

**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).

2014 IL App (4th) 140648-U

NO. 4-14-0648

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

December 16, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: T.F., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Livingston County
v.	)	No. 13JA7
LETTA KOLESAR,	)	
Respondent-Appellant.	)	Honorable
	)	Robert M. Travers,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.  
Justices Holder White and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* Because the appellate court concluded that it lacked jurisdiction, the court dismissed respondent's appeal in which she argued that the trial court erred by denying her motion for visitation with her son.

¶ 2 Following a November 2013 dispositional hearing conducted in accordance with article II of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-1 to 2-34 (West 2012)), the trial court entered a written order (1) adjudicating the son of respondent, Letta Kolesar, a ward of the court; and (2) ordering that respondent's visitation with her son, T.F. (born January 4, 2006), be at the discretion of the Department of Children and Family Services (DCFS).

¶ 3 In May 2014, respondent filed a motion for visitation. Following a permanency-review hearing conducted later that same month—at which the trial court also considered respondent's motion for visitation—the court entered an order (1) finding that respondent was unfit

and unable to parent T.F., (2) changing respondent's goal to "return home pending status," and (3) reiterating that visitation shall remain at the discretion of DCFS. In June 2014, respondent filed a motion to reconsider the permanency order and change of goal. Following a July 2014 hearing, the court denied respondent's motion to reconsider.

¶ 4 Respondent appeals, arguing that the trial court erred by denying her motion for visitation. Because we lack jurisdiction to consider respondent's claim, we dismiss respondent's appeal.

¶ 5 I. BACKGROUND

¶ 6 A. The State's Wardship Petition and the Shelter-Care Hearing

¶ 7 On May 15, 2013, the State filed a petition for adjudication of wardship, alleging that T.F. was a neglected and dependent minor as defined by article II of the Juvenile Court Act. Pertinent to this appeal, the State claimed that respondent lived in Arkansas and had not been involved in any aspect of T.F.'s life for over two years.

¶ 8 At a shelter-care hearing conducted that same day, the trial court admitted a shelter-care report, which chronicled that in April 2013, T.F.'s biological father, Daniel Field, left T.F. at his parents' home but did not return. For several weeks, T.F.'s grandfather cared for T.F. as well as his wife, who had suffered a stroke. During that time, T.F. set a bath mat on fire and attempted to set aflame other items located inside and outside of the home. In May 2013, T.F.'s grandfather told the resource officer at T.F.'s elementary school that he could no longer care for T.F. given his dangerous behavior. In response, the elementary school called DCFS.

¶ 9 Thereafter, the trial court (1) found that an immediate and urgent necessity required T.F.'s placement in shelter care and (2) granted DCFS temporary guardianship of T.F. (Respondent did not appear at the hearing because the State could not locate her to provide prop-

er service of notice.)

¶ 10

#### B. The Adjudicatory Hearings

¶ 11

In August 2013, the State filed an amended petition for adjudication of wardship, alleging that T.F. was a neglected minor because (1) he had been abandoned by his biological parents (705 ILCS 405/2-3(1)(a) (West 2012)) (count I), (2) he was not receiving the proper care necessary for his well-being (705 ILCS 405/2-3(1)(a) (West 2012)) (count II), and (3) his environment was injurious to his welfare in that Field was living out of his car and used illegal substances (705 ILCS 405/2-3(1)(b) (West 2012)) (count III). The State also alleged that T.F. was a dependent minor because he was without a parent (705 ILCS 405/2-4(1)(a) (West 2012)) (count IV). The State based its allegations in counts I, II, and IV on the circumstances that prompted DCFS' May 2013 involvement, adding that respondent had not been involved in any aspect of T.F.'s life for over two years. At an August 2013 adjudicatory hearing, the trial court considered the following evidence, which we summarize.

¶ 12

Respondent testified during the State's case in chief that she gave birth to five children but had voluntarily relinquished her parental rights to her three oldest children (ages 17, 13, and 8). Respondent's last contact with T.F. occurred four years earlier, when she moved to Arkansas. (Despite respondent's testimony that her last contact with T.F. was four years ago, the record shows that it had been five years earlier). Respondent later attempted to contact Field through social-networking websites and a mutual friend, but Field did not want respondent in T.F.'s life. Respondent admitted that she did not seek court-ordered visitation with T.F.

