2019 IL App (1st) 182380-U

No. 1-18-2380

Order filed May 10, 2019

Fifth Division

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).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

IN THE INTEREST OF C.M. & J.M., Minors,	)	Appeal from the
	)	Circuit Court of
Respondents-Appellees,	)	Cook County.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	
	)	
v.	)	No. 13JA 562
	)	13 JA 563
Torria J. and William J.,	)	
	)	Honorable
Appellants).	)	Peter J. Vikelis,
	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held*: In this case involving two dependent minors placed in the guardianship of the Department of Children and Family Services, this court lacks jurisdiction of the former foster parents' appeal from the circuit court's permanency planning hearing orders because those orders did not finally determine the rights or status

of the former foster parents pursuant to Illinois Supreme Court Rule 304(b)(1) (eff. Nov. 1, 2017).

¶ 2 Minors C.M. and J.M. were removed from the home of foster parents Torria and William J. (Mr. and Mrs. J.) after the Department of Children and Family Services (DCFS) upheld the assigned service agency's decision to remove the children. Mr. and Mrs. J. filed an administrative service appeal of that removal decision.

¶ 3 While that appeal was pending, the circuit court held a permanency planning hearing and made specific findings as part of its orders that the foster placement with Mr. and Mrs. J. was not necessary and appropriate to the case plan's adoption goal. Later, the circuit court denied Mr. and Mrs. J.s' motion to vacate the permanency planning hearing orders. Thereafter, DCFS issued a final administrative decision that dismissed Mr. and Mrs. J.s' administrative service appeal because the court had made a judicial determination or issued an order on the issue being appealed.

¶ 4 Mr. and Mrs. J. did not file a complaint in the circuit court for administrative review of that dismissal. Instead, they appealed the circuit court's permanency planning orders and denial of their motion to vacate those orders, arguing that the circuit court violated their statutory rights to be heard by the court and to pursue their administrative appeal of DCFS' removal decision.

¶ 5 For the reasons that follow, we dismiss this appeal for lack of jurisdiction.[1]

¶ 6 I. BACKGROUND

¶ 7 On June 14, 2013, 11-month-old J.M. (born on July 13, 2012) and her sister, one-month-old C.M. (born on May 18, 2013), were found in their home. They were near the body of their

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

deceased mother, who had been dead for several days. The girls were dehydrated and malnourished. The putative father denied paternity.

¶ 8 In June of 2013, the State filed petitions for adjudication of wardship and motions for temporary custody, and the circuit court found that probable cause existed that the girls were abused, neglected or dependent. DCFS was granted temporary guardianship and placed the girls in the home of Mrs. J. as their foster mother. (Mrs. J. met and married Mr. J. after the girls were placed in her home.)

¶ 9 At the adjudicatory hearing in 2014, the court found that the girls were neglected and dependent based on their mother's death and their father's history of mental illness. Shortly thereafter, the court entered dispositional orders finding that the girls' mother was deceased and their father was unable and unwilling to care for, protect, train or discipline them. The court placed the girls in the guardianship of DCFS and entered a goal of return home to the father. In February of 2015, the court entered a goal of substitute care pending the court's determination on the termination of the father's parental rights. Camelot Care Centers, Inc. (Camelot) was the agency assigned to offer services.

¶ 10 In December of 2016, the court found that the father was unfit and terminated his parental rights. The court entered permanency orders, setting the goal as adoption and finding that Mr. and Mrs. J.'s home was necessary and appropriate for that goal.

¶ 11 In March of 2018, Camelot initiated conversations with Mrs. J. about the future of the placement. On March 26, 2018, DCFS held a clinical staffing,[2] which included the Camelot caseworker and Mrs. J. The clinical staffing reviewed the girls' placement and services and made

[2] A staffing is a structured multi-disciplinary meeting convened to analyze a case situation.

several recommendations for the girls and Mr. and Mrs. J. After that meeting, the caseworker reported that Mrs. J. gave the caseworker a verbal 14-day notice to remove J.M. from Mr. and Mrs. J.s' home. On March 27, 2018, the caseworker contacted Mrs. J. again regarding the 14-day notice. That same day, Camelot held an internal agency staffing to discuss the placement. Then Camelot contacted Mr. and Mrs. J. by telephone to discuss concerns and options. After that teleconference, Mrs. J. went to Camelot's office to discuss the matter further. After that meeting, Camelot began concurrent planning by identifying another pre-adoptive home.

¶ 12 Later, however, Mrs. J. rescinded her 14-day notice and submitted a placement review request.

