procedure, the April notice of appeal would have been timely as to the two March orders, assuming them to be appealable at all. Here, however, the father's failure to appeal timely no later than December 16, 2019, ended his appellate prospects. This result is appropriate in light of the time-sensitive nature of dependency proceedings, as evidenced by the rule that explicitly reflects the lack of any tolling effect for motions for rehearing. Accordingly, this appeal is DISMISSED.

OSTERHAUS and JAY, JJ., concur.

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***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

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James Pratt O'Connor, Fernandina Beach, for Appellant.

Ward L. Metzger, Jacksonville, for Appellee Department of Children and Families; and Sara Elizabeth Goldfarb, Tallahassee, for Guardian ad Litem.