

**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).

2017 IL App (4th) 160785-U

NO. 4-16-0785

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

March 24, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

In re: Y.Z., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 15JA32
DIMARRIO ZANDER,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

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

**ORDER**

¶ 1 *Held:* The appellate court dismissed after declining to exercise jurisdiction pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. Mar. 8, 2016).

¶ 2 Respondent, Dimarrio Zander, appeals the trial court's October 2016 permanency order finding him unfit and removing Y.Z. (born May 8, 2014) from his custody. We decline to exercise jurisdiction over this interlocutory appeal and, therefore, we dismiss the appeal.

¶ 3 I. BACKGROUND

¶ 4 In June 2015, the State filed a petition for adjudication of neglect and shelter care, alleging Y.Z. was neglected by being subjected to an injurious environment pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1)(b) (West 2014)) due to the ongoing mental illness of respondent mother, Kinny Redmon. The trial court subsequently adjudicated Y.Z. neglected. Following a September 2015 dispositional hearing, the

court found respondent fit, willing, and able to exercise custody of Y.Z. The court thereafter granted guardianship to the Department of Children and Family Services (DCFS) but found placing Y.Z. in respondent's custody was not against her best interest. We affirmed the trial court's adjudicatory and dispositional findings in *In re Y.Z.*, 2016 IL App (4th) 150749-U.

¶ 5 Following the dispositional hearing, Y.Z. remained in respondent's custody. Respondent was compliant with services and cooperative with DCFS, and Y.Z. was doing well in his care. However, in June 2016, DCFS became suspicious of respondent's motives in trying to close the case quickly and expressed concern that he was not being entirely honest with DCFS about his relationship with Redmon. DCFS raised concerns that, despite his denial of paternity, respondent might be the father of Redmon's unborn child, and that respondent was allowing Redmon more visits with Y.Z. than DCFS permitted.

¶ 6 In October 2016, DCFS filed a permanency report, again noting its suspicion that respondent allowed Redmon visits with Y.Z., as Y.Z. always asked the caseworker why Redmon did not accompany the caseworker on home visits. This raised concerns with DCFS because Redmon's mental health had deteriorated to the point that she was dangerous to Y.Z. DCFS also discovered respondent acknowledged paternity of Redmon's newborn child despite telling DCFS he was not the father. Further, Y.Z. missed several days of preschool and respondent failed to provide an explanation for her absences. Respondent's lack of candidness led DCFS to recommend removing Y.Z. from respondent's care.

¶ 7 As a result of DCFS's October 2016 permanency report, the State filed a motion to declare respondent unfit and remove Y.Z. from his care, citing his lack of candor and cooperation with DCFS. Following a permanency hearing, the trial court found respondent was

no longer a fit custodian for Y.Z. and placed custody with DCFS. The court scheduled another permanency hearing for January 2017.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 On appeal, respondent asserts the trial court's permanency order was against the manifest weight of the evidence. However, before reaching the merits, we begin by addressing this court's jurisdiction to review a permanency order.

¶ 11 Respondent filed this appeal pursuant to Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015), which applies to final judgments. The State did not initially contest whether the trial court's permanency order constituted a final order appealable pursuant to Rule 303. However, we have a duty to consider our jurisdiction *sua sponte*. *In re Alexis H.*, 335 Ill. App. 3d 1009, 1011, 783 N.E.2d 158, 160 (2002).

¶ 12 We therefore ordered the parties to submit supplemental briefing discussing whether respondent should have filed a petition for leave to appeal the permanency order as an interlocutory appeal pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. Mar. 8, 2016). In his supplemental brief, respondent asserts we have jurisdiction in this matter or, in the alternative, we should construe his brief as a petition for leave to appeal as required by Rule 306(a)(5). Conversely, the State asserts we lack jurisdiction over this appeal.

