Circuit Court for Montgomery County, Juvenile Division
Case No. C-15-JV-22-000045

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 225

September Term, 2022

IN THE MATTER OF D.R.

Nazarian,
Zic,
Ripken,

JJ.

Opinion by Nazarian, J.

Filed: September 28, 2022

Ms. B ("Mother") and Mr. B ("Father") are the parents of D.R. ("D"), who is now fourteen years old. Mother, Father, and D speak only Spanish. After conducting a family assessment prompted by a referral and placing D in shelter care, the Montgomery County Department of Health and Human Services (the "Department") filed a child in need of assistance ("CINA") petition and sought temporary custody of D for continued shelter care placement. In each of a series of hearings held in February 2022 and in a written motion filed with the court on February 14, 2022, Mother, Father, and D asked the court to provide Spanish written translation of all orders. They argued that the court's failure to provide written translations was fundamentally unfair and failed to satisfy the requirements of Maryland Code (1984, 2021 Repl. Vol.), § 10-1103 of the State Government Article ("SG") and Maryland Rule 11-112.

In a written order issued on March 8, 2022, the circuit court denied the motion for written translations on the ground that Rule 11-112 doesn't require written translations as the exclusive means of compliance and can be satisfied by access to an oral translation. Mother, Father, and D noted appeals from that order on April 5, April 8, and May 3, 2022, respectively. The Department moved to dismiss all three appeals on the ground that the order is not immediately appealable, and to dismiss D's appeal on the additional ground that it is untimely. We agree and grant the Department's motion to dismiss.

I. BACKGROUND

D was born in El Salvador and moved to the United States in May 2021 to join Mother, Father, and their younger siblings. After receiving a referral about then-thirteen-

year-old D's behaviors at home and at school in December 2021, the Department began an assessment of the family. During interviews of Mother and D, both indicated that Father was abusing alcohol, acting violently in the family home, and had on at least one occasion touched D sexually. The Department negotiated a safety plan with Mother in which she agreed that Father would no longer live in the home or have contact with any of the children.

On February 9, 2022, after discovering that Father had been in contact with the children in violation of the safety plan, the Department placed D in shelter care. The next day, the Department filed a CINA petition for D in the circuit court, requesting temporary custody of D for continued shelter care placement.

The court held several hearings over the course of February 2022 and an interpreter was present at all of them. The first shelter care hearing took place on February 10, 2022, then continued until February 14 to give Father time to obtain an attorney. Before continuing the hearing, the court articulated the substance of the Interim Shelter Care and Limited Guardianship Orders it would issue later that day. Those orders continued the Department's custody of D for placement in shelter care until the February 14 hearing.

Mother also requested Spanish written translations of these orders under Rule 11-112 at the February 10 hearing.[1] The court denied Mother's request orally, ruling that

[1] Rule 11-112 provides:

> Whenever the court or a unit of the State or local government has reason to believe that an individual required to be served with a summons, subpoena, notice of hearing or court conference, or other document that requires a decision, action,

written translation is not required by the Rule, but encouraged Mother to file a motion for reconsideration if she so desired.

On February 14, 2022, Mother filed a written Motion for Written Translation of Court Orders. She asked that the court provide Spanish written translations of all court orders in this case, arguing that SG § 10-1103,[2] Rule 11-112, and fairness require the court

> or response by the individual, by reason of unfamiliarity with the English language, may be unable to read and understand the document, the unit shall (1) serve the document in English and in a language that the court or unit reasonably believes the individual can understand, or (2) as an attachment to the English version of the document, inform the individual in a language the court or unit reasonably believes the individual can understand that, if the individual, due to unfamiliarity with the English language, is unable to read and understand the document, upon request (A) a copy of the document in a language the individual understands will be made available, or (B) an individual fluent in the language the served individual understands will be made available to translate the document.

[2] SG § 10-1103 provides, in pertinent part:

> (a) In general—Each State department, agency, or program listed or identified under subsection (c) of this section shall take reasonable steps to provide equal access to public services for individuals with limited English proficiency.
>
> (b) Reasonable steps—Reasonable steps to provide equal access to public services include:
>
> * * *
>
> (2)(i) the translation of vital documents ordinarily provided to the public into any language spoken by any limited English proficient population that constitutes 3% of the overall population within the geographic area served by a local office of a State program as measured by the United States Census . . . .

Maryland courts are not listed under subsection (c) of this section.

to provide orders in written translated form. The shelter care hearing went forward that day, and the court decided again to continue the Department's custody of D for placement in shelter care. At the hearing, Mother also requested an immediate ruling on her motion for written translation, and Father joined that motion. The court declined to rule on the motion at that time and did not provide Spanish written translations of the Shelter Order or the Order for Dependency Mediation that it entered on February 16 and 17, 2022, respectively.

