[Cite as *In re J.R.*, 2009-Ohio-4883.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92957

IN RE: J.R.
A Minor Child

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case No. AD 03900968

BEFORE: Cooney, A.J., Gallagher, J., and Blackmon, J.

RELEASED: September 17, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} In this appeal, appellant B.A. ("mother"),[1] appeals the juvenile court's nunc pro tunc order granting permanent custody of her son, J.R. (born in January 1996), to the Cuyahoga County Department of Children and Family Services ("CCDCFS"). As we lack jurisdiction to consider the appeal, we dismiss it.

{¶ 2} In 1999, mother became unable to care for her three children, J.R., P.A., and A.A. Her brother, E.P., obtained legal custody of the children. But in April 2003, E.P. asked his CCDCFS caseworker to remove the children from his home. On April 25, 2003, the juvenile court adjudicated the children dependent and neglected and placed them in the emergency temporary custody of CCDCFS. In May 2003, CCDCFS filed a case plan with the goal of reunifying the children with E.P. It included goals for E.P. and mother to complete, but mother now claims she never knew the plan existed.

{¶ 3} On July 10, 2003, during a juvenile court hearing, E.P. admitted that he had neglected the children and suffered from a substance abuse problem that prevented him from caring for them. The juvenile court awarded temporary custody of J.R. to CCDCFS. Mother claims no knowledge of this hearing, even though she signed the return receipt sent with the

[1]The parties are referred to herein by their initials or title in accordance with this court's established policy not to disclose identities in juvenile cases.

summons and complaint that notified her of the date, time, and location of the hearing.

{¶ 4} On March 19, 2004, CCDCFS moved to obtain permanent custody of the children. During a hearing on May 3, 2004, E.P. consented to CCDCFS's permanency plan. Mother did not attend this hearing, because, she later claimed, she had not been informed about it. The summons and complaint stating the date, time, and location of the hearing had been sent to an address on West 104th Street, and mother now claims she never lived there. The undelivered envelope was returned to the Clerk's office, marked, "Returned – attempted not known."

{¶ 5} The juvenile court continued the matter to June 2, 2004 to perfect service on mother. The caseworker served mother by publication. On June 22, 2004, the court issued a journal entry finding that a grant of permanent custody is in the child's best interest.

{¶ 6} In 2007, mother moved to have the juvenile court modify custody and visitation arrangements for J.R. A juvenile court magistrate heard the matter and ruled that because the court had terminated mother's parental rights in 2004, she had no standing to move to modify custody. Mother made no attempt to appeal this decision.

{¶ 7} Then, on the CCDCFS's motion in 2008, the juvenile court filed a nunc pro tunc entry on February 10, 2009, stating:

{¶ 8} "The Motion to Modify Temporary Custody to Permanent Custody is granted and the parental rights of [mother and father of P.A. and A.A. and father of J.R.] are terminated."

{¶ 9} Mother appeals from the nunc pro tunc order, raising five assignments of error for our review.[2]

{¶ 10} As a threshold matter, we must determine whether mother's appeal is timely. We lack jurisdiction to hear untimely appeals, and a party must appeal within 30 days after a court enters a final appealable order. App.R. 4(A); *Morton v. Morton* (1984), 19 Ohio App.3d 212, 483 N.E.2d 1192, paragraph one of the syllabus.

{¶ 11} Mother claims that her appeal is timely because she appealed within 30 days after the court entered its nunc pro tunc entry. A nunc pro tunc entry, however, does not extend the deadline for filing an appeal; it relates back to the date of the original entry. *State ex rel. Rue v. Perry*, Cuyahoga App. No. 87810, 2006-Ohio-5320; *Gold Touch, Inc. v. TJS Lab, Inc.* (1998), 130 Ohio App.3d 106, 719 N.E.2d 629. In *Soroka v. Soroka* (June 17, 1993), Cuyahoga App. No. 62739, this court explained:

[2]The assignments of error are set forth in the appendix.

> "Only when the trial court changes a matter of substance or resolves a genuine ambiguity in a judgment previously rendered should the period within which an appeal must be taken begin to run anew. *Perfection Stove Co. v. Scherer* (1929), 120 Ohio St. 445, 449; *Aetna Life & Casualty v. Daugherty* (Apr. 21, 1983), Cuyahoga App. No. 45368, unreported. The relevant inquiry is whether the trial court, in its second judgment entry, has disturbed or revised legal rights and obligations which by its prior judgment had been settled with finality. See *F.T.C. v. Minneapolis & Honeywell Co.* (1952), 344 U.S. 206."

