

FILED

07/26/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
July 19, 2023 Session

IN RE SKYLAR M.

**Appeal from the Chancery Court for Cumberland County
No. 2020-CH-1884 Ronald Thurman, Chancellor**

No. E2023-00875-COA-R3-PT

The appellant filed a notice of appeal more than thirty days from the date of entry of the order from which the appellant is seeking to appeal. Because the notice of appeal was not timely filed, we have no jurisdiction to consider this appeal.

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

THOMAS R. FRIERSON, II, J.; JOHN W. MCCLARTY, J.; and KRISTI M. DAVIS, J.

Tyler S. Davis, Kingston, Tennessee, for the appellant, Thomas M.

Patricia A. Moore, Crossville, Tennessee, for the appellees, Donald M., II, and Stacy M.

MEMORANDUM OPINION¹

Following a bench trial, the Cumberland County Chancery Court (“Trial Court”) entered an order terminating the parental rights of the appellant father, Thomas M. (“Appellant”). Appellant timely appealed to this Court following the Trial Court’s initial termination order. During the appeal, this Court vacated the Trial Court’s judgment and remanded for the Trial Court to make sufficient findings of fact in compliance with Tenn. Code Ann. § 36-1-113(k). *See In re Skylar M.*, No. E2022-00119-COA-R3-PT, 2022 WL

¹Rule 10 of the Rules of the Court of Appeals provides as follows:

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 When a case is decided by memorandum opinion it shall be designated “MEMORANDUM OPINION,” shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

3099267, at *6 (Tenn. Ct. App. Aug. 4, 2022). Following the initial appeal, the Trial Court entered its amended order terminating parental rights in October 2022.² Appellant filed a notice of appeal on June 9, 2023, seeking to appeal the final judgment entered in October 2022. The notice of appeal was entered more than thirty days following entry of the Trial Court’s final judgment.

The Trial Court Clerk filed a notice with this Court stating that Appellant had not filed a notice of appeal within thirty (30) days of entry of the Trial Court’s Amended Order for Termination of Parental Rights. The Trial Court Clerk attached to its notice an order entered by the Trial Court determining that Appellant’s notice of appeal was untimely and ordering that an adoption may proceed. This Court entered an order on June 23, 2023, requiring Appellant to show cause why this appeal should not be dismissed as having been untimely filed. Appellant failed to respond to this Court’s show cause order.

In order to be timely, a notice of appeal must “be filed with the clerk of the appellate court within 30 days after the date of entry of the judgment appealed from.” Tenn. R. App. P. 4(a). “The thirty-day time limit for filing a notice of appeal is mandatory and jurisdictional in civil cases.” *Albert v. Frye*, 145 S.W.3d 526, 528 (Tenn. 2004). If a notice of appeal is not filed in a civil case in a timely fashion from the date of entry of the final judgment, we are not at liberty to waive the procedural defect and must dismiss the appeal. *See Arfken & Assocs., P.A. v. Simpson Bridge Co., Inc.*, 85 S.W.3d 789, 791 (Tenn. Ct. App. 2002); *Am. Steinwinter Investor Grp. v. Am. Steinwinter, Inc.*, 964 S.W.2d 569, 571 (Tenn. Ct. App. 1997); *Jefferson v. Pneumo Services Corp.*, 699 S.W.2d 181, 184 (Tenn. Ct. App. 1985).

Because the Notice of Appeal in this case was filed more than thirty (30) days after the date of entry of the final order, we lack jurisdiction to consider the appeal. This appeal is dismissed. Costs on appeal are taxed to the appellant, Thomas M., for which execution may issue if necessary.

PER CURIAM

² The notice of appeal filed by the appellant stated that he was seeking to appeal the final judgment entered on October 28, 2022. However, the Trial Court’s order finding that the notice of appeal was untimely stated that the Amended Order for Termination of Parental Rights was filed on October 27, 2022. Regardless, the appellant’s notice of appeal clearly was untimely filed in this Court.