¶ 13 A. DCFS Clinical Placement Review

¶ 14 DCFS convened a clinical placement review[3] on April 23, 2018. Mr. and Mrs. J. were present and represented by an attorney. After this review, DCFS recommended that Camelot's decision to remove both girls from Mr. and Mrs. J.s' home be upheld. DCFS prepared a written summary of the clinical placement review (summary), which included a history of the girls' placement, a summary of the information provided by Mrs. J. and the Camelot caseworker and supervisor, the DCFS convener's impression of the disruption, the efforts made to preserve the placement, and the rationale for the removal recommendation.

¶ 15 DCFS made the final clinical placement review decision on May 8, 2018. DCFS concluded that it was in the girls' best interests to remove them from Mr. and Mrs. J.s' home.

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[3] " 'Clinical placement review' means a process whereby designated clinical Department staff will review a disputed decision by the Department or purchase of service agency to remove a child from the home of a foster family or relative caregiver, when the child will be placed in the home of another foster family or relative caregiver." 89 Ill. Adm. Code 337.20 (2016).

DCFS advised Mr. and Mrs. J. that if they disagreed with this decision, they could request a fair hearing[4] within 10 days. Although the record on review does not include Mr. and Mrs. J.s' request for a fair hearing, a subsequent decision by the administrative hearing unit indicates that they did file such a request.

¶ 16 On June 5, 2018, J.M. and C.M. were moved to a new foster home. DCFS gave Mr. and Mrs. J. official notice of the signed final clinical placement review decision on June 12, 2018.

¶ 17 B. Circuit Court Permanency Planning Hearing

¶ 18 On June 14, 2018, the court held a permanency planning hearing in the girls' cases. As former foster parents, Mr. and Mrs. J. were not served with notice of this hearing[5] and did not attend it. Camelot supervisor Demetris Parrish testified that she had been assigned to this matter since March of 2018. Parrish stated that C.M. and J.M. were in their new foster home, services were put in place for J.M., and both minors were registered for summer school. J.M. had been diagnosed with post-traumatic stress disorder. C.M. had epilepsy, was seeing a neurologist, and would continue in therapy. Furthermore, the girls' new foster placement was a pre-adoptive home.

¶ 19 DCFS' final clinical placement review decision, which included the summary and was dated June 12, 2018, was admitted into evidence. The court stated that it had reviewed the summary and it was not necessary for Parrish to testify regarding the old foster placement with Mr. and Mrs. J.

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[4] " 'Fair hearing' *** means a formal review of the action or decision of the Department or provider agency to determine whether that action or decision is in compliance with the applicable laws and rules and will be in the best interests of the child." 89 Ill. Adm. Code 337.20 (2016).

[5] Section 1-5(2)(a) of the Juvenile Court Act requires notice of hearings only for current foster parents. 705 ILCS 405/1-5(2)(a) (West 2016).

¶ 20 According to the summary, Mrs. J. had reported that J.M. was exhibiting progressively negative behaviors at home and in school, which included mistreating and manipulating C.M. and masturbating excessively. After the March 26th, 2018 clinical staffing, the caseworker reported that Mrs. J. expressed concerns that services for J.M. would interfere with Mrs. J.s' job and conflict with services for C.M., and Mrs. J. gave a verbal 14-day notice for the removal of J.M. from her home. When the caseworker contacted Mrs. J. the next day and inquired whether she was certain that she wanted to issue a 14-day notice for J.M., Mrs. J. responded that her decision remained the same. The caseworker then asked Mrs. J. to tender the 14-day notice in writing. That same day, Camelot held an internal staffing and then contacted Mr. and Mrs. J. by telephone to discuss options to preserve the placement.

¶ 21 According to the summary, Mrs. J. stated during that teleconference that she and her husband could not accommodate the request to keep J.M. due to her behaviors, the need for extensive services, and conflicts with J.M.'s school attendance and Mrs. J.'s employment schedule. Camelot explained to Mr. and Mrs. J. that services would accommodate Mrs. J.'s schedule and allow J.M. to attend school. Camelot also explained that it wanted to preserve this consolidated sibling placement because the girls had resided in their home since coming into the care of DCFS five years ago and it was in their best interests to remain together. Mrs. J. declined Camelot's suggestion. Then Mr. J. began yelling and using inappropriate language. Specifically, he told Camelot to "Come pick these little motherf***ers up." The teleconference was discontinued due to Mr. J.'s behavior. That same day, Mrs. J. contacted Camelot and asked to speak with staff at their office, and Camelot agreed.

¶ 22 According to the summary, during that office meeting, Mrs. J. apologized for her husband's outburst. She explained that she did not want "Sasha," a name Mrs. J. insisted on

using for J.M. because Mrs. J. thought that J.M.'s first name was a "streetwalker name." Mrs. J. referred to J.M. as "Sasha" throughout that meeting even though Camelot asked her to call J.M. by her birth name. Camelot explained to Mrs. J. that another staffing would take place in the near future to discuss the transition. Then Camelot held an internal staffing and concluded that major concerns existed regarding Mr. J.'s commitment to the children, reports of Mrs. J. favoring C.M. over J.M., and Mr. J.'s resistance to becoming licensed and participating in the home study. Camelot discussed honoring Mr. and Mrs. J.'s removal request and placing both girls with their siblings. Camelot began concurrent planning by identifying another pre-adoptive home. Mrs. J., however, requested a clinical placement review and rescinded her 14-day notice for J.M.

