

2014 IL App (2d) 140699-U  
No. 2-14-0699  
Order filed December 1, 2014

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> ZOE T., a Minor	)	Appeal from the Circuit Court
	)	of Kane County.
	)	
	)	No. 12-JA-17
	)	
(The People of the State of Illinois, Petitioner-Appellee, v. Zefr T., Respondent, and Samsun T., Party in Interest-Appellant).	)	Honorable Linda S. Abrahamson, Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Presiding Justice Burke and Justice Spence concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Appellate court lacked jurisdiction to consider appeal where trial court order referenced in notice of appeal was not made part of record on appeal and where notice of appeal was not otherwise timely.
- ¶ 2 Samsun T. (Samsun) appeals a judgment of the circuit court of Kane County denying his request for custody of his minor granddaughter, Zoe T. For the reasons that follow, we dismiss the appeal for lack of jurisdiction.
- ¶ 3 Zoe was born on December 22, 2009, to Zefr T. (Samsun's son) and Melissa T. According to the record, both parents suffer from developmental delays. In January 2012, an individual contacted the Illinois Department of Children and Family Services (DCFS) with

concerns about Zoe's physical and medical safety. The reporter noted that Melissa forcefully fed Zoe after the minor refused to take food from her. The reporter also indicated that Melissa frequently forgets to provide Zoe with Pediasure, which was recommended to support Zoe's nutritional needs. In addition, the reporter expressed concerns regarding the cleanliness and safety of the home environment. At the time of the report, both Melissa and Zefr lived with Zefr's parents.

¶ 4 DCFS assumed protective custody of Zoe on February 17, 2012, and placed her with a foster family. On that same date, the State filed a five-count petition alleging that Zoe was a neglected minor in that her parents do not provide proper or necessary support or medical care (see 705 ILCS 405/2-3(1)(a) (West 2012)) and that her environment is injurious to her welfare (see 705 ILCS 405/2-3(1)(b) (West 2012)). On February 21, 2012, the trial court found that both Melissa's and Zefr's developmental delays and their failure to follow recommendations resulted in the need to remove Zoe for failure to thrive. At that time, temporary custody of Zoe was granted to the guardianship administrator of DCFS. On May 8, 2012, following a stipulation by the parents, Zoe was adjudicated a neglected minor pursuant to section 2-3(1)(a) of the Juvenile Court Act (705 ILCS 405/2-3(1)(a) (West 2012)). The factual basis for the stipulation was that Zoe was diagnosed with failure to thrive and that, despite interventional services, the failure-to-thrive diagnosis continued. On May 22, 2012, the parents stipulated that they were unable to care for Zoe due to the minor's special needs and the parents' developmental delays. At that time, the minor was made a ward of the court. Custody and guardianship of Zoe was continued with DCFS to allow the parents to correct the conditions that brought the minor into care. On November 13, 2012, Melissa signed a specific consent to adopt by Zoe's foster parents.

¶ 5 Meanwhile, on November 9, 2012, Samsun filed a petition to intervene, which he later amended. On January 8, 2013, the trial court struck without prejudice the petition to intervene. On February 26, 2013, Samsun filed a second amended petition to intervene, seeking leave to file a “Petition for Change of Custody” and a “Motion to Modify or Vacate Temporary Custody Order.” On April 12, 2013, the trial court denied with prejudice the second amended petition to intervene. The court explained that although liberal intervention is encouraged, the intervening party must have a legally cognizable right subject to protection. The court determined that there is nothing specifically conferring a right to a grandparent “that is a legally cognizable right or interest.”

¶ 6 Subsequently, Samsun commenced a separate proceeding in the circuit court of Kane County by filing a petition to obtain guardianship of Zefr (Case no. 13-P-267). On or about June 14, 2013, Judge Joseph Grady granted Samsun’s petition and appointed him as Zefr’s guardian. Based on this appointment, the trial court in the minor’s case determined that Samsun was a party to the case involving Zoe and appointed an attorney to represent Samsun. On November 5, 2013, the court discharged the attorney representing Samsun, and Samsun informed the court that he would proceed *pro se*.

