2018 IL App (5th) 180181-U

NOS. 5-18-0181, 5-18-0182 cons.

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re D.A. and L.A., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Williamson County.
	)	
Petitioner-Appellee,	)	
	)	
v.	)	Nos. 14-JA-68, 14-JA-69
	)	
Tina S.,	)	Honorable
	)	Jeffrey A. Goffinet,
Respondent-Appellant).	)	Judge, presiding.

PRESIDING JUSTICE BARBERIS delivered the judgment of the court.
Justices Goldenhersh and Overstreet concurred in the judgment.

ORDER

¶ 1 *Held*: The respondent's appeal dismissed for lack of jurisdiction where she failed to file a timely notice of appeal following the circuit court's denial of her initial postjudgment motion, and the court lacked jurisdiction to hear the respondent's successive postjudgment motion.

¶ 2 This appeal arises from the circuit court's denial of a motion filed by the respondent, Tina S., to rescind the final and irrevocable surrenders of her parental rights to her minor children for adoption purposes and to vacate the subsequent judgments to terminate her parental rights. Because the notice of appeal was untimely, this court lacks jurisdiction. As a result, this appeal must be dismissed.

¶ 3 I. Background

¶ 4 This appeal requires an accelerated disposition pursuant to Illinois Supreme Court Rule 311(a)(5) (eff. July 1, 2018) because it involves a matter affecting the best interest of a child. Rule 311(a)(5) requires that the appellate court issue its decision within 150 days of the filing of the notice of appeal, except when good cause for delay is shown. The respondent filed her notice of appeal on March 20, 2018. Accordingly, this decision is due on August 17, 2018. The parties have waived oral argument, and we now issue this order.

¶ 5 Tina S. is the biological mother of two children, D.A., born on July 5, 2013, and L.A., born on September 9, 2014. The children's biological father, Antonio A., had his parental rights terminated by default. As such, he is not a party to this appeal.

¶ 6 On December 11, 2014, the Illinois Department of Children and Family Services (DCFS) received information from the Williamson County Sheriff's Department that D.A. and L.A. had been present during a search of the family's residence where drugs had been sold and various controlled substances had been found. A subsequent investigation revealed that Antonio A., the sole caretaker of the children at various times, was a sex offender, and Tina S. had mental health and substance abuse issues that had affected her ability to parent. Following this investigation, DCFS took the children into protective custody and placed them in foster care. The State consequently filed a petition for temporary custody and requested an order for adjudication of neglect. Shortly thereafter, the circuit court entered an order placing the children in temporary custody and guardianship of DCFS.

¶ 7 On March 12, 2015, the circuit court entered an adjudicatory order finding that D.A. and L.A., while residing with Antonio A. and Tina S., had lived in an environment injurious to their welfare and, on that basis, had been neglected, pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2014)).

¶ 8 On April 20, 2015, the circuit court entered a dispositional order finding Tina S. an unfit parent based on her need for "more services." The court also found that it was in the best interest of the children to remain in foster care and be made wards of the court. Tina S. was ordered to continue her service plan, which included the successful completion of substance abuse treatment and in-home parenting classes, and to obtain and maintain employment and appropriate housing. The court scheduled the first of several permanency hearings to begin in October 2015.

¶ 9 DCFS submitted permanency reports to the circuit court, which indicated that Tina S. had made satisfactory progress on reunification services. A subsequent report, however, indicated that Tina S. had tested positive for benzodiazepines on April 5, 2016, and had been arrested for shoplifting and driving with a suspended license following the previous permanency report. Additionally, Tina S. had relocated to a friend's home, which hindered her ability to participate in the in-home parenting classes. It was later determined that Tina S. had been prescribed medication from her treating psychiatrist, which accounted for the positive drug test. Despite this, DCFS suspected that Tina S. had been abusing controlled substances. Moreover, prior to the January 2017 permanency hearing, the permanency report indicated that Tina S. had failed to make satisfactory progress toward reunification due to her lack of compliance with her service plan. As a

result, the circuit court determined that Tina S. was no longer making substantial progress.