¶ 13

After respondent's testimony, Field informed the trial court that he was willing to admit the neglect and dependency allegation in counts I, II, and IV of the State's amended petition for adjudication of wardship. After admonishing Field regarding the consequences of his

admissions, the court (1) adjudicated T.F. a neglected and dependent minor as the State alleged in counts I, II, and IV; and (2) maintained DCFS as T.F.'s guardian. The court then continued the adjudicatory hearing for further proceedings as to count III. (Because count III of the State's August 2013 amended petition for adjudication of wardship pertained only to Field—who is not a party to this appeal—we omit that portion of the adjudicatory hearing.)

¶ 14 C. The Dispositional Hearing

¶ 15 At a November 2013 dispositional hearing, the trial court admitted an October 2013 dispositional report prepared by Cassandra Crawford, a foster-care case manager employed by Children's Home and Aid (Children's Home), a DCFS-contracted provider. In her report, Crawford documented that five years earlier, respondent moved to Arkansas after "losing custody" of T.F. and her eight-year old daughter, E.K., because of "environmental neglect." (Respondent's custody of E.K. is not at issue in this appeal.) The court subsequently determined respondent was unfit, and respondent did not complete her assigned client-service-plan goals.

¶ 16 Crawford noted that T.F. had been diagnosed with intermittent explosive disorder and attention deficit/hyperactivity disorder. Crawford reported that T.F. (1) has a short temper, (2) gets angry often, (3) defecates in his pants, and (4) smears feces when E.K.'s or respondent's name is mentioned. Crawford documented that in June 2013, a clinical staffing team decided that visits should not occur between T.F. and respondent until T.F.'s therapist recommended it because T.F. was still "unstable" and required time to adjust given respondent's five-year absence. Crawford's report also included a September 2013 conversation she had with T.F.'s therapist, Ronald Lambert, in which Lambert recommended that visits do not take place "until [respondent] has completed the majority of her service plan tasks and objectives to show that she is fit."

¶ 17 Respondent—who was 36 years old at the time of the hearing—testified that she lived in Springdale, Arkansas, with her fiancé of three years, who was employed as a semi-tractor-trailer mechanic. Respondent described her residence as a three-bedroom townhouse in a "decent" neighborhood that had a spare bedroom furnished with a twin bed. Respondent characterized herself as a stay-at-home mother to her three-year-old son, E.G. (born October 4, 2010). (E.G. is not a party to this appeal.) Respondent acknowledged her past cannabis abuse but asserted that she had been sober for 3 1/2 years. Respondent admitted that in 2008, DCFS acquired guardianship of T.F.

¶ 18 While in Arkansas, respondent spoke to Field "a few times," but he would not allow respondent any contact with T.F. Respondent's only source of contact with Field was through the Internet, but Field ignored her inquiries regarding T.F.'s overall health and location. Respondent stated that she wanted to provide T.F. financial support and gifts, but she did not have T.F.'s address.

¶ 19 After DCFS' current involvement with T.F., respondent travelled 600 miles from her home to attend trial court hearings. Respondent asked Crawford about visitation with T.F. but was told that DCFS was reserving any decision concerning visitation until respondent had a "good chance" of reacquiring custody of T.F. Crawford explained that reestablishing a relationship between respondent and T.F. could be detrimental to T.F. if respondent did not regain custody. Respondent acknowledged that DCFS provided her a client-service plan but she had yet to start any of her assigned goals.

¶ 20 Respondent admitted that she "could have possibly contacted the police or done more in an effort to try to find [T.F.]," but it did not occur to her that involving the police would assist her in locating T.F. When asked by the trial court as to the reason why respondent could

not find T.F., respondent answered that despite her best efforts to solicit information from friends and family, she could not determine T.F.'s location during the past five years.

¶ 21 Following the presentation of argument, the trial court entered a written order, (1) adjudicating T.F. a ward of the court, (2) maintaining DCFS as his guardian, and (3) ordering that respondent's visitation with T.F. "is at the discretion of DCFS and/or the private agency." In so finding, the court agreed with "the recommendations in the dispositional report that visitation \*\*\* take place after mother has completed [her] service plan."