¶ 23 According to the summary, before the April 23rd clinical placement review, Mrs. J. clarified during a telephone call with DCFS staff that she was appealing only the decision to remove C.M., not the decision to remove J.M. DCFS asked Mrs. J. to indicate this request in writing on the appropriate review request form, and thereafter counsel for Mrs. J. submitted a placement review form that had only C.M.'s name under the checked box requesting a clinical placement review. Mrs. J. became upset during the April 23rd clinical placement review and stated that she did not want J.M. and could only maintain C.M. When DCFS reminded her that she previously had told them during the March 26th clinical staffing that she was invested in the well-being of both girls and would adopt no matter what, Mrs. J. did not respond. She did, however, opine again that J.M.'s first name was a "streetwalker" name, and many of the other meeting participants "gasped" and noted that Mrs. J.'s perspective was further evidence of Mr. and Mrs. J.s' inability to accept J.M.

¶ 24 The convener's impressions section of the summary reported that Mr. and Mrs. J. failed to understand how to parent J.M. or the trauma she had experienced early in her life. Their lack

of insight into the correlation between J.M.'s current presentation and the fact that they had parented her since she was 11 months old spoke volumes about the lack of quality care J.M. had received in their home. Although Mrs. J. sought resources for J.M., she neglected to seek the assistance, consent or prior approval from Camelot for the appropriate services. Furthermore, when Mrs. J. felt that J.M. was not benefitting from the services, Mrs. J. made the unilateral decision to terminate the services. The intensive stabilization services Camelot provided for J.M. were unsuccessfully discharged due to nonparticipation, which indicated that Mr. and Mrs. J. did not want to work to keep J.M. in their home.

¶ 25 The convener's impressions also stated that DCFS increasingly became concerned that J.M. may have suffered some early life trauma while in the care of Mr. and Mrs. J. "There were too many unknowns with respect to the etiology of [J.M.'s] alleged maladaptive behaviors," and Mr. and Mrs. J.'s lack of engagement in services created a risk of harm environment for J.M. Also, they viewed her as the bad child whereas C.M. was the good child, and this unhealthy dynamic would exacerbate negative behaviors and cause resentment between the sisters. When Mrs. J. disciplined J.M. by sending her to school with different colored shoes and heel levels to stop her from running in school, Mrs. J. showed no concern about humiliating J.M., but rather seemed to express disdain and resentment towards her. During the meeting, Mrs. J. continued referring to J.M. as "Sasha" despite DCFS' repeated directions to Mrs. J. to address J.M. by her birth name. Mrs. J. also had instructed school officials to change school documents and address J.M. as "Sasha," which was confusing to J.M. and likely contributed to her negative behavior and sense of identity.

¶ 26 According to the convener's impressions, Mr. J. demonstrated a lack of involvement during the meeting and frustration with the process. He had only negative comments about J.M.

and was unwilling to speak about his position regarding the girls remaining in his home. He eventually said that J.M. was "sh***ting all over her room," and if she stayed in their home or DCFS moved both girls to a new home together, then C.M. would "end up dead." Finally, the convener noted that this meeting established Mr. and Mrs. J. were fighting to keep only C.M. in their home. Although they either rescinded or disputed ever giving their verbal 14-day removal notice, they clearly wanted J.M. removed from their home. Accordingly, Mr. and Mrs. J. were not even entitled to a clinical placement review under DCFS' administrative rules, which provide that placement changes to consolidate siblings in a single home were not subject to clinical placement reviews. Consequently, this meeting had evolved to more accurately reflect a best-interest staffing.

¶ 27 The summary stated that Mr. and Mrs. J. discussed only J.M.'s negative behavior and did not identify any of her strengths. In contrast, J.M.'s school reports stated that she had positive moments throughout her day, loved being the teacher's helper and participating in group activities, sought positive reinforcement and good behavior stars for her chart, and enjoyed playing games and dress up and having dance parties with her friends. The school social worker thought J.M. was sweet and friendly with a great personality.

¶ 28 The rationale section of the summary explained that the decision to remove the girls was upheld for their overall emotional wellbeing. There was no assurance that Mr. and Mrs. J. could promote nurturing bonds with the children or ensure effective, appropriate and research-based child discipline.

