

[Cite as *In re Z.M.*, 2015-Ohio-1436.]

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF SUMMIT    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

IN RE: Z.M.

C.A. No.       27463

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     DN 12-07-0509

DECISION AND JOURNAL ENTRY

Dated: April 15, 2015

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WHITMORE, Judge.

{¶1} Appellant, Joy M. (“Mother”), attempts to appeal from a judgment of the Summit County Court of Common Pleas, Juvenile Division, that placed her minor child in the legal custody of his paternal grandmother. This Court dismisses the appeal for lack of jurisdiction.

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{¶2} Because this Court will not reach the merits of this appeal, it will recite only the basic procedural facts. Mother is the natural mother of Z.M., born July 14, 2003. The child’s father is deceased.

{¶3} On July 30, 2012, Z.M. was removed from Mother’s custody, later adjudicated a dependent child, and placed in the temporary custody of Summit County Children Services Board (“CSB”). Shortly after his removal from Mother’s home, Z.M. was placed with his paternal grandmother. CSB later moved to have the disposition of temporary custody modified to legal custody to the grandmother.

{¶4} Following a hearing, the magistrate decided that granting legal custody to the grandmother would be in the best interest of Z.M. Mother filed timely objections to the magistrate's decision, which were overruled by the trial court. On June 26, 2014, the trial court entered judgment that placed Z.M. in the legal custody of the grandmother.

{¶5} Through a letter dated Wednesday, July 30, 2014, which was filed with the trial court on July 31, 2014, Mother requested counsel to represent her on appeal. The trial court appointed counsel on July 31, who filed a notice of appeal the same day.

{¶6} This Court initially questions its jurisdiction to hear this appeal, as an untimely notice of appeal does not invoke this Court's jurisdiction. *See Transamerica Ins. Co. v. Nolan*, 72 Ohio St.3d 320 (1995), syllabus. App.R. 4(A) requires a notice of appeal to be filed within thirty days of the order appealed. Thirty days after the trial court's June 26, 2014 judgment was July 26, a Saturday. Consequently, the notice of appeal was required to be filed no later than Monday, July 28, 2014. Mother's notice of appeal was not filed until July 31, 2014, three days after the 30-day appeal period ended.

{¶7} This Court asked Mother to brief the issue of whether she had been properly served with the judgment, as the time for filing a civil appeal may be extended if the trial court fails to comply with the service requirements of Civ.R. 58. Civ.R. 58(B) provides that "[w]ithin three days of entering the judgment upon the journal, the clerk shall serve the parties in a manner prescribed by Civ. R. 5(B) and note the service in the appearance docket." If the clerk fails to complete service within the three-day period, App.R. 4(A)(3) provides that "the 30-day periods referenced in App.R. 4(A)(1) and 4(A)(2) begin to run on the date when the clerk actually completes service." Appellant does not dispute that her trial counsel was served with the

judgment within the three-day period set forth in Civ. R. 58(B) and that the service was properly noted on the docket, but argues that she herself was not served with the judgment.

{¶8} Under Civ.R. 5(B), service is perfected upon a party represented by counsel by service upon the attorney unless service upon the party is ordered by the court. *In re T.B.*, 9th Dist. Summit No. 23990, 2008-Ohio-2026. Here, service was properly made by timely serving appellant's attorney, and, therefore, the time for appeal was not extended under App.R. 4(A)(3). As a result, the notice of appeal is untimely, and this Court is without jurisdiction to consider the attempted appeal. Consequently, this Court dismisses the appeal.

Appeal dismissed.

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Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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BETH WHITMORE  
FOR THE COURT

HENSAL, P. J.  
CONCURS.

CARR, J.  
CONCURRING.

{¶9} I concur in the majority opinion but must express my concern about the limited access to appellate review available to parents in juvenile abuse, neglect, and dependency cases. Ohio courts have long recognized that parental rights are fundamental and, for that reason, must be afforded due process through appropriate procedural protections. *See, e.g., In re A.K.*, 9th Dist. Summit No. 26291, 2012-Ohio-4430, ¶ 23. In certain aspects, these cases are treated as quasi-criminal, as the parents are afforded a right to counsel and certain due process rights, including a right to counsel on appeal. A parent loses her right to appeal if she does not do so within 30 days, however, and she has no collateral avenues available to seek redress for any ineffective assistance of trial or appellate counsel.

{¶10} I recognize that this Court is bound by the Ohio Supreme Court's decision in *In re B.C.*, 141 Ohio St.3d 55, 2014-Ohio-4558, that delayed appeals are not permitted in parental rights cases under the explicit language of App.R. 5(A) or principles of due process. I must emphasize my regret, however, that the Court accepted *In re B.C.* to decide this significant legal issue, because the facts of that case did not get to the heart of the due process issue. Specifically, although the parent in *In re B.C.* attempted to argue ineffective assistance of trial counsel, she did not assert that her counsel was to blame for her failure to perfect a timely appeal. In other words, she did not comply with the requirement of App.R. 5(A)(2) that she "set forth the reasons for the failure of the appellant to perfect an appeal as of right." Her only justification was that, more than eight months after the permanent custody judgment and after her child was adopted, she changed her mind and wanted to appeal. Under those specific facts, even if Ohio courts were to recognize delayed appeals in parental rights cases, an appellate court would not likely exercise its discretion to allow a delayed appeal in that case.

{¶11} In sharp contrast to the mother's lengthy and unjustified delay in attempting to appeal in *In re B.C.*, this Court has seen a growing number of untimely appeals in parental rights cases that are filed a mere day or two late (three days in this case) and under circumstances to suggest that trial counsel or the court might have contributed to the delay. Nevertheless, given the holding of *In re B.C.*, regardless of any justification the mother in this case may have had for filing her notice of appeal three days late, no procedure is available to her to invoke this Court's jurisdiction.

APPEARANCES:

ANGELA M. KILLE, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.