

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2011 CJ 0491

STATE OF LOUISIANA

IN THE INTEREST OF M.L.M., M.M., AND L.M.

—
**On Appeal from the 22nd Judicial District Court
Parish of Washington, Louisiana
Docket No. J-06-97, Juvenile Division
Honorable Mary C. Devereux, Judge Presiding**
—

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BEFORE: PARRO, GUIDRY, AND HUGHES, JJ.

Judgment rendered JUN 17 2011

Hughes, J., dissents and will assign reasons.

PARRO, J.

Mr. M.L.M.,¹ the father in this matter, appeals a judgment terminating his parental rights as to the minor child, L.M., and certifying that L.M. was free for adoption.² For the following reasons, we dismiss the appeal.

RULE TO SHOW CAUSE

On March 18, 2011, this court, *ex proprio motu*, issued an order for the parties to show cause by briefs on or before April 4, 2011, whether or not the appeal should be dismissed as untimely. Mr. M.L.M. and the Louisiana Department of Children and Family Services (DCFS) filed briefs concerning this issue.³ We must first address this rule to show cause to determine whether the appeal should be dismissed.

A review of the record demonstrates that the judgment terminating Mr. M.L.M.'s parental rights as to L.M. and certifying L.M. as free for adoption was signed on September 28, 2009. Notice of the judgment was sent on October 2, 2009. On that same day, Mr. M.L.M., *pro se*, filed a motion for new trial, contending that the judgment was contrary to the law and the evidence. After various delays, in which Mr. M.L.M. was required to specify in what way the judgment was deficient, the motion for new trial was ultimately denied in open court at a hearing on July 15, 2010. In response to this ruling, counsel for Mr. M.L.M. stated, "At ... this point, I'm going to note my objection[,] and I will discuss an appeal with my client." The judgment denying the motion for new trial was signed on September 7, 2010, and notice of the judgment was mailed on September 8, 2010. Mr. M.L.M. filed a motion for appeal on October 1, 2010.

DISCUSSION

Courts shall avoid delays in resolving the status of the parent and in achieving

¹ In this instance and throughout the opinion, Mr. M.L.M. refers to the father of the three minor children in this matter, while in the caption, M.L.M. refers to one of the minor children who had been involved in the proceedings. The judgment in this matter does not involve the minor child, M.L.M.

² The judgment also terminated the parental rights of the mother of the minor child; however, she has not appealed the judgment.

³ DCFS filed its brief late. Mr. M.L.M. sought and obtained an extension of time until April 14, 2011, to file his brief. The brief was mailed on that date and was, therefore, timely.

permanency for the child. LSA-Ch.C. art. 1032. All phases of termination of parental rights proceedings are to be given priority. See State in the Interest of S.M., 98-0922 (La. 10/20/98), 719 So.2d 445, 453 (La. 1998). Consistent with the statutory scheme of expediency, LSA-Ch.C. art. 332(A) provides:

Except as otherwise provided within a particular Title of this Code, appeals shall be taken within fifteen days from the mailing of notice of the judgment. However, if a timely application for a new trial is made pursuant to Paragraph C, the delay for appeal commences to run from the date of the mailing of notice of denial of the new trial motion.

An order of appeal may be granted on oral motion in open court, on written motion, or on petition. LSA-Ch.C. art. 333(B).

Mr. M.L.M.'s motion for appeal was not filed until October 1, 2010, twenty-four days from the date of the mailing of the notice of judgment denying the motion for new trial. Although LSA-Ch.C. art. 333(B) authorizes an oral motion for appeal, neither the minute entry, nor the transcript of the hearing on the motion for new trial indicates that any such oral motion was made or granted.

The courts of appeal have consistently held that appeals not timely filed in juvenile matters shall be dismissed. State in the Interest of Hair, 98-560 (La. App. 3rd Cir. 6/8/98), 715 So.2d 551; In the Interest of H.M., 411 So.2d 1176, 1177 (La. App. 4th Cir. 1982); In the Matter of Lagarde, 358 So.2d 983, 984 (La. App. 4th Cir. 1978); In re Rome, 316 So.2d 759, 760 (La. App. 1st Cir. 1975). In State in the Interest of K.B., 30,358 (La. App. 2nd Cir. 8/21/97), 698 So.2d 761, 762, the court found that it lacked appellate jurisdiction based on an untimely appeal. See LSA-C.C.P. art. 2162.

In the instant matter, because the fifteen-day period of LSA-Ch.C. art. 332(A) for taking an appeal applied to the judgment at issue, and because Mr. M.L.M.'s motion for appeal was not filed until twenty-four days had elapsed from the date of the mailing of the notice of denial of the new trial motion to the parties, the motion for appeal was not filed timely. Accordingly, we find that this court lacks appellate jurisdiction over the appeal of the September 28, 2009 judgment, which terminated Mr. M.L.M.'s parental rights as to L.M.

CONCLUSION

For the above reasons, the appeal of the September 28, 2009 judgment is dismissed at Mr. M.L.M.'s cost.

APPEAL DISMISSED.