¶ 29 The circuit court ruled that the goal for J.M. and C.M. would remain adoption and found that the services contained in the service plan were appropriate and reasonably calculated to

facilitate achievement of the goal, which could not be achieved immediately because services were ongoing. The court ruled that the girls' current placement was necessary and appropriate to the case plan and goal and that DCFS was making reasonable efforts to provide services to facilitate achievement of the goal. The court also made a specific finding, based on the information about the children's placement with Mr. and Mrs. J., that it was "clear" and "as plain as day" that the placement with them was not necessary and appropriate to the case plan and goal. A status hearing date was set for December 2018.

¶ 30 C. Subsequent Proceedings in the Circuit Court

¶ 31 On June 18, 2018, Mrs. J. filed a *pro se* notice of motion with no motion attached. The notice stated that Mrs. J. would appear for a "Permanency order to be removed to a new foster home from 6-14-2018" motion. At the June 27, 2018 hearing for this matter, Mrs. J. appeared in court *pro se*. The court told her that her remedy was an administrative appeal within DCFS and she could not file a motion in this circuit court proceeding because she was not a party to this case. Her notice of motion was stricken.

¶ 32 On July 10, 2018, counsel for Mr. and Mrs. J. filed motions in both J.M.'s and C.M.'s cases in the circuit court. The motions asked the court to allow Mr. and Mrs. J. to be heard and to vacate the portion of the court's June 14, 2018 permanency planning hearing orders which found that the girls' placement with Mr. and Mrs. J. was not necessary to the case plan and goal. The motions stated that Mr. and Mrs. J. were not given notice of the June 14, 2018 permanency planning hearing and argued that they had statutory rights to be heard by the court and to receive adequate notice of any proceeding. They also argued that the court's June 14 orders would eliminate their pending DCFS administrative appeal even though substantive factual and legal

issues remained to be litigated regarding whether they had provided the girls with a safe and nurturing home that served the girls' best interests.

¶ 33 On October 4, 2018, a hearing was held on Mr. and Mrs. J.s' motions. In support of the motions, Mrs. J. testified that she had been the foster parent for both children since June of 2013 and J.M.'s psychological behavior issues started when she turned three years old. Mrs. J. explained that J.M. was very defiant and destructive and would urinate and defecate in areas that were not appropriate. Mrs. J. stated that J.M. was "very, very needy," "selfish," and "had a very quick, violent temper." Mrs. J. testified that she was a registered nurse and had taken many steps to deal with J.M.'s issues, including speaking to the caseworker. Mrs. J. also explained that J.M. would act out toward C.M. When Mrs. J. had J.M. evaluated at the age of three, the doctor thought that J.M. might be schizophrenic and diagnosed her with oppositional defiance disorder, behavior disorder, and reaction attachment disorder. Mrs. J. testified that she told the caseworker about the diagnosis and requested clinical intervention placement preservation, which was granted.

¶ 34 Mrs. J. testified that during the March 27, 2018 teleconference, Camelot wanted Mr. and Mrs. J. to give the 14-day notice to remove J.M. but they refused because their ultimate goal was adoption. Mrs. J. testified that she told Camelot she did not want J.M. removed and would not give the 14-day notice, but Camelot continued to demand it. Regarding whether Mrs. J. ever told Camelot that she no longer wanted to adopt J.M., Mrs. J. testified that she told Camelot it could move J.M. if it felt somebody else could do better. Mrs. J. testified that she never heard Mr. J. call the girls "motherf***ers" during the teleconference. After the teleconference, the caseworker texted Mrs. J. about feeling very upset and mistreated.

¶ 35 Mrs. J. testified that the summary of the April 2018 clinical placement review was not accurate and falsely attributed statements to her. She became emotional during that meeting because she had the girls for five years and Camelot was blaming her for the girls' problems. Mrs. J. denied ever stating that she wanted J.M. removed from the home and believed that Camelot failed to consider the girls' social or medical history. Mrs. J. explained that she disliked J.M.'s first name and wanted to change it to "Sasha" because in her culture it was "not a very nice name" and was a "street walker name." Mrs. J. said that she used the two names for J.M. interchangeably. Mrs. J. stated that Mr. J. was very invested in the children but he did say during the April meeting that J.M. was "sh***ing all over the room." According to Mrs. J., Mr. J.'s statement that C.M. could end up dead meant that her health could be at risk if the girls were not kept together because Mr. and Mrs. J. had learned to recognize when C.M. needed medication for her epilepsy and a new placement might not have that information.

¶ 36 Regarding DCFS' impression in the summary that Mrs. J. did not understand the trauma J.M. had experienced, Mrs. J. testified that she wanted therapy for J.M. but nobody ever set it up. Mrs. J. explained that she treated the girls differently because J.M. needed more structure. Mrs. J. asserted that she did not have any hesitation about adopting J.M. but merely was concerned that J.M. had not been assessed properly and wondered whether appropriate subsidies would be forthcoming. Mrs. J. denied terminating recommended services for J.M. and explained that she had decided instead to let J.M. go to school to learn. Mrs. J. testified that her administrative appeal within DCFS of the removal decision was still pending, but DCFS had moved to dismiss her appeal based on the court's June 14, 2018 order. Thus, Mrs. J. was asking the court to vacate its June 14 order so that she could continue with her appeal before an administrative law judge.