¶ 13 Under Rule 306(a)(5), "A party may petition for leave to appeal to the Appellate Court \*\*\* from interlocutory orders affecting the care and custody of or the allocation of parental responsibilities for unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules." *Id.* This provision encompasses appeals of permanency orders. See *In re Curtis B.*, 203 Ill. 2d 53, 63, 784 N.E.2d 219, 225 (2002).

Accordingly, respondent should have filed a petition for leave to appeal to this court pursuant to Rule 306(a)(5) rather than filing a direct appeal under Rule 303.

¶ 14 For appeals arising under Rule 306, the petition for leave to appeal, supporting record, and any legal memorandum "shall be filed in the Appellate Court within 14 days of the entry or denial of the order from which review is being sought." Ill. S. Ct. R. 306(b)(1) (eff. Mar. 8, 2016). Because respondent proceeded pursuant to Rule 303, he failed to meet these deadlines. Respondent asserts the filing of a notice of appeal with the trial court should be sufficient to confer this court with jurisdiction, as filing a notice of appeal is the only necessary jurisdictional step for perfecting an appeal, citing Illinois Supreme Court Rule 606(a) (eff. Dec. 11, 2014). We note Rule 606 pertains to criminal and juvenile delinquency cases, not permanency orders entered in a juvenile abuse and neglect case, and, further, respondent did not invoke Rule 606 in filing his jurisdictional statement. See also Ill. S. Ct. R. 660 (eff. Oct. 1, 2001) (appeals of delinquency proceedings are governed by rules applicable to criminal cases, while other proceedings under the Juvenile Act are subject to the rules applicable to civil cases). Additionally, respondent asserts the circuit clerk was at fault for following the wrong rule. We find this argument flawed where the trial court immediately appointed counsel to represent respondent on appeal, and counsel failed to correct the error by filing an appropriate petition for leave to appeal under Rule 306(a)(5). In this case, respondent clearly failed to follow the necessary steps provided under Rule 306(a)(5).

¶ 15 Despite his failure to follow the technical rules, respondent alternatively requests we construe his brief as a petition for leave to appeal pursuant to Rule 306(a)(5). Although we do not excuse respondent's failure to comply with Rule 306(a)(5), judicial economy permits us to construe respondent's brief as a petition for leave to appeal pursuant to Rule 306(a)(5) by

considering the notice of appeal and arguments raised in the briefs in lieu of requiring a petition for leave to appeal. *In re Marriage of Agustsson*, 223 Ill. App. 3d 510, 517, 585 N.E.2d 207, 212 (1992).

¶ 16 We therefore must consider whether to grant leave to appeal. We should grant leave to appeal in cases where "the petition raises important legal questions or refers to questionable actions taken by the circuit court." *Curtis B.*, 203 Ill. 2d at 63, 784 N.E.2d at 225. Leave to appeal should only be granted in select cases so "[t]he majority of cases, by not being subject to immediate interlocutory review, can proceed in a more timely fashion to determine the permanent placement status of the child." *Id.* Reviewing every permanency order only serves to cause further delay in providing the child with a permanent placement. *Id.* at 62-63, 784 N.E.2d at 225. The decision to grant or deny leave to appeal rests within our discretion. *Alexis H.*, 335 Ill. App. 3d at 1014, 783 N.E.2d at 163.

¶ 17 Here, respondent's argument centers on the trial court's findings being against the manifest weight of the evidence. While every case involving a child is a serious matter, respondent raises no important legal questions, nor does he allege any questionable actions taken by the court. "[G]iven the length of time that has passed in this particular proceeding and the constant state of change involved here, events may have transpired since the trial court's initial decision that could affect the status of the case as well as the best interests of the [child]." *Id.* Accordingly, we decline to exercise our jurisdiction over respondent's appeal.

¶ 18 III. CONCLUSION

¶ 19 Based on the foregoing, we decline to exercise our jurisdiction over respondent's appeal.

¶ 20 Dismissed.