

**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).

2016 IL App (4th) 160366-U

NO. 4-16-0366

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

October 5, 2016

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

In re: K.G., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner,	)	Champaign County
v.	)	No. 13JA48
YURIDIA HEREDIA and CARLOS GARCIA,	)	
Respondents-Appellees	)	Honorable
(Champaign County CASA, Guardian ad-Litem-	)	Brett N. Olmstead,
Appellant).	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.  
Justices Harris and Appleton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court dismissed, concluding this court does not have jurisdiction over the appeal under Rules 301 or 304(b)(1) because the trial court's order denying the petition for termination of parental rights was not a final, appealable order.

¶ 2 In April 2015, the guardian *ad litem* (GAL), Champaign County CASA (court-appointed special advocates), filed a motion to terminate the parental rights of respondent mother, Yuridia Heredia, and respondent father, Carlos Garcia, with respect to their daughter, K.G. (born May 12, 2013). In April 2016, the trial court entered an order finding the State failed to prove respondents unfit and denying the petition for termination of parental rights.

¶ 3 The GAL appeals, arguing the trial court's finding that the State failed to prove by clear and convincing evidence respondents failed to protect K.G. from conditions within her

environment injurious to her welfare was against the manifest weight of the evidence. Finding we lack jurisdiction, we dismiss.

¶ 4

## I. BACKGROUND

¶ 5

### A. Initial Proceedings

¶ 6

In September 2013, the State filed a petition for adjudication of neglect and shelter care, alleging K.G. was neglected in that her environment was injurious to her welfare in exposing her to (1) a risk of physical harm (count I), and (2) domestic violence (count II). 705 ILCS 405/2-3(1)(b) (West 2012).

¶ 7

In December 2013, the trial court entered an adjudicatory order finding K.G. neglected. In January 2014, the court entered a dispositional order in which the court (1) determined respondents were unfit and unable to care for K.G.; (2) made K.G. a ward of the court; and (3) placed guardianship of K.G. with the Department of Children and Family Services.

¶ 8

### B. Termination Proceedings

¶ 9

In April 2015, the GAL filed a motion to terminate respondents' parental rights with respect to K.G. The petition alleged both respondents were unfit persons because they (1) failed to protect K.G. from conditions within her environment injurious to her welfare (750 ILCS 50/1(D)(g) (West 2014)); (2) committed substantial, continuous, and repeated neglect of K.G. (750 ILCS (D)(d) (West 2014)); (3) failed to maintain a reasonable degree of interest, concern, or responsibility as to K.G.'s welfare (750 ILCS 50/1 (D)(b) (West 2014)); (4) engaged in extreme or repeated cruelty to K.G. (750 ILCS 50/1(D)(e) (West 2014)); (5) were deprived (750 ILCS 50/1(D)(i) (West 2014)); and (6) failed to make reasonable progress toward the return of K.G. within the initial nine months of the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)). The prosecutor agreed to prosecute on the GAL's motion.

¶ 10 In September 2015, respondents' fitness hearing commenced and spanned eight nonconsecutive days. Following the close of the State's case, respondents moved for a directed verdict on all counts. The trial court allowed the motion as to all counts except for the failure-to-protect allegation. After respondents presented evidence, and following argument, the court entered an order finding the State failed to prove respondents unfit and dismissing the petition for termination of parental rights. The court then scheduled the matter for a permanency hearing.

¶ 11 This appeal followed.

## ¶ 12 II. ANALYSIS

¶ 13 On appeal, the GAL argues the trial court's finding that the State failed to prove by clear and convincing evidence respondents failed to protect K.G. from conditions within her environment injurious to her welfare was against the manifest weight of the evidence. However, we first consider this court's jurisdiction over this appeal.

¶ 14 Respondent father filed a motion to dismiss this appeal, arguing the GAL (1) lacks standing to bring the appeal, or (2) appeals an interlocutory order without complying with Illinois Supreme Court Rule 306 (eff. Mar. 8, 2016). The GAL contends the order dismissing the petition to terminate parental rights was a final order for purposes of appeal and does not seek review under Rule 306.

¶ 15 Although this court denied respondent father's motion to dismiss this appeal, this court has a duty to consider at any time whether jurisdiction exists. See, e.g., *Shermach v. Brunory*, 333 Ill. App. 3d 313, 320, 775 N.E.2d 173, 180 (2002). Accordingly, we reconsider the basis for appellate jurisdiction in this case.

¶ 16 Rule 301 allows appeals as a matter of right from *final* judgments of the trial court. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). Final judgments terminate the litigation between the

parties on the merits or dispose of the rights of the parties. *In re A.H.*, 207 Ill. 2d 590, 594, 802 N.E.2d 215, 217 (2003). Rule 304(b)(1) allows for appeals from "[a] judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party." Ill. S. Ct. R. 304(b)(1) (eff. Mar. 8, 2016). "A final order is one which sets or fixes the rights of a party." *In re Curtis B.*, 203 Ill. 2d 53, 59, 784 N.E.2d 219, 223 (2002).

¶ 17 In *A.H.*, the trial court entered an order denying a petition to terminate parental rights, and the supreme court found the order was not a final judgment appealable under Rule 301. *A.H.*, 207 Ill. 2d at 594, 802 N.E.2d at 218. As the Illinois Supreme Court noted, "the Act contemplates the filing of more than one petition to terminate parental rights." *Id.* The supreme court stated:

"[T]he \*\*\* order is not final because it did not end the litigation of the parties on the issue of termination of parental rights and did not 'set or fix' the rights of the parties on either side of the controversy. Although the order decided the important issue of whether to terminate the parental rights *at that point in time*, such does not, in itself, render the order final. '[T]he fact that an order resolves important issues does not necessarily render it final. [Citation.] As stated by the trial court, the possibility still exists that the parental rights of the parents could be terminated in the future." (Emphasis in original.) *Id.*

The supreme court went on to note the State could file a permissive interlocutory appeal pursuant to Rule 306(a)(5) to seek appellate review of the dismissal of the petition to terminate parental rights. *Id.* at 596, 802 N.E.2d at 218-19.

¶ 18 Here, the trial court's order denying the petition to terminate parental rights did not end the litigation on the issue of termination of parental rights, nor did it set, fix, or finally determine a party's rights or status. Indeed, the court's order set the matter for a permanency hearing, thus continuing the litigation and not settling or fixing any party's rights. Nothing precludes the State or the GAL from filing a subsequent petition for termination of parental rights.

¶ 19 Moreover, nothing precluded the GAL from seeking review of this order under Rule 306(a)(5), as the supreme court contemplated in *A.H.* However, the GAL did not seek review under Rule 306(a)(5). Rule 306(b) dictates the procedure for petitions under Rule 306(a)(5) and requires, in part, (1) the petition for leave to appeal be filed with 14 days of the entry of the order appealed from; (2) service of a copy of the petition on the trial court; and (3) a 15-page limit for the optional supporting memorandum. Ill. S. Ct. R. 306(b) (eff. Mar. 8, 2016). None of these requirements were met and the GAL's brief was 40 pages in length. Therefore, nothing indicates the GAL intended to seek appellate review under Rule 306(a)(5). Accordingly, we decline to exercise discretionary jurisdiction over this appeal.

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, we dismiss this case for lack of jurisdiction.

¶ 22 Appeal dismissed.