¶ 37 On cross-examination, Mrs. J. asserted that she was never told to stop calling J.M. by the name "Sasha." Mrs. J. acknowledged that J.M. had missed 15 days of school at the end of 2017, but explained that she and Mr. J. could not get J.M. to school because Mrs. J. had surgery. Mrs. J. also acknowledged that the girls were not in therapy from March 2018 until they were removed from her home on June 5, 2018.

¶ 38 After Mrs. J. testified, the court stated that it would assume Mr. J.'s testimony would be consistent with his wife's. Counsel for Mr. and Mrs. J. made a proffer that Mr. J. would testify consistently with Mrs. J. and deny referring to the girls with profanity. Counsel also argued that Mr. and Mrs. J. were not merely challenging the court's findings regarding witness credibility; rather, they were arguing that the court's June 14 ruling violated their rights because that ruling would bar their access to DCFS' appeal process.

¶ 39 The court denied Mr. and Mrs. J.'s motions to vacate the June 14 permanency planning hearing orders. Although the court believed that caring for the very traumatized girls was challenging, the court was convinced after hearing Mrs. J.'s testimony that the June 14 decision was correct. The court found that the testimony of the Camelot supervisor was credible; although Mrs. J. was upset that the children were removed from her care, the evidence supported the court's finding that the placement with Mr. and Mrs. J. was not necessary and appropriate. The court's written October 4, 2018 order stated that the placement with Mr. and Mrs. J. was not necessary and appropriate and denied their motions to be heard and to vacate the June 14, 2018 orders.

¶ 40 On October 29, 2018, an order from the administrative hearings unit of DCFS dismissed Mrs. J.'s administrative appeal because, pursuant to Rule 337.110(a), the "court has made a

judicial determination or issued an order on the issue being appealed." 89 Ill. Adm. Code 337.110 (a) (4) (2016). The order stated that it was a final administrative decision,[6] Mrs. J. could seek judicial review of this decision, and a complaint for administrative review must be filed in the circuit court within 35 days. There is no indication in the record that Mr. or Mrs. J. filed a complaint for administrative review.

¶ 41 On November 5, 2018, Mr. and Mrs. J. filed a notice of appeal from the circuit court's June 14 and October 4, 2018 orders.

¶ 42 II. ANALYSIS

¶ 43 Mr. and Mrs. J. argue that section 1-15(13) of the Foster Parent Law[7] (20 ILCS 520/1-15(13) (West 2016)), in clear and unambiguous language, afforded them the meaningful right to an impartial administrative appeal process as to any decision regarding their foster placement, and that the circuit court's ruling at the permanency planning hearing on June 14, 2018 abrogated that right. Mr. and Mrs. J. explain that they timely requested a fair hearing under DCFS' service appeal process of DCFS' decision to uphold the removal of the girls from their home. However, the administrative rules required the administrative law judge to dismiss that appeal because the circuit court's June 14, 2018 ruling constituted a judicial determination or order on the issue being appealed.

[6] " 'Final administrative decision' means the Department's final decision, order, or determination of an appealed issue rendered by the Director in a particular case that affects the legal rights, duties or privileges of appellants and may be appealed in a circuit court under the Administrative Review Law [735 ILCS 5/Art. III]." 89 Ill. Adm. Code 337.20 (2016).

[7] Section 1-15(13) of the Foster Parent Law provides that foster parents' rights include the "right to have timely access to the child placement agency's existing appeals process and the right to be free from acts of harassment and retaliation by any other party when exercising the right to appeal." 20 ILCS 520/1-15(13) (West 2016).

¶ 44 Mr. and Mrs. J. also argue that subsections 1-5(2)(a) and (2)(c) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-5(2)(a), (2)(c) (West 2016))[8] provided them with standing in this matter and a right to be heard by the court as previously appointed foster parents interested in the minors even though they are not considered parties to the proceeding. They argue that the circuit court violated their right to be heard when Mrs. J. appeared in court on June 27, 2018, but was dismissed out of hand and sent away to chase after an administrative remedy that later would be foreclosed to her due to the effects of the circuit court's June 14th order. Consequently, she was not allowed to timely address the court in any meaningful way on June 27th about either the impact its June 14th order would have on her administrative appeal or her disagreement with the accuracy of the information contained in DCFS' summary, which the court had admitted into evidence on June 14th and relied on in making its ruling.