On February 17, 2022, the parties participated in mediation and agreed to a disposition in which D would be declared a CINA, D would return to Mother under an order of protective supervision, and the family would comply with a set of directives set forth in the CINA Petition. That same day, the court held a hearing at which it accepted the parties' agreement, found D to be a CINA, returned D to Mother's custody under an order of protective supervision, and ordered the parties to comply with the agreed recommendations. Mother once again raised the issue of Spanish translation of court orders and referenced her pending motion. Father adopted Mother's argument and motion, counsel for D agreed to the motion, and the Department waived its right to file a written reply to the motion.[3] When Mother asked the court to rule on the motion as part of the CINA disposition so that she could appeal the issue, the court responded that it would prefer to take time to consider the motion and issue a written opinion, and, in the interest

[3] The Department also offered no oral argument opposing the contention that Rule 11-112 requires Spanish written translation of the court orders.

of issuing the CINA order promptly, would issue the CINA disposition order and an order on the motion separately. Mother's counsel agreed to this sequencing:

> [COUNSEL FOR MOTHER]: . . . [W]e have a pending motion, which is agreed to by all parties, which is that all of the court orders in this matter going forward will be translated into Spanish by the Court . . . in written form . . . .
>
> * * *
>
> THE COURT: Here's the problem. I don't believe that the Court rule requires the Court to provide written translations of court orders, and so, I am not prepared to bind the court to that because as a practical matter our interpreters that work here, that is not within their job description. . . .
>
> [COUNSEL FOR MOTHER]: Well, Your Honor, I'm just asking you to rule on my motion, and then we have an agreement as to everything else, and I can just take an appeal of that order.
>
> * * *
>
> THE COURT: Okay, I am not going to rule on that today.
>
> * * *
>
> So, I am just trying to think through the mechanics of [Mother's] motion, and ruling on it, and here are my concerns. I would like to get you this order quickly, and I would also like to be thoughtful about [Mother's] motion, and because I suspect that this is an issue that is going to go up on appeal, [counsel for Mother] has already indicated that, I think a written opinion is appropriate, and I fear that it's going to take me longer to write a written opinion, than to get on an order in a day. So, what I can do is give you . . . the order in English, and then rule on the motion separately . . . . [A]nd once I issue a written opinion you may go one way or the other, is that acceptable?
>
> [COUNSEL FOR MOTHER]: Yes, Your Honor . . . .

On February 23, 2022, the court entered the CINA disposition order, which tracked the agreement discussed in the February 17 hearing. Nobody appealed from that order.

Nearly two weeks later, in a written order entered on March 8, 2022, the court denied the motion for written translation. The court ruled that Rule 11-112 did not require the court to provide written translations "as the *exclusive* means of compliance," and that notice of and access to oral translation satisfied the Rule. Mother and Father noted appeals from the translation order on April 5 and April 8, 2022, respectively. D noted an appeal of the translation order on May 3, 2022, fifty-six days after the order was entered.

II. DISCUSSION

The parties raise three categories of questions on appeal:[4] *first*, whether D's appeal

[4] Mother phrased the Questions Presented in her brief as follows:

> 1. Did the court commit error when it refused to provide translated copies of the requested documents when those documents were ones within the purview of Maryland Rule 11-112?
> 2. Did the court err when it refused to provide translated copies of the requested documents and instead relied on a burdensome procedure for sight-translation in violation of the spirit of the rule?
> 3. Did the court's interpretation of the rule's exception to the requirement to provide translated documents and the procedure implemented by the court to comply with the rule violate [Mother's] right to due process of law?

Father phrased his Questions Presented as follows:

> 1. Did the juvenile court err when it refused, under Maryland Rule 11-112, [Father]'s request for a translated copy of the court's orders in Spanish, where the orders controlled the conduct of [Father] related to his fundamental right to parent his child, where [Father] cannot read and understand the court's orders due to his limited English proficiency, and where he does read and understand Spanish, a language spoken by more than 3% of the population?
> 2. Did the juvenile court violate [Father]'s right to due process

may be heard despite its untimeliness; *second*, whether the March 8, 2022 translation order is an appealable interlocutory order; and *third*, whether Rule 11-112 requires Spanish

when it refused his request for a translated copy of the court's orders in Spanish, where the orders controlled the conduct of [Father] related to his fundamental right to raise his child, where he cannot read and understand the court's orders due to his limited English proficiency, and where he does read and understand Spanish, a language spoken by more than 3% of the population?

