

**NOT DESIGNATED FOR PUBLICATION**

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**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**NUMBER 2016 CJ 0173**

**STATE OF LOUISIANA**

**IN THE INTEREST OF J.F.B.**

**Judgment Rendered: JUN 03 2016**

**Appealed from the Juvenile Court,  
In and for the Parish of East Baton Rouge,  
State of Louisiana  
Docket Number 11879**

**Honorable Pamela Taylor Johnson, Judge Presiding**

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**BEFORE: WHIPPLE, C.J., WELCH, AND DRAKE, JJ.**

## **WHIPPLE, C.J.**

In this termination of parental rights proceeding, the State of Louisiana, Department of Children and Family Services, appeals from a judgment dismissing its petition to terminate parental rights. For the reasons that follow, we remand this matter to the juvenile court with instructions.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On May 29, 2015, the State of Louisiana, Department of Children and Family Services (“DCFS”), filed a petition for the termination of parental rights and certification for adoption of the minor child J.F.B. against K.B., the mother of J.F.B., and any and all unknown fathers to J.F.B.<sup>1</sup> The matter was tried before the juvenile court on September 14, 2015. At the conclusion of trial, the court granted DCFS’s petition to terminate the parental rights of any unknown fathers, but dismissed the petition requesting termination of K.B.’s parental rights, finding that DCFS failed to meet its burden of proof by clear and convincing evidence pursuant to LSA-Ch.C. art. 1035. However, the judgment at issue in this appeal was not signed until November 6, 2015, when the court signed a judgment dismissing DCFS’s petition to terminate K.B.’s parental rights of J.F.B.<sup>2</sup> On November 24, 2015, DCFS filed a motion for appeal of that judgment, which was subsequently granted.

### **DISCUSSION**

At the outset, we note that the timely filing of a motion for appeal is a condition precedent for an appellate court to properly obtain jurisdiction over an action. Dupuy v. Dupuy, 2000-2744 (La. App. 1<sup>st</sup> Cir. 3/28/01), 808 So. 2d 562, 565. Absent the timely filing of an appeal, or petition for judicial review of an

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<sup>1</sup>In order to protect the identity of the parties, we use the parties’ initials herein pursuant to Uniform Rules – Courts of Appeal, Rules 5-1 and 5-2.

<sup>2</sup>A separate judgment granting DCFS’s petition to terminate the parental rights of any and all unknown fathers of J.F.B. was also signed on November 6, 2015.

administrative ruling, the courts of this state lack jurisdiction to review that ruling. Robinson v. City of Baton Rouge, 566 So. 2d 415, 418 (La. App. 1<sup>st</sup> Cir. 1990). An appellate court can dismiss an appeal at any time for lack of jurisdiction if it is untimely. LSA-C.C.P. art. 2162. Moreover, it is well settled that appeals not timely filed in juvenile matters shall be dismissed. State ex. rel. C.P., 2000-2703 (La. 1/17/01), 777 So. 2d 470, 471.

Louisiana Children's Code article 332(A) addresses the time period for such appeals and provides that, absent a motion for new trial, "appeals shall be taken within fifteen days from the **mailing** of the notice of the judgment." (Emphasis added.) Moreover, Louisiana Children's Code articles 104 and 332(B) provide that notice of judgment shall be as provided in LSA-C.C.P. art. 1913. Louisiana Code of Civil Procedure article 1913(A) requires that "notice of the signing of a final judgment ... shall be mailed by the clerk of court." See State ex. rel. C.P., 777 So. 2d at 472. Thus, the appeal delays begin to run from the date the notice of judgment is mailed. See LSA-C.C.P. art. 1913; LSA-Ch.C. arts. 104 and 332(B); see also State in the Interest of L.S., 2012-0880 (La. App. 1<sup>st</sup> Cir. 11/2/12) (unpublished opinion), writ denied, 2012-2574 (La. 1/18/13), 107 So. 3d 635; State in the Interest of S.K., 2015-457 (La. App. 5<sup>th</sup> Cir. 7/29/15), \_\_\_ So. 3d \_\_\_, \_\_\_.

In the instant case, the record clearly reflects that the judgment denying the termination of K.B.'s parental rights was signed on November 6, 2015. Following the judgment, the record contains six documents entitled, "Notice of Service," variously addressed to "[K.B.]," "Leslie L. Lacy" (counsel for J.F.B.), "Jane Arieux Thomas" (counsel for K.B.), "CASA c/o Susan Murrell," "Terrylynn Harris, Foster Care," and "Laura G. Slocum" (counsel for DCFS). The "Notice of Service" documents state that judgments in this matter were filed in the juvenile court for East Baton Rouge Parish, that certified copies are attached thereto, and that "This Notice was issued by the Clerk of Court for East Baton Rouge Parish on

06-NOV-2015.” The notice is signed by a deputy clerk and stamped with the seal of the Clerk of Court for East Baton Rouge Parish. However, these notice documents are silent as to whether they were served by mailing same to the parties. Instead, each notice contains a section entitled, “Service Information” at the bottom.

Although each notice states that it was “issued” on November 6, 2015, as set forth above, LSA-C.C.P. art. 1913(A) provides that the notice of the signing of a final judgment “**shall be mailed** by the clerk of court to the counsel of record for each party, and to each party not represented by counsel.” (Emphasis added.) Louisiana Code of Civil Procedure article 1913(D) further provides that “[t]he clerk shall file a certificate in the record showing the date on which, and the counsel and parties to whom, notice of the signing of the judgment was mailed.” On the record before us, although the notices were apparently delivered to the sheriff’s office for service, there is nothing to show that a notice of judgment was mailed to DCFS or any of the parties or counsel of record herein or if such mailing occurred prior to the sheriff’s service. Absent any indication in the record as to whether a notice of judgment was mailed, and if so, when it was mailed to DCFS, we are unable to determine whether the appeal was timely or if the delays have begun to run herein. See State ex. rel. C.P., 777 So. 2d at 471-472; see also State in the Interest of L.S., 2012-0880 at p. 1.

If, in fact, the notice was mailed to DCFS on November 6, 2015, the time for filing an appeal began to run on that date, and DCFS’s motion for appeal filed on November 24, 2015, or eighteen days after the mailing of a notice of judgment would be untimely. See State ex. rel. C.P., 777 So. 2d at 472. And, although DCFS asserts in the “Statement of Jurisdiction” in its brief that it “received a copy of the Judgment on November 12, 2015 and subsequently filed its Motion for

Appeal on November 24, 2015,” the date of such service, delivery, or receipt of the notice of judgment is not determinative. State ex. rel. C.P., 777 So. 2d at 472.

Accordingly, considering the lack of clarity in the record, and the seeming internal inconsistency of the clerk’s certification, we are unable to determine whether the appeal was timely. Therefore, we are constrained to remand this matter to the juvenile court with instructions that it conduct an evidentiary hearing to determine what date, if any, the notice of judgment was mailed to DCFS herein.

### **CONCLUSION**

For the above and foregoing reasons, this matter is hereby remanded to the juvenile court, with instructions that it conduct an evidentiary hearing on an expedited basis to determine what date, if any, the notice of judgment was mailed to DCFS. The juvenile court is also hereby ordered to file a written copy of its ruling with this court within ten days of its ruling. Costs in this matter shall await final disposition.

**REMANDED, WITH ORDER AND INSTRUCTIONS.**