¶ 45 Mr. and Mrs. J. acknowledge that Mrs. J. was allowed to address the court at the October 4th hearing; nevertheless, they argue that the October 4th hearing does not render harmless the circuit court's prior erroneous denial of their right to be heard by the court because they were not allowed to timely address the errors contained in the summary. They argue that the court greatly restricted the October 4th hearing and improperly weighed Mrs. J.'s credibility against the

[8] Section 1-5(2)(a) of the Juvenile Court Act provides that any previously appointed foster parent, even though not appointed guardian or legal custodian or otherwise made a party to the proceeding, "has a right to be heard by the court, but does not thereby become a party to the proceeding." 705 ILCS 405/1-5(2)(a) (West 2016).

Furthermore, section 1-5(2)(c) provides that if a foster parent has had the minor in her home for more than one year and "the minor's placement is being terminated from that foster parent's home, that foster parent shall have standing and intervenor status except in those circumstances where [DCFS] *** has removed the minor from the foster parent because of a reasonable belief that the circumstances or conditions of the minor are such that continuing in the residence or care of the foster parent will jeopardize the child's health or safety or presents an imminent risk of harm to the minor's life." 705 ILCS 405/1-5(2)(c) (West 2016).

Camelot supervisor's even though that supervisor never testified about the placement with Mr. and Mrs. J. They complain that, because the circuit court relied solely on the summary for information about the placement with Mr. and Mrs. J., Mrs. J. was held up against a "mythical standard of credibility that was a figment of the court's imagination."

¶ 46 Mr. and Mrs. J. argue that a fair and logical reading of the Juvenile Court Act in conjunction with the Foster Parent Law establishes that the court cannot and should not enter an order that would prevent foster parents from challenging a placement removal decision through DCFS' administrative appeal process, as happened here. They argue that the court's June 14 ruling at the permanency planning hearing intruded into the province of DCFS, with its administrative structure and appellate process.

¶ 47 Also, the Public Guardian has filed a motion to dismiss this appeal for lack of jurisdiction or lack of standing, and we ruled that this motion would be taken with the case. Mr. and Mrs. J. and the State have filed responses to the motion to dismiss.

¶ 48 Jurisdiction

¶ 49 Before we can address the merits of the issues on appeal, we must discuss this court's jurisdiction to review the arguments raised by Mr. and Mrs. J. This court has a duty to consider *sua sponte* its jurisdiction and to dismiss an appeal if jurisdiction is wanting. See *In re Marriage of Link*, 362 Ill. App. 3d 191, 192 (2005). Supreme Court Rule 303(a) provides, in pertinent part, that "notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed." Ill. S. Ct. R. 303(a) (eff. June 4, 2008). Supreme Court Rule 660(b) provides that appeals from final judgments entered in proceedings under the Juvenile Court Act, other than delinquent minor proceedings, are governed by the rules

applicable to civil cases. See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001). Compliance with the rules governing the deadline for filing a notice of appeal is mandatory and jurisdictional. *In re C.S.*, 294 Ill. App. 3d 780, 229 (1998).

¶ 50 Mr. and Mrs. J. challenge the circuit court's June 14, 2018 permanency planning orders. Supreme Court Rule 306(a)(5) (eff. Feb. 26, 2010)[9] permits a party who wishes to appeal a permanency planning order to petition the appellate court for leave to file an interlocutory appeal. If the petition raises important legal questions or refers to questionable actions taken by the circuit court, the appellate court may grant review. See *In re Curtis B.*, 203 Ill. 2d 53, 63 (2002). The petition must be filed within 14 days of the entry or denial of the order from which the review is being sought and shall state the relief requested and the grounds for the relief requested. Ill. S. Ct. R. 306(b)(1). The petition must be accompanied by an appropriate supporting record that has been authenticated by the certificate of the clerk of the trial court. *Id.* The petition must also be served upon the trial court judge who entered the order from which leave to appeal is sought. *Id.*

¶ 51 Here, the challenged permanency orders were entered on June 14, 2018. On July 10, 2018, Mr. and Mrs. J. filed motions to vacate those June 14th orders, and the circuit court denied those motions on October 4, 2018. Assuming that Mr. and Mrs. J. had standing to appeal, they never petitioned this court for leave to appeal either the June 14th orders or the October 4th order. Instead, they filed a notice of appeal on November 5, 2018, within the first business day

[9] Rule 306(a)(5) states that 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 or the relocation (formerly known as removal) 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).

following 30 days of the circuit court's October 4, 2018 order. Consequently, any error pertaining to the permanency planning hearing orders has been forfeited. See *In re R.A.B.*, 146 Ill. App. 3d 993, 996 (1986); *cf. In re Curtis B.*, 203 Ill. 2d at 63. Moreover, this court has no jurisdiction to consider whether the permanency planning orders were properly made. *In re Leona W.*, 228 Ill. 2d 439, 456-57 (2008).