¶ 7 On November 27, 2013, Samsun filed a *pro se* motion seeking custody of Zoe. The trial court denied the motion without prejudice the same day.<sup>1</sup> On January 9, 2014, Samsun filed another motion seeking custody of Zoe. On January 16, 2014, the State filed a petition to terminate Zefr’s parental rights. On March 5, 2014, the trial court entered an order construing

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<sup>1</sup> Also on November 27, 2013, Melissa revoked her previously signed consent to adoption as a year had passed without the filing of an adoption petition. However, Melissa later signed a new specific consent to adopt by Zoe’s foster parents.

Samsun's January 9, 2014, motion to grant custody as a motion to reconsider the denial of the motion filed in November 2013. The trial court then denied the motion to reconsider. On May 20, 2014, the trial court found that Zefr was unfit to have a child and terminated his parental rights. On July 11, 2014, Samsun filed an "Appeal to Grant Custody" seeking review of the trial court's "Denial of Petition on December 19th, 2013."

¶ 8 "The filing of a notice of appeal 'is the jurisdictional step which initiates appellate review.' " *People v. Smith*, 228 Ill. 2d 95, 104 (2008) (quoting *Niccum v. Botti, Marinaccio, DeSalvo & Tameling, Ltd.*, 182 Ill. 2d 6, 7 (1998)). "Unless there is a properly filed notice of appeal, a reviewing court has no jurisdiction over the appeal and is obliged to dismiss it." *Smith*, 228 Ill. 2d at 104; see also *In re Janira T.*, 368 Ill. App. 3d 883, 891 (2006) (noting that appellate jurisdiction is generally dependent upon the timely filing of a notice of appeal after a final judgment); *In re M.J.*, 314 Ill. App. 3d 649, 654 (2006) (holding that compliance with the rules governing the deadline for filing a notice of appeal is mandatory and jurisdictional).

¶ 9 Illinois Supreme Court Rule 303(a)(1) (eff. May 30, 2008) provides in relevant part that a party's notice of appeal "must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from, or, if a timely posttrial motion directed against the judgment is filed, \*\*\* within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order." In this case, our review of Samsun's "Appeal to Grant Custody," which we construe as his notice of appeal, specifies that he is seeking to appeal from an order entered December 19, 2013, involving the trial court's ruling on his *pro se* motion for custody. Yet, the record does not contain any order entered by the trial court on December 19, 2013. Moreover, Samsun does not indicate where this order may be found in the record and he does not reference the order in the brief he filed in this appeal.

Even assuming a final judgment was entered on December 19, 2013, Samsun's notice of appeal was untimely as it was not filed until July 11, 2014, which is more than 30 days after December 19, 2013. Ill. S. Ct. Rule 303(a)(1) (eff. May 30, 2008).

¶ 10 We also note that Samsun's notice of appeal was not filed within 30 days after the entry of any order of the trial court relevant to his *pro se* motion for custody. For instance, the trial court denied Samsun's *pro se* motion seeking custody of Zoe on November 27, 2013. On March 5, 2014, the trial court denied Samsun's motion to reconsider the November 27, 2013, decision. As noted above, Samsun did not file his notice of appeal until July 11, 2014. Since the notice of appeal was filed more than 30 days after the entry of the order disposing of the last pending postjudgment motion, it was untimely. Moreover, Samsun's notice of appeal was filed more than 30 days after the May 20, 2014, order finding Zefr unfit and terminating his parental rights. Thus, even if we were to construe the final judgment in this case to have been entered on May 20, 2014, Samsun's notice of appeal would not be timely. Since Samsun did not file a timely notice of appeal, we lack jurisdiction to consider this appeal.

¶ 11 For the reasons set forth above, we dismiss the instant appeal.

¶ 12 Appeal dismissed.