

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 30, 2023

FILED
02/10/2023
Clerk of the
Appellate Courts

IN RE: AURELIA S.¹

Appeal from the Chancery Court for Maury County
No. A-046-21 Stella L. Hargrove, Judge

No. M2022-01184-COA-R3-PT

A mother appeals the termination of her parental rights. Because the mother did not file her notice of appeal within thirty days after entry of the final judgment as required by Tennessee Rule of Appellate Procedure 4(a), we dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

FRANK G. CLEMENT, JR., P.J., M.S., ANDY D. BENNETT, and JEFFREY USMAN, JJ.

Amanda Howell Castillo, Columbia, Tennessee, for the appellant, Kelcy D.

Mark A. Free, Columbia, Tennessee, for the appellees, Thomas S. and Tammy S.

Shawn David Snyder, Columbia, Tennessee, for the appellee, Joshua S.

Stacy S. Neisler, Spring Hill, Tennessee, Guardian ad Litem.

MEMORANDUM OPINION²

¹ This Court has a policy of protecting the identity of children by initializing the last names of the parties, relatives, and foster parents.

² A case designated as a memorandum opinion “shall not be published, and shall not be cited or relied on for any reason in any unrelated case.” Tenn. Ct. App. R. 10.

Kelcy D. (“Mother”) has filed a notice of appeal from a final judgment entered on July 25, 2022, terminating her parental rights. Tennessee Rule of Appellate Procedure 4(a) requires that a notice of appeal be filed with the clerk of the appellate court within thirty days after entry of the judgment appealed. Mother did not file her notice of appeal until August 29, 2022, thirty-five days after entry of the judgment.

The Court received the record on appeal on December 29, 2022. After reviewing the record, we ordered Mother to show cause why her appeal should not be dismissed for failure to file a timely notice of appeal. In response, Mother requests relief from this Court under Tennessee Rule of Civil Procedure 60.02. Mother’s counsel asserts that she was out of town caring for ill family members during much of the relevant time period. Counsel also contends that she timely mailed the notice of appeal to the clerk on August 25, 2022.

We first address Mother’s claim that her counsel timely mailed the notice of appeal to the clerk. Papers filed with the appellate court are considered timely if they “are received by the clerk within the time fixed for filing or mailed to the office of the clerk by certified return receipt mail or registered return receipt mail within the time fixed for filing.” Tenn. R. App. P. 20(a). Filings will also be considered timely if “placed for delivery with computer tracking, either through a commercial delivery service or the United States Postal Service, within the time fixed for filing.” *Id.* A filing sent by regular mail will be considered timely only if it is actually received by the clerk within the time fixed for filing.

The envelope containing the notice of appeal indicates it was sent by regular mail, and counsel does not assert that she mailed the notice by certified mail, registered mail, or “with computer tracking.” Because the notice was sent by regular mail, it was not filed until August 29, 2022, the date it was received by the clerk. In any event, July has thirty-one days, and the notice of appeal was due on August 24, 2022, not August 25, 2022. Thus, the notice mailed by the counsel on August 25, 2022, would have been untimely even if counsel had used certified mail, registered mail, or computer tracking.

We turn next to Mother’s request for relief under Tennessee Rule of Civil Procedure 60.02. Mother contends we should set aside the judgment based on excusable neglect. However, Rule 60 does not apply in this Court. Tenn. R. Civ. P. 1. While a trial court may, under unusual and compelling circumstances, grant relief under Rule 60 from the failure to file a timely notice of appeal, this Court cannot grant relief under Rule 60, and Mother must seek such relief in the trial court. Tenn. R. App. P. 4(a), *Advisory Commission Comments; McCracken v. Brentwood United Methodist Church*, 958 S.W.2d 792 (Tenn. Ct. App. 1997).

We are reluctant to dismiss an appeal involving the termination of parental rights based solely on a counsel’s failure to comply with Tennessee Rule of Appellate Procedure 4. Nevertheless, the time limit for filing a notice of appeal is mandatory and jurisdictional. *Albert v. Frye*, 145 S.W.3d 526, 528 (Tenn. 2004); *Binkley v. Medling*, 117 S.W.3d 252,

255 (Tenn. 2003). This Court can neither waive nor extend the thirty-day time period. Tenn. R. App. P. 2. The failure to file a timely notice of appeal deprives this Court of jurisdiction to hear the matter. *Flautt & Mann v. Council of City of Memphis*, 285 S.W.3d 856, 869 n.1 (Tenn. Ct. App. 2008).

The appeal is hereby dismissed for failure to file a timely notice of appeal. The dismissal is without prejudice to Mother seeking relief from the trial court under Rule 60. The case is remanded to the trial court for further proceedings consistent with this opinion. The costs are taxed to Mother for which execution may issue.

PER CURIAM