¶ 52 However, Mr. and Mrs. J. assert, and the State agrees, that our jurisdiction over this appeal lies under Supreme Court Rule 304(b)(1) (eff. Mar. 8, 2016), which considers appeals from final judgments that do not dispose of an entire proceeding, and states that 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" is appealable without the trial court's express written finding that there is no just reason for delaying either enforcement or appeal or both. Mr. and Mrs. J. argue, and the State agrees, that we have jurisdiction to hear this appeal because the circuit court's finding at the June 14, 2018 permanency planning hearing—*i.e.*, the former foster placement was not necessary or appropriate to the adoption goal—finally determined the status of Mr. and Mrs. J. as foster parents. They argue that they are considered parties to the circuit court proceedings based on their statutory right to intervene in this matter. Specifically, they contend that they have standing to bring this claim because section 1-5(2)(a) of the Juvenile Court Act gives former foster parents the right to be heard even though the right to be heard does not grant party status. Although they did not file a motion to intervene in the circuit court case at bar, they contend that no motion was necessary under section 1-5(2)(c) of the Juvenile Court Act, which provides that if a foster parent has had the minor who is the subject of the proceeding in her home for more than one year, and if the placement is being terminated from that foster

parent's home, that foster parent shall have standing and intervenor status except where DCFS had removed the minor because of a reasonable belief that the circumstances or conditions of the minor are such that continuing in the home care of the foster parent will jeopardize the child's health or safety. *Id.*

¶ 53 The Public Guardian, however, argues that Mr. and Mrs. J. do not have standing to bring this appeal because they failed to file a motion to intervene in the circuit court case and section 1-5(2)(c) must be construed to require them to file such a motion. The Public Guardian also argues that there is no appellate jurisdiction to hear this appeal because the June 14, 2018 permanency orders were neither final orders nor judgments that finally determined the former foster parents' rights or status. The Public Guardian asserts that Mr. and Mrs. J. are improperly using the child protection proceedings for the girls as a vehicle to challenge the validity of the DCFS regulation that requires the dismissal of a service appeal when a court has made a judicial determination or issued an order on the issue being appealed.[10]

¶ 54 Because we agree with the Public Guardian that the challenged permanency orders were not a judgment that finally determined the former foster parents' rights or status under Rule 304(b)(1), we need not address the arguments regarding standing.

¶ 55 The circuit court's specific finding included in the June 14 permanency orders—that the former foster placement was not necessary or appropriate to the adoption goal—did not constitute a final determination as it pertained to Mr. and Mrs. J. A judgment is considered final if it "fixes absolutely and finally the rights of the parties in the lawsuit; it is final if it determines

[10] This same regulation also provides that "a juvenile court determination that a current foster home placement is necessary and appropriate does not constitute a judicial determination on the merits of a service appeal, filed by a former foster parent, involving a change of placement decision." 89 Ill. Adm. Code 337.110(a)(4) (2016).

the litigation on the merits so that, if affirmed, the only thing remaining is to proceed with the execution of the judgment." *In re T.M.,* 302 Ill. App. 3d 33, 37 (1998). Any "matters left for future determination are merely incidental to the ultimate rights that have been adjudicated by the order." *In re T.M.,* 302 Ill. App. 3d at 37.

¶ 56 The circuit court's June 14th ruling was not the impetus of the children's removal from Mr. and Mrs. J.s' home; the children had already moved to their new home on June 5th as a result of DCFS' May 8th final clinical placement review decision. Section 2-28(2) of the Juvenile Court Act specifically precludes the circuit court from ordering a specific placement or foster home after DCFS has been appointed guardian of the minor. 705 ILCS 405/2-28(2) (West 2016). Because the children were already removed from Mr. and Mrs. J.s' home, the June 14th orders did not change the parties' status quo, which continued unaffected. The orders did not permanently determine the rights of the parties nor definitely resolve any issue in the case.

¶ 57 Section 2-28(3) of the Juvenile Court Act (705 ILCS 405/2-28(3) (West 2016)) provides that a permanency order is issued following a permanency hearing and sets forth the court's determination as to the future status of the child. The order is to contain a permanency goal for the child that is chosen based on the child's best interests from a list of enumerated goals that includes alternatives such as return home, adoption, and guardianship on a permanent basis. Furthermore, section 2-28(3)(b)(iii) requires the court to determine "whether the minor's placement is necessary, and appropriate to the plan and goal." 705 ILCS 405/2-28(3)(b)(iii) (West 2016). The Illinois Supreme Court has stated that a permanency order, by statute, does not finally determine a right or status of a party. *In re Curtis B.,* 203 Ill. 2d at 56. By operation of section 2-28(3), all of the rights and obligations set forth in a permanency order must remain

open for reexamination and possible revision until the permanency goal is achieved. *Curtis B.,* 203 Ill. 2d at 60. Permanency orders must be reviewed and reevaluated at a minimum of every six months. 705 ILCS 405/2-28(2) (West 2016). Therefore, "[n]one of the determinations contained in a permanency order can be considered set or fixed as a matter of law." *Curtis B.,* 203 Ill. 2d at 59.

