UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1731

September Term, 2015

IN RE: ADOPTION/GUARDIANSHIP
OF ABBY F. & JYEL F.

Meredith,
Wright,
Reed,

JJ.

Opinion by Wright, J.

Filed: March 29, 2016

Appellant, Tina R.F. ("Mother"), appeals from an order of the Circuit Court for Washington County terminating her parental rights to Abby F. (born August 2013) and Jyel F. (born October 2012). Along with its brief, appellee, the Washington County Department of Social Services (the "Department"), moved to dismiss this action pursuant to Md. Rule 8-602(a)(3),[1] noting that Mother's appeal was not timely filed. For the reasons stated below, we grant the Department's motion.

Background

The Department first renewed its involvement[2] with Mother when Abby was prematurely born at 27 weeks, weighing just over two pounds and testing positive for cocaine. In September 2013, Mother and Guadalupe F., the children's father ("Father"), were separately indicted on drug charges. On November 7, 2013, the circuit court found Abby to be a child in need of assistance ("CINA")[3] due to Mother's failure to comply

[1] That rule states: "On motion or on its own initiative, the Court may dismiss an appeal [if] . . . the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202[.]"

[2] Mother and the children's father had previously consented to the termination of their parental rights for three other children.

[3] A CINA is:

> a child who requires court intervention because: (1) The child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) The child's parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child's needs.

Md. Code (1973, 2013 Repl. Vol.), § 3-801 of the Courts & Judicial Proceedings Article.

with the Department's mental health and addictions treatment recommendations. Nonetheless, both children remained in the custody of the parents while the Department continued to provide services.

In December 2013, Father was convicted of cocaine distribution and sentenced to two years in prison. Around the same time, Mother pleaded guilty to cocaine distribution charges, with sentencing scheduled for January 21, 2014. Subsequently, Mother and the two children moved in with Mother's brother and sister-in-law (the "Rs"), while the Department continued to provide services.

Mother failed to appear for her sentencing hearing and was arrested nine days later. After her subsequent sentencing hearing, she began serving a ten-year sentence. With both parents incarcerated, Abby and Jyel were placed with the Rs. Ten days later, however, the Rs informed the Department that they could no longer care for the children. On February 18, 2014, the Department placed the children in a foster home together. The circuit court confirmed this placement on February 27, 2014, when a review hearing was held for Abby and Jyel was adjudicated a CINA. At that time, the permanency plan was reunification with a concurrent plan of relative placement.

Following a February 10, 2015 permanency planning/review hearing, the circuit court ordered that the children's permanency plan be changed to adoption by a non-

relative. On March 12, 2015, the Department filed petitions to terminate the parental rights of Mother and Father.[4] Both parents filed objections.

A termination of parental rights ("TPR") hearing was held on July 23, 2015. At that time, Father's attorney moved to terminate his appearance on the grounds of lack of communication with Father. The circuit court granted the motion and deemed Father to have consented to the Department's request to terminate his parental rights.[5] The children, through counsel, consented to the termination of both parents' rights, and the hearing proceeded on Mother's opposition to the Department's request.

On August 17, 2015, the circuit court issued an opinion addressing each of the statutory factors in Md. Code (1984, 2012 Repl. Vol.), § 5-323(d) of the Family Law Article (addressing considerations for "Grant of guardianship – Nonconsensual"). In pertinent part, the court acknowledged that Mother was pursuing a new trial or a drug treatment plan in lieu of incarceration, but found that "there are no guarantees that either of these situations will occur." Thus, it concluded that both parents were unfit and that there were exceptional circumstances warranting the termination of Mother's and Father's parental rights. Orders to that effect were entered on August 18, 2015, and Mother noted her appeal 44 days later, on October 1, 2015. [6]

[4] On November 10, 2014, U.S. Immigration and Customs Enforcement notified the Department that Father had been deported on October 16, 2014.

[5] Father is not a party to this appeal.

[6] In her brief Mother presented the following questions:

(continued…)

Discussion

The Department argues that "[t]his appeal should be dismissed because 'the notice of appeal was not filed with the lower court within the time prescribed by [Md.] Rule 8-202[(a),]'" which provides that "the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." The Department points out that "'a party in the trial court must file a timely notice of appeal, from an appealable judgment, in order to confer upon an appellate court subject matter jurisdiction over that party's appeal.'" (Quoting *Taylor v. Giant of Maryland, LLC*, 423 Md. 628, 665 (2011) (citation omitted)). Moreover, the Department emphasizes that "[w]hen the thirty day 'requirement is not met, the appellate court acquires no jurisdiction and the appeal must be dismissed.'" (Quoting *Comptroller of Treasury v. J/Port, Inc.*, 184 Md. App. 608, 643 (2009) (citation omitted)).

