

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah, in the interest)	MEMORANDUM DECISION
of J.O. and L.R., persons)	(Not For Official Publication)
under eighteen years of age.)	
_____)	Case No. 20070315-CA
L.R. and L.R.,)	
Appellants,)	F I L E D
v.)	(June 7, 2007)
State of Utah,)	2007 UT App 197
Appellee.)	

Seventh District Juvenile, Price Department, 151996
The Honorable Mary L. Manley

Attorneys: Dusten L. Heugly and Sonny J. Olsen, Price, for
Appellants
Mark L. Shurtleff and John M. Peterson, Salt Lake
City, for Appellee

Before Judges Bench, McHugh, and Thorne.

PER CURIAM:

L.R. (Father) and L.R. (Mother) appeal an order terminating their parental rights. Because their notice of appeal was not timely, we lack jurisdiction to consider the appeal on the merits.

Following the termination trial, the State prepared proposed findings of fact, conclusions of law, and an order and served them on counsel for Mother and Father on January 26, 2007. The certificate of service notified counsel that the document would be submitted to the court for signature within five days. No objections were filed. The court signed the findings of fact, conclusions of law, and order terminating parental rights on

February 2, 2007, and filed the document with the clerk on February 5, 2007. Accordingly, the time for appeal commenced to run with entry of the final judgment on February 5. See Utah R. Civ. P. 58A(b) & (c) (providing that a judgment is final for all purposes, except creation of a lien on real property, when it is signed by the judge and filed with the clerk).

Rule 52(a) of the Utah Rules of Appellate Procedure requires a notice of appeal to be "filed within 15 days after the entry of the order appealed from." Utah R. Civ. P. 52(a). Accordingly, the time for filing a notice of appeal in this case expired on February 20, 2007. "The juvenile court, upon a showing of good cause or excusable neglect, may extend the time for filing a notice of appeal upon motion filed prior to the expiration of time prescribed by Rule 52." Utah R. App. P. 59(a). Mother and Father filed their notice of appeal on April 12, 2007, along with the affidavit of counsel requesting an extension of the time for appeal. Counsel stated that he contacted the juvenile court on or about March 15, 2007, and learned that the final judgment was entered on February 5. Counsel also stated that no notice of entry of the final judgment appears in the record. However, rule 58A(d) of the Utah Rules of Civil Procedure provides that "[t]he time for filing a notice of appeal is not affected by the requirement" to provide a notice of entry. Utah R. Civ. P. 58A(d). Although the proposed final order advised counsel that it would be submitted for signature within five days, counsel did not call the juvenile court until after the expiration of the appeal time.

Counsel's affidavit was not timely as a motion to extend the appeal time under rule 59 of the Utah Rules of Appellate Procedure. The juvenile court transmitted the notice of appeal and accompanying affidavit of counsel to this court without specifically ruling on counsel's request for an extension. "The time for filing a child welfare appeal may be extended only by [a] motion filed before the expiration of the original fifteen-day filing time." In re A.M., 2005 UT App 2, ¶4, 106 P.3d 193 (per curiam) (citing Utah R. App. P. 59(a)). These time frames cannot be suspended or extended. See id. (citing Utah R. App. P. 2). Because both the notice of appeal and counsel's affidavit were filed after the time for appeal had expired, the juvenile

court lacked jurisdiction to implicitly grant an extension.¹ See id.

The appeal is dismissed as untimely.

Russell W. Bench,
Presiding Judge

Carolyn B. McHugh, Judge

William A. Thorne Jr., Judge

¹Although the State suggests that Mother and Father could have filed a motion to extend under rule 4(e) of the Utah Rules of Appellate Procedure, this court rejected that position in In re J.J.L., 2005 UT App 322, ¶4, 119 P.3d 315 (per curiam). Instead, "extensions of the time for appeal in child welfare cases are specifically governed by rule 59(a), which requires a motion for an extension of the appeal time to be 'filed prior to the expiration of [the] time prescribed by [r]ule 52.'" Id. (citation omitted).