¶ 58 Later, however, the supreme court clarified that in some cases a permanency order or certain decisions included in a permanency order may be interpreted as a final and appealable order. *In re Faith B.*, 216 Ill. 2d 1, 17 (2005) (permanency order for private guardianship contained within a dispositional order under which the mother's children were made wards of the court was final and appealable because the trial court declined to set any subsequent permanency hearings and clearly stated that guardianship was the only acceptable plan, and the goal of guardianship by relatives was achieved as soon as the court set that goal). It is the nature of the order that is relevant in determining whether appellate jurisdiction exists. *Id.* at 16.

¶ 59 Furthermore, we cannot agree with the proposition that the ultimate effect the June 14th permanency orders had on Mr. and Mrs. J.s' administrative appeal—*i.e.*, the October 29th dismissal of their administrative appeal based on the court's judicial determination or order on the issue being appealed—transformed those June 14th orders into final determinations on Mr. and Mrs. J.s' rights or status for purposes of jurisdiction under Rule 304(b)(1). DCFS' October 29th dismissal order informed Mr. and Mrs. J. that it was a final administrative decision and they could seek judicial review, but they failed to file a complaint in the circuit court for administrative review. Although Mr. and Mrs. J. correctly predicted that the circuit court's adverse finding on June 14th would lead to the dismissal of their administrative appeal, the

October 29th order constituted a final determination on their status as foster parents when they failed to seek administrative review.

¶ 60 We find that Mr. and Mrs. J.s' assertion of jurisdiction under Rule 304(b)(1) based on a fair and logical reading of the Juvenile Court Act in conjunction with the Foster Parent Act is similar to the argument rejected by the Illinois Supreme Court in *In re Curtis B.,* 203 Ill. 2d 53, which held that a permanency order may not be appealed as a matter of right under Rule 304(b)(1). At the time *Curtis B.* was decided, section 2-28(3) of the Juvenile Court Act provided that permanency orders were appealable as a matter of right. The supreme court, however, held that this statutory grant of appellate jurisdiction was unconstitutional because it was an attempt by the legislature to " 'encroach upon the exclusive power of the supreme court to regulate matters of appellate practice and procedure.' " *Curtis B.,* 203 Ill. 2d at 57, 60, quoting *People v. Heim,* 182 Ill. App. 3d 1075, 1081 (1989). In determining the constitutionality of the review provision of section 2-28(3), the supreme court focused on whether a permanency order was appealable under the supreme court rules. *Id.* at 59-60. To the extent that permanency orders are not appealable under the supreme court rules, the legislative provision for their appeal was an usurpation of the supreme court's authority and, therefore, unconstitutional as a violation of the separation of powers. *Id.* at 60. After the court concluded that section 2-28(3) was unconstitutional, the court noted that the invalidation of the appealability provision in section 2–28(3) rendered the case an unauthorized appeal from a nonfinal order. *Id.* at 60-61.

¶ 61 The court recognized that permanency orders decide important issues. *Id.* at 59. Nevertheless, "providing the right to appellate review of every permanency order necessarily comes at a cost, because with every appeal comes further delay in determining the child's

permanent placement status." *Id.* at 62-63. Where the Illinois Supreme Court has already held invalid a statutory provision that directly attempted to provide for appeals as a matter of right under Rule 304(b)(1) for permanency orders, this court certainly cannot conclude that a right to appeal permanency orders under Rule 304(b)(1) may be inferred by cobbling together provisions from two separate statutes.

¶ 62 Finally, Mr. and Mrs. J. assert that Rule 307(a)(6) (eff. Nov. 1, 2017) imparts a corollary basis of jurisdiction. Rule 307(a)(6) provides that an appeal may be taken to the appellate court from an interlocutory order of court "terminating parental rights or granting, denying or revoking temporary commitment in adoption proceedings commenced pursuant to section 5 of the Adoption Act." This claim lacks merit; this case is not an appeal of the termination of the parents' parental rights or any other order in a proceeding commenced under section 5 of the Adoption Act (750 ILCS 50/5 (West 2016)).

¶ 63 III. CONCLUSION

¶ 64 We conclude that the challenged permanency planning hearing orders in the instant case constitute nonfinal orders for which the supreme court provided Rule 306(a)(5) for an appeal to this court. Because Mr. and Mrs. J. failed to follow the requirements of that rule, we conclude that we lack jurisdiction to consider the appeal and are compelled to dismiss it.

¶ 65 Appeal dismissed.