

Commonwealth of Kentucky
Court of Appeals

NO. 2022-CA-1212-ME

A.G.K.

APPELLANT

v. APPEAL FROM MCCRACKEN FAMILY COURT
HONORABLE BRANDI ROGERS, SPECIAL JUDGE
ACTION NO. 22-AD-00012

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; J.W.; M.K.;
AND L.L.W., A MINOR CHILD

APPELLEES

OPINION & ORDER
DISMISSING

** ** * * * * *

BEFORE: THOMPSON, CHIEF JUDGE; ECKERLE AND LAMBERT,
JUDGES.

ECKERLE, JUDGE: A.G.K. (Mother) appeals from findings and a judgment of the McCracken Family Court terminating her parental rights. Because Mother failed to file a timely notice of appeal, we must dismiss her appeal.

The relevant facts of this action are not in dispute. L.L.W. (Child) was born to Mother in November 2020. At the time of Child's birth, Mother named J.W. as father, and he signed an acknowledgement of paternity. However, Mother was married to M.K. at the times of the conception and birth of Child. Furthermore, he remained married to Mother at the time of the filing of the petition. Consequently, M.K. is presumed to be Child's legal father pursuant to KRS¹ 406.011.

The Cabinet filed a petition for dependency/neglect/abuse (DNA) when Child tested positive for methamphetamine at birth. Mother also tested positive for methamphetamine at that time. Both Mother and the legal father, M.K., have a history of substance abuse. The Family Court granted the petition and placed Child in the Cabinet's care. Child has been in foster care since that time.

Mother was partially compliant with the Cabinet's case plan, but M.K. had no contact with the Cabinet. Due to the lack of progress, the Cabinet filed the current petition to terminate Mother and M.K.'s parental rights on March 16, 2022. The Cabinet filed an amended petition naming the putative father, J.W., on March

¹ Kentucky Revised Statutes.

28, 2022. The Family Court appointed a Guardian *Ad Litem* for Child and counsel for Mother. M.K. and J.W were served by warning order attorney.

On August 5, 2022, Mother appeared before the Family Court to give her consent to a voluntary termination of her parental rights to Child. The Court placed Mother under oath and engaged in a colloquy to determine if her consent was freely and voluntarily given. Mother responded that her consent was voluntary, and that no one had forced her coerced her to give consent. On August 8, 2022, the Family Court entered its findings of fact and conclusions of law. The Court entered an order terminating Mother's parental rights to Child on the same day. The findings and order conform to the requirements of KRS 625.090.²

Thereafter, Mother contacted her appointed counsel and stated that she wished to revoke her verbal consent. Mother filed a motion to set aside the termination order on August 24, 2022. Following a hearing, the Family Court concluded that the motion was untimely. The Court also noted its prior finding that her consent was knowingly and voluntarily given. Consequently, the Court denied the motion. Mother now appeals.

Mother's appointed counsel has filed an *Anders* brief in compliance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App.

² The Court also entered separate findings and orders of termination as to M.K. and J.W. Those findings and orders are not the subject of this appeal.

2012). In *A.C.*, this Court adopted and applied the procedures identified in *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), to appeals from orders terminating parental rights where counsel cannot identify any non-frivolous grounds to appeal. *A.C.*, 362 S.W.3d at 364. Those procedures require counsel to engage in a thorough and good faith review of the record. *Id.* “[I]f counsel finds his [client’s] case to be wholly frivolous, after a conscientious examination of it, he should so advise the court and request permission to withdraw.” *Id.* (quoting *Anders*, 386 U.S. at 744, 87 S. Ct. at 1400).

Counsel complied with the requirements of *A.C.* and *Anders* by providing Mother with a copy of the brief and informing her of the right to file a *pro se* brief raising any issues she found meritorious. *Id.* at 371. Mother has not filed a *pro se* brief. Under *A.C.*, we agree with counsel that no grounds exist to disturb the Family Court’s order terminating parental rights. Consequently, we shall grant counsel’s motion to withdraw.

As noted above, the Family Court entered its findings and order terminating Mother’s parental rights on August 8, 2022. Mother did not file her motion until August 24, 2022. CR³ 59.05 requires that a motion to alter, amend, or

³ Kentucky Rules of Civil Procedure.

vacate a judgment “shall be served not later than 10 days after entry of the final judgment.” Hence, Mother’s motion was clearly untimely.

Furthermore, at the time Mother filed her notice of appeal, CR 73.02(1)(a) required that the notice of appeal be filed within 30 days from the entry of a final judgment.⁴ Without the properly filed notice of appeal, the appellate court lacks jurisdiction to consider the matter. *Cabinet for Health & Family Servs. v. H.C.*, 581 S.W.3d 580, 583 (Ky. 2019). As a result, a party’s failure to file a timely notice of appeal “shall result in a dismissal or denial.” CR 72.02(2).⁵

Here, Mother filed her notice of appeal on October 4, 2022, which was clearly more than 30 days after the entry of the findings and judgment terminating her parental rights. Her untimely CR 59.05 motion did not toll the time for filing an appeal. *See* CR 73.02(1)(e). Consequently, this Court lacks jurisdiction to consider the merits of her appeal.

Accordingly, we dismiss the above-style appeal as untimely, and we grant Mother’s counsel’s request to withdraw. IT IS FURTHER ORDERED that,

⁴ *See* Kentucky Rules of Appellate Procedure (RAP) 3(a)(1) (*eff.* Jan. 1, 2023), which likewise requires a notice of appeal to be filed within 30 days.

⁵ Although the RAP generally adopts a “substantial compliance” standard, RAP 2(A)(3) states that “[t]he failure of a party to file timely a notice of appeal, cross-appeal, or motion for discretionary review shall result in a dismissal or denial.” *See also* RAP 10(A) and *Mahl v. Mahl*, No. 2021-SC-0481-DG, 2023 WL 3113308, at *8 (Ky. Apr. 27, 2023) (finality endorsement granted May 18, 2023). Since this language is identical to the former CR 72.02(2), the timely filing of a notice of appeal remains a jurisdictional prerequisite to the validity of an appeal.

pursuant to *A.C. v. Cabinet for Health and Family Services, supra*, the motion to withdraw by appointed counsel, J.T. Skinner, is GRANTED.

ALL CONCUR.

ENTERED: 06/30/2023



JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

J.T. Skinner
Paducah, Kentucky

BRIEF FOR APPELLEE CABINET
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