

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
February 4, 2019

IN RE DEVIN C.¹

**Appeal from the Juvenile Court for Montgomery County
No. 17-JV-1216 Ray Grimes, Judge**

No. M2018-01918-COA-R3-JV

This is an appeal from a decision of the Juvenile Court for Montgomery County setting a father’s child support obligation. Because the father did not file his notice of appeal within thirty days after entry of the final judgment as required by Tenn. R. App. P. 4(a), we dismiss the appeal.

Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed

ANDY D. BENNETT, RICHARD H. DINKINS, AND W. NEAL MCBRAYER, JJ.

Devin K. C., Nashville, Tennessee, pro se.

Amber L. Seymour, Nashville, Tennessee, for the appellee, Child Support Services of Tennessee

Mikayla N. H., Clarksville, Tennessee, pro se.

MEMORANDUM OPINION²

This appeal arises out of a petition to set support filed in the Juvenile Court for Montgomery County. The magistrate entered an order setting support on January 4, 2018.

¹This Court has a policy of protecting the identity of children in juvenile cases by initializing the last names of the parties.

²Tenn. R. Ct. App. 10 states:

This court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

On March 23, 2018, the father, Devin K. C., requested a rehearing before the juvenile judge. The juvenile court entered an order on May 23, 2018, denying the father's request for a rehearing and confirming the magistrate's order setting support. The father subsequently filed a "Demand to Vacate" which the trial court denied on August 8, 2018. The father filed his notice of appeal on October 18, 2018.³

Tenn. R. App. P. 4(a) requires that a notice of appeal be filed with the clerk of the appellate court within thirty days after entry of the judgment appealed. Although the father's notice of appeal does not identify the order being appealed, the notice was not filed within thirty days of any order. Thus, on January 11, 2019, this court ordered the father to show cause why his appeal should not be dismissed for failure to file a timely notice of appeal.

In response, the father does not dispute that his notice of appeal is untimely. Rather, he asserts the time limit for filing the notice of appeal should be waived and argues the merits of his appeal. However, the time limit for filing a notice of appeal in this court is mandatory and jurisdictional. *Albert v. Frye*, 145 S.W.3d 526, 528 (Tenn.2004); *Binkley v. Medling*, 117 S.W.3d 252, 255 (Tenn. 2003). This court can neither waive nor extend the time period. Tenn. R. App. P. 2 and 21(b); *Flautt & Mann v. Council of City of Memphis*, 285 S.W.3d 856, 869 (Tenn. Ct. App. 2008); *Jefferson v. Pneumo Serv. Corp.* 699 S.W.2d 181, 184 (Tenn. Ct. App. 1985). The failure to file a timely notice of appeal deprives this court of jurisdiction to hear the matter. *Flautt & Mann*, 285 S.W.3d at 869.

The appeal is hereby dismissed for failure to file a timely notice of appeal. The case is remanded to the trial court for further proceedings consistent with this opinion. Devin K. C. is taxed with the costs for which execution may issue

PER CURIAM

³ The father also filed a Writ of Quo Warranto on August 21, 2018. There is no indication that the trial court has ruled on the writ. Regardless, the filing has no effect on the time limit for filing a notice of appeal from the underlying judgment.