

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah, in the	)	MEMORANDUM DECISION
interest of M.S., a person	)	(Not For Official Publication)
under eighteen years of age.	)	
_____	)	Case No. 20060645-CA
	)	
C.S.,	)	F I L E D
	)	(October 13, 2006)
Appellant,	)	
	)	2006 UT App 412
v.	)	
	)	
State of Utah,	)	
	)	
Appellee.	)	

-----

Third District Juvenile, Salt Lake Department, 447532  
The Honorable Robert S. Yeates

Attorneys: Jeffrey J. Noland, Salt Lake City, for Appellant  
Mark Shurtleff and John M. Peterson, Salt Lake City,  
for Appellee  
Martha Pierce and Tracy S. Mills, Salt Lake City,  
Guardians Ad Litem

-----

Before Judges Bench, Greenwood, and Thorne.

PER CURIAM:

C.S. (Mother) appeals an order denying her petition to restore custody of M.S. to her, continuing temporary custody with a family member residing in California, and setting the matter for further review. We dismiss the appeal for lack of jurisdiction. See In re D.E., 2006 UT App 391 (per curiam).

A notice of appeal in a child welfare case must be filed in the juvenile court within fifteen days of entry of the order appealed. See Utah R. App. P. 52(a). The notice of appeal "must be signed by the appellant's counsel and by appellant." Utah R. App. P. 53(b). If counsel files a notice of appeal without the appellant's signature, counsel "shall contemporaneously file, with the clerk of the juvenile court, a certification that substantially complies with the Counsel's Certification of

Diligent Search form that accompanies these rules." Id. "Under those circumstances, counsel may then file an amended notice of appeal adding appellant's signature within fifteen days of the filing of the initial notice of appeal." In re D.E., 2006 UT App 391 at ¶3; see also In re J.J.L., 2005 UT App 322, ¶5, 119 P.3d 315 (per curiam) (stating that where the certification is not filed, the extension is not available under rule 53(b)).

On July 14, 2006, counsel for Mother filed a notice of appeal that was not signed by Mother. In a letter dated July 17, 2006, this court advised counsel that the notice of appeal was not signed by Mother as the appellant or accompanied by the required certification of diligent search. On July 21, 2006, counsel faxed a second notice of appeal to this court, which was signed by counsel and by Mother. That notice of appeal does not bear the juvenile court's filing stamp nor is it included in the juvenile court record. Counsel did not file a certification of diligent search with the initial unsigned notice of appeal, nor did he file the certification when notified of the deficiency by this court. "Absent the certification of diligent search required by rule 53(b), the extension to file a complete notice of appeal . . . is not available." In re D.E., 2006 UT App 391 at ¶4. Accordingly, the notice of appeal signed by counsel and Mother was untimely, and the appeal must be dismissed. See Serrato v. Utah Transit Auth., 2000 UT App 299, ¶7, 13 P.3d 616.

The State also asserts that the order being appealed was not final and appealable under In re A.F., 2006 UT App 200, 138 P.3d 65. We agree that the order Mother seeks to appeal was not final and appealable because it did not determine her parental status and it contemplated further action. See 2006 UT App 200 at ¶10. However, our dismissal based upon an untimely notice of appeal makes it unnecessary to rely on this alternative ground.

We dismiss the appeal for lack of jurisdiction.

---

Russell W. Bench,  
Presiding Judge

---

Pamela T. Greenwood,  
Associate Presiding Judge

---

William A. Thorne Jr., Judge