

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
January 6, 2023

<p><b>FILED</b> 01/11/2023 Clerk of the Appellate Courts</p>
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**IN RE JACOB J.<sup>1</sup>**

**Appeal from the Chancery Court for Sumner County  
No. 2021-AD-18 Louis W. Oliver, Chancellor**

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**No. M2023-00029-COA-R3-PT**

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A father appeals the termination of his parental rights. Because the father did not file his notice of appeal with the clerk of the appellate court within thirty days after entry of the final order as required by Tennessee Rule of Appellate Procedure 4(a), we dismiss the appeal.

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

FRANK G. CLEMENT, JR., P.J., M.S., ANDY D. BENNETT, and W. NEAL MCBRAYER, JJ.

Martin G., Jr., Jackson, Michigan, pro se.

Wende J. Rutherford, Nashville, Tennessee, for the appellees, Brian K. H., April Dawn H. (S.).

Stephanie Renee Reeves, Nashville, Tennessee, for the appellee, Tennessee Department of Children’s Services.

**MEMORANDUM OPINION<sup>2</sup>**

Martin G. (“Father”) has filed a pro se notice of appeal from a final order entered

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<sup>1</sup> This Court has a policy of protecting the identity of children by initializing the last names of the parties, relatives, and foster parents.

<sup>2</sup>Under the rules of this Court, as a memorandum opinion, this opinion may not be published, “cited[,] or relied on for any reason in any unrelated case.” Tenn. Ct. App. R. 10.

by the Chancery Court for Sumner County on September 28, 2022, terminating his parental rights.<sup>3</sup> Tennessee Rule of Appellate Procedure 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. Father did not file his notice of appeal with the clerk of this Court until January 4, 2023, ninety-eight days after entry of the judgment appealed.

Father asserts that he first attempted to file a notice of appeal with the trial court clerk by facsimile on November 4, 2022. The trial court clerk informed Father that the notice must be filed with the clerk of this Court, and Father attempted to file his notice of appeal with the clerk of this Court by facsimile on December 5, 2022. After the clerk of this Court notified Father that the notice of appeal could not be filed by facsimile, Father mailed the notice to the clerk by certified mail on December 27, 2022. The clerk received and filed the notice of appeal on January 4, 2023.

Rule 4(a) requires a notice of appeal to be filed with the clerk of the appellate court. A notice of appeal filed with the clerk of the trial court is a nullity and does not initiate an appeal as of right. Moreover, Tennessee Rule of Appellate Procedure 20A does not permit the filing of a notice of appeal by facsimile, and a notice of appeal filed by facsimile is not sufficient to perfect an appeal. See *Love v. Coll. Level Assessment Servs., Inc.*, 928 S.W.2d 36, 36–37 (Tenn. 1996); *Davis v. Jackson Tennessee Hosp. Co., LLC*, W2009-02537-COA-R3-CV, 2010 WL 2812625 at \*3–4 (Tenn. Ct. App. July 16, 2010). Thus, the notice faxed to the trial court clerk on November 4, 2022, and the notice faxed to the clerk of this Court on December 5, 2022, are nullities and did not initiate an appeal as of right or extend the time for filing a notice of appeal. Even if we could consider the notice of appeal to have been filed on November 4, 2022, the notice would still be untimely as it was tendered thirty-seven days after entry of the order appealed.

We have also determined that Father’s appeal is not saved by the application of Tennessee Rule of Appellate Procedure 20. Because Father is an inmate proceeding pro se, his notice of appeal would be considered timely if it were delivered to the appropriate individual at his correctional facility within the time fixed for filing. Tenn. R. App. P. 20(g). Likewise, because the notice was sent to the clerk of this Court by certified mail, we would consider the notice timely if it were mailed within the time fixed for filing. Tenn. R. App. P. 20(a). However, the envelope containing the notice of appeal and Father’s own admissions demonstrate that the notice was neither mailed to the clerk nor delivered to the appropriate individual at Father’s correctional facility within the thirty-day time limit.

We are reluctant to dismiss an appeal involving the termination of parental rights based solely on a pro se parent’s failure to comprehend and comply with the Tennessee Rules of Appellate Procedure. Nevertheless, the time limit for filing a notice of appeal is

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<sup>3</sup> Father rejected the attorney appointed for him by the trial court and has been proceeding pro se.

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). The failure to file a timely notice of appeal deprives this Court of jurisdiction to hear the matter. *Flautt & Mann v. Council of City of Memphis*, 285 S.W.3d 856, 869 (Tenn. Ct. App. 2008). While a trial court may, under unusual and compelling circumstances, grant an appellant relief from the failure to file a timely notice of appeal under Tennessee Rule of Civil Procedure 60, such relief must be sought in the trial court. Tenn. R. App. P. 4(a), *Advisory Commission Comments; McCracken v. Brentwood United Methodist Church*, 958 S.W.2d 792 (Tenn. Ct. App. 1997). This Court can neither waive nor extend the thirty-day time period.

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. The costs are taxed to Martin G. for which execution may issue.

PER CURIAM