¶ 10 In February 2017, the State filed petitions to terminate Tina S.'s parental rights and motions to change the permanency goal to substitute care pending termination of parental rights. In particular, the State's petition alleged that it was in the best interest of the children to terminate Tina S.'s parental rights because she was an unfit parent, as outlined in the Illinois Adoption Act, in that she: (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare; (2) failed to protect the children from conditions within her environment injurious to the children's welfare; (3) displayed habitual drunkenness or addiction to drugs for at least one year immediately prior to the commencement of the unfitness hearing; (4) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the children from the parent during any nine-month period following the adjudication of neglected or abused minor; and (5) failed to make reasonable progress toward the return of the child to the parent during any nine-month period following the adjudication of neglected or abused minor. See 750 ILCS 50/1(D)(b), (g), (k), (m)(i), (m)(ii) (West 2016).

¶ 11 On June 1, 2017, the circuit court conducted the first-stage parental fitness hearing. Tina S. testified to the following. Tina S. admitted that she would test positive for hydrocodone because she had a tooth pulled the day before the hearing. She also acknowledged ongoing use of cannabis. Following her testimony, the court recessed for

lunch. During this time, Tina S. announced her desire to execute a voluntary surrender of her parental rights to both D.A. and L.A.

¶ 12 After the circuit court reconvened, Tina S. testified that she was not under the influence of alcohol, medication, or drugs that would prevent her from understanding the nature of the proceeding; she had not been threatened and no promises had been made to her in exchange for her surrenders; she had ample time to consult with her attorney, go over the documents, and have any questions answered; and she had no questions for the court prior to signing the documents. She also testified that she believed surrendering her parental rights was in the best interest "of everyone." Additionally, the court admonished Tina S. that "[e]xcept under very unusual circumstances, [surrenders] can't be set aside." After finding no evidence of fraud or undue influence and that the surrenders "ha[d] been freely and voluntarily given after [Tina S.] understood the nature and extent of what she was doing and that these are final and irrevocable consents," the court accepted her surrenders. The court subsequently entered a judgment terminating her parental rights.

¶ 13 On June 19, 2017, Tina S. filed a motion to rescind the final and irrevocable surrenders of her parental rights and to vacate the subsequent judgments terminating her parental rights. Tina S. alleged that she had been "tricked[,] lied to[,] and coerced by [her] lawyer" who had yelled profanities at her and told her that she would not win the termination hearing.

¶ 14 A hearing on Tina S.'s motion was held on September 7, 2017, but Tina S. was incarcerated and did not appear. The court "denied" the June 19, 2017, motion because no motion to continue had been filed.

¶ 15 On November 13, 2017, Tina S. filed a second motion to rescind the voluntary and final surrenders. The second motion contained the same allegations as the June 19, 2017, motion. On February 15, 2018, a hearing on the motion was held and the following dialogue took place:

> "THE COURT: So why do you believe that there is a basis to set aside the voluntary consent you signed?
>
> [TINA S.]: Because my lawyer told me that I had no chance of winning my case. He told me to sign my rights over, move to Colorado, and be a bud cutter. If my kids wanted to find me when they got older, they could move to Colorado with me. ***
>
> * * *
>
> THE COURT: So what is there that you believe allows me to set aside your surrender?
>
> [TINA S.]: Because I really would like my kids. I have been fighting for four years for this. I have no reason not to have my kids. I was told I had no chance to win, and I know that's a lie. I'm the only person that's fought for my kids. I'm the only person that has every single thing be done and has been done.
>
> THE COURT: Okay. Anything else you want to tell me?
>
> [TINA S.]: I mean, I just would really like a chance to finish my case out fairly, because I haven't had a fair chance at all in the past four years. I have had two judges. I personally have had three lawyers. Eleven case workers. I never got a fair chance of getting my kids back. ***
>
> * * *
>
> THE COURT: Okay. [Tina S.], you get the last word. So is there anything else you want to tell me about why I should set aside the surrender[s]?
>
> [TINA S.]: Because I had—my lawyer didn't help me. ***
>
> * * *
>
> THE COURT: Okay. And I'm not putting words in your mouth, but what I'm hearing you tell me is that you had ineffective assistance of counsel. They weren't helping you, and that's your reason.
>
> [TINA S.]: Yes. Yes."

