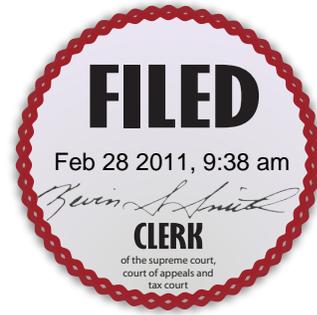


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

T.S. and R.D.,)
)
Appellants-Respondents,)
)
vs.)
)
INDIANA DEPARTMENT OF CHILD SERVICES,)
)
Appellee-Petitioner.)

No. 27A02-1007-JT-816

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Thomas G. Wright, Senior Judge
Cause No. 27D02-0907-JT-438

February 28, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

T.S. (“Mother”) and R.D. (“Father”) appeal the involuntary termination of their parental rights to their child, K.S. We conclude that this court does not have subject-matter jurisdiction due to the parents’ failure to timely file a notice of appeal and, thus, dismiss this cause with prejudice.

FACTS AND PROCEDURAL HISTORY

Mother and Father are the biological parents of K.S., born in May 2005 shortly after Mother’s seventeenth birthday. In October 2005, the Indiana Department of Child Services, Grant County (“GCDSC”) filed a petition alleging that both Mother and K.S. were children in need of services (“CHINS”). Mother was removed from her parents’ home and placed in foster care with K.S. Mother and K.S. were returned to the maternal grandparents’ care following a dispositional hearing in May 2006.

GCDSC filed an order requesting a temporary change of placement for K.S. in November 2007 due, at least in part, to Mother’s incarceration. Several months later, GCDSC filed a new CHINS petition alleging K.S. was a CHINS and naming Mother, who was no longer a minor, and Father as parties.¹ Mother and Father were both offered reunification services, but their participation was sporadic and ultimately unsuccessful. GCDSC eventually filed petitions seeking the involuntary termination of both Mother’s and Father’s parental rights to K.S. in July 2009.

A two-day consolidated evidentiary hearing on the termination petitions commenced in March 2010 and concluded in April 2010. The trial court took the matter

¹ Father’s identity was withheld from GCDSC until Mother reached the age of majority. Father was thirty-six years old when K.S. was born. Father was later determined to be K.S.’s biological father through a paternity proceeding.

under advisement, and on June 14, 2010, the court entered its judgment terminating both Mother's and Father's parental rights to K.S. On July 16, 2010, counsel for Mother and Father filed a petition seeking the trial court's permission to file belated notices of appeal. The trial court issued an Order Granting Permission to File Belated Notice of Appeal the same day. Counsel thereafter filed a separate Notice of Appeal on behalf of both Mother and Father with the Clerk of this Court on July 16, 2010; however, it appears from the face of said documents that counsel dated the notices, "July 14, 2010." Appellant's App. p. 107, 109. This appeal ensued.²

DISCUSSION AND DECISION

Initially, we observe that lack of appellate jurisdiction may be raised at any time, and if the parties do not question subject matter jurisdiction, the appellate court may consider the issue *sua sponte*. Georgos v. Jackson, 790 N.E.2d 448, 451 (Ind. 2003). Here, the record reveals that the trial court issued its final judgment terminating Mother's and Father's parental rights to K.S. on June 14, 2010. Neither parent, however, filed his or her Notice of Appeal until July 16, 2010, thirty-three days later. Thus, both parents failed to timely file their Notice of Appeal pursuant to Indiana Appellate Rule 9(A) (2010), which provides in relevant part:

(1) *Appeals from Final Judgments*. A party initiates an appeal by filing a Notice of Appeal with the trial court clerk within thirty (30) days after the entry of final judgment.

* * *

² On January 20, 2011, this Court issued an order directing Mother and Father to show cause as to why this case should not be dismissed for lack of subject-matter jurisdiction. Mother's and Father's responses were due on or before February 4, 2011. As of February 15, 2011, Mother and Father had failed to file any response to this Court's Order to Show Cause.

(5) *Forfeiture of Appeal*. Unless the Notice of Appeal is timely filed, the right to appeal *shall* be forfeited

(Final emphasis added).

This court has previously explained that the timely filing of a notice of appeal is a jurisdictional requirement, and failure to conform to the applicable time limits results in forfeiture of an appeal. Trinity Baptist Church v. Howard, 869 N.E.2d 1225, 1227 (Ind. Ct. App. 2007), trans. denied; see also Cavazzi v. Cavazzi, 597 N.E.2d 1289, 1292 (Ind. Ct. App. 1992) (stating “[o]ur supreme court has held that it is bound by its own rules,” and further explaining that we are not at liberty “to waive compliance with our rules that determine whether we may entertain the appeal in the first place. . . .”). Because Mother and Father failed to timely file their notices of appeal, their respective rights to appeal the trial court’s termination order are forfeited.³ Accordingly, we dismiss this case with prejudice.

Dismissed.

DARDEN, J., and BAILEY, J., concur.

³ We note that in In re IC, 877 N.E.2d 1254, slip op. p. 7, n. 2 (Ind. Ct. App. 2007), this Court issued an order dismissing a termination of parental rights appeal because the Appellant failed to timely file a Notice of Appeal pursuant to Appellate Rule 9(A)(1) & (5). Our Supreme Court granted transfer in the matter and issued an unpublished order remanding the cause for our review on the merits, finding that the Appellant had not forfeited her right to appeal due to the “extraordinary circumstances” of the case which involved “the combination of this appeal being an appeal of an order terminating [the mother’s] parental rights and her detrimental reliance upon the trial court’s erroneous granting of an extension of time to file her notice of appeal when no extension was available.” M.C. v. State, Cause No. 26S05-0707-JV-296 (Ind. July 26, 2007). Such extraordinary circumstances do not exist here, as the parents did not seek, nor did the trial court grant, an erroneous extension of time. Nor was there any detrimental reliance by the parents on an erroneous order.