{¶ 12} In this vein, mother claims that the June 2004 journal entry did not conclusively terminate her parental rights. She claims, instead, that the February 2009 entry actually terminated her parental rights and revised the rights enumerated in the June 2004 entry. We disagree. The June 2004 journal entry was entitled, "Journal Entry and Findings of Fact P/C Motion" and stated, in pertinent part:

> "This matter came on for hearing this 2nd day of June, 2004 * * * upon the motion for permanent custody as to the children [J.R. and A.A.] and upon the motion to modify temporary custody to Planned Permanent Living Arrangement as to the child [P.A.] * * *.
>
> "The order heretofor[e] made committing children to the temporary custody of CCDCFS is now terminated. * * *
>
> "In Re: [A.A. and J.R.]: * * * the Court finds by clear and convincing evidence that a grant of permanent custody is in the best interests of the child and the children cannot be placed with one of the children's parents within a reasonable period of time or should not be placed with either parent.
>
> "The Court further finds that: The children are abandoned. The children are orphaned and there are no relatives of the children who are able to take permanent custody. * * * The children [have] been in

temporary custody of a public children services agency or private child placing agency under one or more separate orders of disposition for twelve or more months of a consecutive twenty-two month period.

"The Court further finds that: Following the placement of the children outside the children's home and notwithstanding reasonable case planning and diligent efforts by the agency to assist the parents to remedy the problems that initially caused the children to be placed outside the home, the parents have failed continuously and repeatedly to substantially remedy the conditions causing the children to be placed outside the children's home. The chronic mental illness, chronic emotional illness, mental retardation, physical disability, or chemical dependency of the parent that is so severe that it makes the parent unable to provide an adequate permanent home for the children at the present time and, as anticipated, within one year.

"The parent committed any abuse against the children, caused the children to suffer any neglect, or allowed the children to suffer any neglect between the date that the original complaint alleging abuse or neglect was filed and the date of the filing of the motion for permanent custody.

"The parent has demonstrated a lack of commitment toward the children by failing to regularly support, visit, or communicate with the children when able to do so, or by other actions showing an unwillingness to provide an adequate permanent home for the children.

"The parent has placed the child at substantial risk of harm two or more times due to alcohol or drug abuse and has rejected treatment two or more times or refused to participate in further treatment two or more times after a case plan issued requiring treatment of the parent was journalized as part of a dispositional order issued with respect to the children or an order was issued by any other court requiring treatment of the parent. The parent for any reason is unwilling to provide food, clothing, shelter, and other basic necessities for the children or to prevent the children from suffering physical, emotional, or sexual abuse or physical, emotional, or mental neglect.

{¶ 13} "The parent has committed abuse against the children or caused or allowed the children to suffer neglect and the court determines that the seriousness, nature, or likelihood of recurrence of abuse or neglect makes the children's placement with the children's parent a threat to the child's safety."

{¶ 14} Clearly, the June 2004 journal entry terminated mother's parental rights, finding that J.R. could not be reunited with her. The nunc pro tunc entry of February 2009 did not revise her legal rights but reiterated that permanent custody was granted, thereby terminating mother's parental rights, so it relates back to the June 2004 journal entry.[3] Because the court's underlying substantive determinations were not disturbed or revised in the nunc pro tunc order, we conclude that final judgment was entered in 2004. See *State ex rel. Rue*. Accordingly, mother's appeal, nearly five years after the juvenile court terminated her parental rights, is untimely. Therefore, we lack jurisdiction to consider the appeal.

{¶ 15} The appeal is dismissed.

It is ordered that appellee recover of appellant costs herein taxed.

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[3]Civ.R. 60(A) allows a court to correct clerical mistakes in judgments, orders, or other parts of the record at any time sua sponte or on any party's motion. The transcript of the June 2004 proceedings reveals that the trial court stated the following: "I'll make the finding that [J.R., A.A., and P.A.] have been abandoned, they should not be placed with either parent or their guardian within a reasonable period of time, that permanent custody is in their best interest. And so I grant permanent custody of [A.A.] and [J.R.]." Accordingly, the February 2009 nunc pro tunc entry spoke the truth of what occurred in June 2004.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and
PATRICIA A. BLACKMON, J., CONCUR

APPENDIX

THE JUVENILE COURT'S FAILURE TO NOTIFY [MOTHER] OF CUSTODY PROCEEDINGS BY USING A KNOWN AND RELIABLE ADDRESS VIOLATED HER RIGHT TO DUE PROCESS UNDER THE STATE AND FEDERAL CONSTITUTIONS.

THE PERMANENT CUSTODY RULING MUST BE VACATED, AS IT WAS VOID *AB INITIO* DUE TO DEFECTIVE SERVICE.

THE JUVENILE COURT ABUSED ITS DISCRETION BY IGNORING EVIDENCE THAT OF A DUE PROCESS VIOLATION.

IN REFUSING TO CONSIDER [MOTHER'S] MOTION TO MODIFY CUSTODY WITHOUT A PROPER HEARING, THE COURT COMMITTED REVERSIBLE ERROR.

AS THE RECORD DOES NOT SUPPORT THE COURT'S "REASONABLE EFFORTS" FINDING OR THE FINDING OF ABANDONMENT, THE PERMANENT CUSTODY RULING MUST BE VACATED.