¶ 16 On February 23, 2018, the circuit court entered an order denying Tina S.'s motion finding that she had failed to demonstrate that the surrenders were obtained by "duress, fraud, or any improper means," as required under section 11 of the Adoption Act. 750 ILCS 50/11 (West 2016). The court also found her allegations inconsistent with the

transcript of the surrender proceedings, specifically, where Tina S. had denied having been threatened and displayed a full understanding of the proceedings. Tina S. filed a notice of appeal on March 20, 2018.

¶ 17 II. Analysis

¶ 18 On appeal, Tina S. argues that (1) trial counsel was ineffective where he "tricked[,] lied to[,] and coerced" her to surrender her parental rights; and (2) the circuit court erred by failing to conduct a hearing in compliance with *People v. Krankel*, 102 Ill. 2d 181, 189 (1984), regarding her claim of ineffective assistance of counsel. In response, the State argues that trial counsel was not ineffective, and the court conducted a proper preliminary inquiry into the factual basis of Tina S.'s allegations. The State argues that, even though Tina S. was not entitled to a *Krankel* hearing, the court's inquiry, in effect, was the equivalent. Additionally, the State contends that the court properly denied her motion to rescind after finding that Tina S.'s surrenders were voluntary and not obtained by fraud or duress.

¶ 19 Although neither party raised a jurisdictional issue before this court, we have a duty to consider our jurisdiction *sua sponte* and dismiss an appeal if jurisdiction is wanting. *In re Marriage of Mackin*, 391 Ill App. 3d 518, 519 (2009). Because this presents a question of law, our review is *de novo*. See *In re A.H.*, 207 Ill. 2d 590, 593 (2003) (applying a *de novo* standard to jurisdictional issue arising from a determination of whether an order was final and appealable order).

¶ 20 Tina S. claims that this appeal is taken pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994), which allows an appeal to be taken from a circuit court's final

judgment in a civil case as a matter of right. Moreover, Illinois Supreme Court Rule 303(a)(1) (eff. July 1, 2017) sets a 30-day time frame for the filing of a notice of appeal after entry of a final judgment or "within 30 days after the entry of the order disposing of the last pending postjudgment motion directed against that judgment or order ***." Additionally, pursuant to Illinois Supreme Court Rule 303(a)(2) (eff. July 1, 2017), "[n]o request for reconsideration of a ruling on a postjudgment motion will toll the running of the time within which a notice of appeal must be filed under this rule." Furthermore, section 2-1301(e) of the Code of Civil Procedure grants the circuit court discretion to set aside a final order on a motion filed within 30 days of entry of a final order. See 735 ILCS 5/2-1301(e) (West 2016).

¶ 21 On June 1, 2017, the circuit court entered a final and appealable order terminating Tina S.'s parental rights. On June 19, 2017, Tina S. filed a timely postjudgment motion to rescind the surrenders and vacate the court's order terminating her parental rights. Although the court set the motion for hearing on September 7, 2017, Tina S. failed to appear. The record on appeal does not contain the written order issued by the court on or about September 7, 2017, or a transcript of the proceedings.

¶ 22 On November 13, 2017, Tina S. filed a second motion to rescind the surrenders and vacate the circuit court's order terminating her parental rights. On February 23, 2018, the court denied the second motion, and also stated that it had previously "denied" the first motion at the September 7, 2017, hearing.

¶ 23 When Tina S. filed her June 19, 2017, timely postconviction motion, the time was tolled until the circuit court disposed of her motion on September 7, 2017. As such, the

record clearly demonstrates that Tina S. failed to file an appeal within 30 days of the entry of the September 7, 2017, order denying her first motion. Specifically, Tina S. was required file a notice of appeal on or before October 6, 2017.

¶ 24 Accordingly, once 30 days had lapsed from the circuit court's September 7, 2017, order, the court no longer had jurisdiction to hear a motion directed against the judgment pursuant to Illinois Supreme Court Rules 303(a)(1) and 303(a)(2) (eff. July 1, 2017). Thus, the November 13, 2017, motion was untimely. As such, the court's February 23, 2018, order, which denied the November 13, 2017, motion, was invalid at its inception. Thus, this appeal was similarly invalid on procedural grounds.

¶ 25 III. Conclusion

¶ 26 For the foregoing reasons, we hereby dismiss Tina S.'s appeal for lack of jurisdiction.

¶ 27 Appeal dismissed.