D phrased their Questions Presented as follows:

I. Did the circuit court fail to meaningfully comply with Maryland Rule 11-112 when it made a court order essential to the safety of D.R. available in Spanish to Spanish-speaking parties, including D.R., only by an oral translation delivered by phone?

II. Did the circuit court fail to adhere to Maryland language access law when it made a court order essential to the safety of D.R. available in Spanish to Spanish-speaking parties, including D.R., only by an oral translation delivered by phone?

III. Did the circuit court fail to adhere to federal language access law when it made a court order essential to the safety of D.R. available in Spanish to Spanish-speaking parties, including D.R., only by an oral translation delivered by phone?

The Department phrased its Questions Presented as follows:

1. Should the appeal be dismissed as not allowed by law?

2. If this Court does not dismiss this appeal, did the juvenile court correctly apply Rule 11-112?

3. Did the juvenile court proceedings afford Mother and Father procedural due process in a proceeding where they agreed to the result and do not challenge that result?

written translation of the orders in this case. Unfortunately, D's appeal is untimely, and the translation order is not an appealable collateral order, so we must dismiss the appeal.

A. D's Appeal Is Untimely.

A notice of appeal must be filed within thirty days of entry of the order being appealed. Md. Rule 8-202(a). D filed their notice of appeal in the circuit court on May 3, 2022, fifty-six days after the court entered the March 8, 2022 translation order. "[O]n motion or on the court's own initiative," we must dismiss an appeal when "the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202." Md. Rule 8-602(b)(2). D's appeal is untimely, and we grant the Department's motion to dismiss on that ground.

B. The Translation Order Is Neither A Final Order Nor An Appealable Interlocutory Order.

This leaves Mother's and Father's appeals of the translation order. A party's right to appeal an order of a circuit court is defined by statute. *In re C.E.*, 456 Md. 209, 220 (2017). Under Maryland Code (1974, 2002 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article, appeals generally may be taken only from a final judgment of the trial court. This rule "aims to 'promote judicial economy and efficiency' by preventing piecemeal appeals after every order or decision by a trial court." *In re C.E.*, 456 Md. at 221 (*quoting Sigma Reprod. Health Ctr. v. State*, 297 Md. 660, 665 (1983)).

A final judgment is one that is "'so final as to determine and conclude rights involved, or deny the appellant means of further prosecuting or defending his rights and interests in the subject matter of the proceeding.'" *Peat, Marwick, Mitchell & Co. v. L.A.*

Rams Football Co., 284 Md. 86, 91 (1978) (*quoting U.S. Fire Ins. Co. v. Schwartz*, 280 Md. 518, 521 (1977), *overruled on other grounds by Dep't of Pub. Safety & Corr. Servs. v. LeVan*, 288 Md. 533 (1980)). "In considering whether a particular court order or ruling constitutes an appealable judgment, we assess whether any further order was to be issued or whether any further action was to be taken in the case." *In re Samone H.*, 385 Md. 282, 298 (2005) (*citing Rohrbeck v. Rohrbeck*, 318 Md. 28, 41–42 (1989)). In contrast, an order that's not a final judgment is an interlocutory order. *Id.* Interlocutory orders are not appealable unless they fall within one of three exceptions to the final judgment rule: "[(1)] appeals from interlocutory orders specifically allowed by statute; [(2)] immediate appeals permitted under Maryland Rule 2-602; and [(3)] appeals from interlocutory rulings allowed under the common law collateral order doctrine." *Salvagno v. Frew*, 388 Md. 605, 615 (2005). None of the parties contend that the translation order is a final order or that it falls under the first or second exceptions to the final judgment rule. Its appealability here depends entirely on whether the order qualifies under the collateral order doctrine.

It doesn't. To be appealable under the collateral order doctrine, an order must satisfy four requirements: "(1) it must conclusively determine the disputed question; (2) it must resolve an important issue; (3) it must be completely separate from the merits of the action; and (4) it must be effectively unreviewable on appeal from a final judgment." *In re Samone H.*, 385 Md. at 316 n.13 (citations omitted). Each of the four requirements must be satisfied for this exception to apply. *In re Foley*, 373 Md. 627, 633–34 (2003) (*citing In re Franklin P.*, 366 Md. 306, 327 (2001)). "Furthermore, in Maryland the four requirements of the

collateral order doctrine are very strictly applied, and appeals under the doctrine may be entertained only in extraordinary circumstances." *Id.* at 634 (citations omitted).

Assuming without deciding that the translation order satisfies the first three requirements of the collateral order doctrine—it indisputably decides an important question that's separate from the merits, although all three appellants suggested that written translation was critical to their ability to comply with the CINA disposition order—the order nevertheless falls outside the scope of the doctrine because it fails at the fourth step. The court's decision to deny written Spanish translation of court orders could have been raised and considered on appeal of an appealable order in this case, such as the CINA disposition order or the earlier shelter care order. And a future decision not to order written translation will be reviewable in connection with a future appealable order (if, of course, the court declines to order a written translation at that point).