The Department is correct. Because Mother filed her notice of appeal 44 days after the entry of circuit court's order terminating her parental rights – or 14 days past the time prescribed by Md. Rule 8-202(a) – then we are without jurisdiction to review her case and shall therefore dismiss it, pursuant to Md. Rule 8-602(a)(3).

> A. Did the juvenile court err in failing to postpone the contested TPR [termination of parental rights] trial or in failing to extend the time for placement so that the mother could present information about her post-conviction status, drug treatment program status, and possible release?
>
> B. Did the juvenile court err by denying visitation between the mother and children, thus preventing the children from bonding with her and undermining reunification?

Mother urges us not to grant the Department's motion, asserting that she "has a fundamental constitutional right to parent her own children; that [she] was incarcerated during the course of these proceedings, with limited communication with her trial attorney, and that the Department has shown no prejudice as a result of the 14-day delay in filing." We are not, however, persuaded by any of her arguments.

We realize that this is Mother's final opportunity to preserve her parental rights. But, it is well-settled that "[w]here appellate jurisdiction is lacking, the appellate court will dismiss the appeal on its own motion." *Gruber v. Gruber*, 369 Md. 540, 546 (2002) (citing *Highfield Water Co. v. Wash. Cnty. Sanitary Dist.*, 295 Md. 410, 414 (1983)). As Maryland courts have repeatedly made clear, "[t]he requirement . . . that an order of appeal be filed within thirty days of a final judgment, is jurisdictional; if the requirement is not met, the appellate court acquires no jurisdiction and the appeal must be dismissed." *Houghton v. Cnty. Comm'rs of Kent Cnty.*, 305 Md. 407, 413 (1986) (citing *Kirsner v. State*, 296 Md. 567 (1983); *Institutional Mgt. v. Cutler Computer*, 294 Md. 626, 629-30 (1982); *Eastgate Assocs. v. Apper*, 276 Md. 698 (1976); *Boyce v. Plitt*, 274 Md. 333, 336 (1975); *Clinton Petroleum Serv. v. Norris*, 271 Md. 665, 667 (1974); *Buck v. Folkers*, 269 Md. 185, 188 (1973); *Merlands Club v. Messall*, 238 Md. 359 (1965); *Porter, Exc'x of Earlougher v. Timanus*, 12 Md. 283, 292 (1858)).

Although "dismissing an appeal on the basis of an appellant's violations of the rules of appellate procedure is considered a 'drastic corrective' measure," and Mother correctly notes that this Court "will not ordinarily dismiss an appeal 'in the absence of

prejudice to appellee,'" we have also stated that dismissal is appropriate when there has been "a deliberate violation of the rule." *Rollins v. Capital Plaza Assoc., L.P.*, 181 Md. App. 188, 202-03 (2008) (internal citations omitted). Where, as here, Mother was represented by counsel[7] and yet failed to note her appeal in a timely manner, she has deliberately violated Md. Rule 8-202(a). *Cf. Gonzales v. Boas*, 162 Md. App. 344, 351-53 (2005) (denying appellee's motion to dismiss where "[a]ppellant filed a timely appeal" and "majority of the alleged rules violations are minor, clerical, and organizational errors"); *Kearns v. Kearns*, 78 Md. App. 461, 463 n.1 (1989) (declining to dismiss appeal where *pro se* appellant merely failed "to comply with the Rules regarding preparation of the record extract and style and form of his brief").

For the foregoing reasons, we hereby dismiss this appeal.[8]

APPEAL OF THE CIRCUIT COURT FOR WASHINGTON COUNTY DISMISSED. COSTS TO BE PAID BY APPELLANT.

[7] Mother asks us to consider her "difficult circumstances in communication with the juvenile court and with her trial attorney while incarcerated." However, this argument cuts against her challenge to the circuit court's finding that she was unfit and that there were exceptional circumstances warranting TPR. As an initial matter, it would not be in the best interest of Abby and Jyel to be reunified with a mother who is unable to regularly communicate with her children. *See In re Abiagail C.*, 138 Md. App. 570, 586 (2001) (When the State files a TPR petition, the court must determine "whether the termination of rights would be in the best interest of the child." (Citations omitted)).

[8] We note that, even if we were to reach the merits of the case, we would agree with the Department that the circuit court did not err or abuse its discretion in terminating Mother's parental rights. Mother's request to continue the TPR proceeding was based on the mere possibility that her incarceration status might change, this would only be the first step on the probable long journey to be a fit parent.