¶ 22 **D. Respondent's Motion for Visitation and  
the Trial Court's Ruling**

¶ 23 In May 2014, respondent filed a motion requesting that the trial court grant her visitation with T.F. At a hearing conducted later that month, the court admitted a permanency report prepared by T.F.'s new caseworker, Ethan Riojas, in advance of a scheduled permanency-review hearing at which the court also considered respondent's motion for visitation.

¶ 24 Respondent testified that since April 2013—when she was first informed of DCFS' involvement—she asked constantly about visitation with T.F. However, Children's Home first informed her that T.F. was not emotionally ready two days before the hearing. Children's Home expressed concern that contact with respondent would cause T.F. to experience "an outburst." Respondent stated her willingness to participate in counseling tailored to parents who have children with special needs, but Children's Home had yet to provide that recommended counseling. Respondent asserted that up to that point, she had complied with all of the client-service-plan recommendations suggested by Children's Home.

¶ 25 Respondent confirmed that she (1) had given birth to five children, (2) had been previously indicated for inadequate supervision, (3) allowed a sex offender to reside with four of her children, and (4) voluntarily relinquished her parental rights as to her three oldest children

because "it was best for my children at that time." Respondent was aware of T.F.'s mental-health issues but stated that she could handle those challenges. Respondent reiterated her stance that for five years, she had attempted unsuccessfully to make contact with T.F.

¶ 26 Riojas testified that in February 2014, he assumed responsibility as respondent's caseworker. Around that time, Riojas informed respondent by phone that visitations were not occurring because of T.F.'s mental state. Since that time, Riojas had monthly contact with respondent, adding that on several occasions, he provided respondent "the same or similar explanation" regarding visitation with T.F. Riojas noted that respondent was (1) complying with bi-weekly drug screenings and (2) scheduled to attend parenting classes in June 2014. Children's home was also attempting to schedule classes for parents with special-needs children to assist respondent in that regard.

¶ 27 Lambert, a licensed professional counselor, testified that T.F. resided in a foster-care home. Initially, T.F. had trouble behaving in school, but reports from T.F.'s foster mother revealed that over the past six months, T.F.'s behavior had improved. Lambert confirmed that T.F. is under the care of a psychiatrist who has prescribed medication to address T.F.'s condition. Lambert opined that (1) nothing about T.F.'s psychological or emotional condition would prevent T.F. from having appropriate contact with his biological mother and (2) T.F.'s knowledge about his biological mother would pose no danger to his mental state.

¶ 28 Lambert clarified that he did not know respondent and his opinion regarding T.F.'s visitation with his biological mother was based on a "generic" mother, which Lambert defined as "your biological mother who \*\*\* gave birth to you and [who] is a blood relation." Lambert stated that he would not classify a mother who has not seen her child for five years as a generic mother. Lambert acknowledged that he did not know that respondent had no contact

with T.F. for five years.

¶ 29 Following closing arguments, the trial court noted that the evidence presented showed that respondent had given up her parental rights to three of her five children and had no contact with T.F. for the past five years. In this regard, the court continued, as follows:

"[W]e deal with probabilities[.] [W]e deal with preponderance of the evidence. Is it highly probable here that [respondent] is going to stay in [T.F.'s] life or that this is just going to be a brief comet-like appearance in [T.F.'s] life as she was in the other children that [respondent] had and given up her rights on? \*\*\* [The court] think[s] so far, based upon history, and history is what we have to look at to project the future, [respondent] doesn't have a lot of staying power; and it's not a safe bet \*\*\*, considering [T.F.'s] circumstances, that she's going to be sticking around."

Thereafter, the court entered a May 30, 2014, permanency review order (1) finding that respondent was unfit and unable to parent T.F., (2) changing respondent's goal to "return home pending status," and (3) reiterating that "visitation shall remain at the discretion of the agency."

¶ 30 E. Respondent's Motion To Reconsider the Permanency Order and Change of Goal

¶ 31 On June 6, 2014, respondent filed a motion to reconsider the permanency order and change of goal. In her prayer for relief, respondent requested that the trial court reconsider its May 2014 permanency order. In her prayer for relief, respondent requested that the court (1) change the goal to return home within 12 months, (2) adjudicate respondent "fit and able," and (3) direct reasonable visitation with T.F.