There can be many appealable orders issued throughout the life of a CINA case, including interlocutory ones. In particular, an interlocutory order that "depriv[es] a parent, grandparent, or natural guardian of the care and custody of his child, or chang[es] the terms of such an order" is appealable, CJP § 12-303(3)(x), including orders that establish or amend the terms of a permanency plan or custody. *See, e.g.*, *In re Damon M.*, 362 Md. 429, 438 (2001) (order amending permanency plan is appealable); *In re Karl H.*, 394 Md. 402, 430–31 (2006) (order establishing permanency plan is appealable); *In re Joseph N.*, 407 Md. 278, 292 (2009) (order changing terms of custody is appealable). And a court's denial of a request for "beneficial service[s]" is appealable under CJP § 12-303(3)(x) where the

denial arises in connection with an order that establishes or amends the terms of care and custody. *See, e.g.*, *In re C.E.*, 456 Md. at 224 (holding that order denying parent's request for continuation of reunification services was not an appealable interlocutory order under CJP § 12-303(3)(x) because it was denied in connection with a permanency plan order that did not change the terms of the existing permanency plan); *In re Samone H.*, 385 Md. at 315–16 (same, but beneficial service requested was a "bonding" evaluation rather than reunification services). In *Samone H.*, for example, the trial court had denied a mother's request for a bonding evaluation during a permanency plan review hearing, and after the court decided to maintain the existing permanency plan, the mother appealed. *Id.* In dismissing the appeal for lack of jurisdiction, the Court of Appeals noted that the trial court's denial of the evaluation would have been appealable had it been appealed as part of an order that changed rather than maintained the existing permanency plan:

> [T]he denial of the bonding study would only be appealable as an interlocutory order under Section 12–303(x) if it deprived [Mother] of her right to care and custody of the children or changed the terms of her parental rights. . . . [Mother's] rights would have been implicated had she made the motion for bonding study and appealed its denial when the court changed the permanency plan . . . but not when the judge continued the plan and increased visitation.

Id.

Unlike the courts in *Samone H.* and *C.E.*, the trial court here *did* issue an order that established new terms for D's care and custody: the CINA disposition order. And because the parties' request for Spanish written translation was denied in connection with that order, the denial of their motion for written Spanish translation *could* have been raised in an

appeal from that order. But that's not the order before us—understandably, since the CINA disposition order embodied the terms of an agreed disposition rather than a decision following a contested hearing.

As a result, the order before us in this appeal—the only order falling within the thirty days preceding Mother's and Father's notices of appeal—is the translation order. Again, everyone agrees that it's not appealable on its own under CJP § 12-303(3)(x), and the fact that the denial of the parties' translation motion could have been reviewed in an appeal of the CINA disposition order is precisely why the translation order can't satisfy the fourth prong of the collateral order doctrine. And since there is no other basis on which we might have jurisdiction to hear their appeals, we must dismiss them.

We recognize that the procedural evolution of this case created difficulty around how (or even whether) the translation could be postured properly for appeal. The CINA disposition was agreed, and thus normally wouldn't be the subject of an appeal itself. The agreement could perhaps have been structured to preserve the Spanish translation issue for appeal, and we can see from the record that the parties sought initially to keep the CINA disposition and the translation issue together. Mother asked the trial court specifically to rule promptly on the motion for Spanish written translation at the CINA disposition hearing, noting that the parties had an agreement as to "everything else":

> [COUNSEL FOR MOTHER]: Well, Your Honor, I'm just asking you to rule on my motion, and then we have an agreement as to everything else, and I can just take an appeal of that order.

But in an equally understandable effort to get the CINA disposition in place quickly and to prevent the translation question from slowing that down, the court issued the translation order separately from, and indeed almost two weeks after, the CINA disposition order. Put another way, the court decoupled the two decisions, leaving the translation order as a standalone order that, in that posture, isn't appealable. Had both orders been issued at the same time, or had appellants noted their appeals sooner after the translation order and still within the deadline to appeal the CINA disposition order, we may have been able to construe the appeals (despite the text of the notices) as an appeal from the translation decision accompanying the CINA disposition, and thus within CJP § 12-303(3)(x). As things actually stand, however, the appeals are untimely as to the CINA disposition and we lack jurisdiction to consider appeals from the translation order standing alone.

APPEAL FROM THE JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY DISMISSED. APPELLANTS TO PAY COSTS.