¶ 32 Following arguments at a July 11, 2014, hearing, the trial court denied respondent's

ent's motion, finding that the permanency report the court admitted at respondent's May 2014 permanency-review hearing supported the court's ruling.

¶ 33 F. Respondent's Appeal to This Court

¶ 34 On July 23, 2014, respondent filed a "petition for leave to appeal and supporting legal memorandum pursuant to [Illinois] Supreme Court Rule 306 [(eff. July 1, 2014)]." Specifically, respondent petitioned this court for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. July 1, 2014), "from the oral order of the [trial] court entered on July 11, 2014[,] denying [respondent's] renewed motion for some visitation with her son." In August 2014, this court granted respondent's petition.

¶ 35 II. ANALYSIS

¶ 36 Respondent argues that the trial court erred by denying her motion for visitation with her son, T.F. Prior to considering the merits of respondent's argument, we first address the State's claim that this court lacks jurisdiction because respondent's petition for leave to appeal is untimely. See *In re Marriage of Sheth*, 2014 IL App (1st) 132611, ¶¶ 19-21, \_\_\_ N.E.3d \_\_\_ ("The timely filing of a notice of appeal is both jurisdictional and mandatory," which requires this court to "first determine whether we have jurisdiction to decide the instant case.").

¶ 37 Rule 306(a)(5)—the provision under which respondent filed her petition for leave to appeal to this court—provides as follows:

"Rule 306. Interlocutory Appeals by Permission.

(a) Orders Appealable by Petition. A party may petition for leave to the Appellate Court from the following orders of the trial court:

\* \* \*

(5) from interlocutory orders affecting the care and custody of unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules[.]" Ill. S. Ct. R. 306(a)(5) (eff. Jul. 1, 2014).

Rule 306(b)(1), entitled "Procedures for Petitions Under Subparagraph (a)(5)," mandates that a notice of appeal "shall be filed in the Appellate Court within 14 days of the entry of the order from which review is being sought." Ill. S. Ct. R. 306(b)(1) (eff. Jul. 1, 2014).

¶ 38 In this case, respondent sought an appeal from the trial court's July 11, 2014, order "denying [respondent's] motion for some visitation or contact with her minor son." However, the report of proceedings at the July 11, 2014, hearing reveals that the only thing the court denied was respondent's motion to reconsider its May 30, 2014, permanency-review order in which the court (1) found that respondent was unfit and unable to parent T.F., (2) changed respondent's goal to return home pending status, and (3) maintained that DCFS has discretion to determine respondent's visitation with T.F. In their respective briefs to this court, both parties acknowledge that the trial court did not at any time during the pendency of this case enter an order denying respondent visitation with T.F. Notwithstanding respondent's concession on this point, which is inconsistent with representations made in her petition for leave to appeal to this court, respondent contends that the court "has refused to direct the agency to allow visitation and contact, knowing the agency has refused all of [respondent's] requests."

¶ 39 We note that respondent does not directly address the State's jurisdictional argument in her reply brief to this court. Instead, respondent again argues the propriety of the trial court's ruling as to her visitation with T.F. It is clear that respondent equates the trial court's May 30, 2014, permanency-review order granting DCFS discretion to manage respondent's visitation

with T.F. as essentially a denial of the motion for visitation she filed earlier that same month. However, under Rule 306(b)(1), respondent had no more than 14 days to file a petition for leave to appeal from the court's May 30, 2014, ruling. That 14-day deadline was not tolled by respondent's June 6, 2014, motion to reconsider the permanency order and change of goal. See *In re Leonard R.*, 351 Ill. App. 3d 172, 174, 813 N.E.2d 1054, 1056 (2004) ("Illinois courts have held that a motion for reconsideration directed against an interlocutory order will not toll the running of the \*\*\* deadline for the filing of the appeal under Supreme Court Rule 306.").

¶ 40 Here, this court improvidently granted respondent's July 2014 petition for leave to appeal based on respondent's affirmative misrepresentations regarding the scope of the trial court's May and July 2014 orders pertaining to respondent's visitation with T.F. Accordingly, we dismiss respondent's appeal for lack of jurisdiction.

¶ 41 III. CONCLUSION

¶ 42 For the reasons stated, we dismiss respondent's appeal.

¶ 43 Appeal dismissed.