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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-371

Filed 19 February 2025

Cumberland County, No. 22 JB 15

IN THE MATTER OF: A.W.

Appeal by Petitioner from Orders entered 17 November 2023 by Judge Toni S. King in Cumberland County District Court. Heard in the Court of Appeals 30 January 2025.

Dawn M. Oxendine for Petitioner-Appellant Cumberland County Department of Social Services.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender David W. Andrews, for Juvenile-Appellee.

Attorney General Jeff Jackson, by Assistant Attorney General Megan Shook, for the State.

HAMPSON, Judge.

Factual and Procedural Background

Petitioner Cumberland County Department of Social Services (DSS) appeals

from an Order to Terminate Supervision releasing the minor child, Audrey,¹ from probation supervised by DSS. The Record before us tends to reflect the following:

Pursuant to two juvenile delinquency petitions, Audrey was placed in the legal and physical custody of DSS on 3 March 2022. Audrey was adjudicated delinquent following a dispositional hearing on 21 November 2022. On 15 December 2022, the trial court entered a Juvenile Level 1 Disposition Order placing Audrey on Level 1 probation for twelve months. Audrey was also ordered to comply with additional classes, rules, and regulations. The trial court ordered custody of Audrey remain with DSS based on its finding that Audrey's continuation in her home would be contrary to her best interest.

On 3 October 2023, Audrey's Juvenile Court Counselor, Shannon Horne, filed a Motion to Terminate Audrey's probation as she had satisfied her probation conditions. On 24 October 2023, the trial court held a hearing on the Motion to Terminate. On 17 November 2023, the trial court entered an Order to Terminate Supervision, ending Audrey's probation and terminating the trial court's jurisdiction. The same day, the trial court entered another Order (the Juvenile Order) containing only a decretal section which provided:

1. We are going to go ahead and terminate [Audrey] successfully as she's completed all conditions and obligations as required by probation.

2. That I am going to order by statute that [DSS] continue to

¹ A pseudonym stipulated to by the parties.

maintain custody and control of the juvenile as well as to monitor her.

On 1 December 2023, DSS filed written Notice of Appeal from the Order to Terminate Supervision and the Juvenile Order.

Appellate Jurisdiction

DSS filed written Notice of Appeal pursuant to N.C. Gen. Stat. § 7B-2602. That statute provides, in pertinent part, “Upon motion of a proper party as defined in G.S. 7B-2604, review of any final order of the court in a juvenile matter under this Article shall be before the Court of Appeals. Notice of appeal shall be given in open court at the time of the hearing or in writing within 10 days after entry of the order.” N.C. Gen. Stat. § 7B-2602 (2023). North Carolina Rule of Appellate Procedure 27 outlines the computation of time for “any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute[.]” N.C.R. App. P. 27(a) (2023).

Here, the trial court entered both Orders on 17 November 2023. The Record and Transcript do not reflect oral notice of appeal was given in open court. Under N.C. Gen. Stat. § 7B-2602, written Notice of Appeal was therefore due by Monday, 27 November 2023. DSS filed its written Notice of Appeal on 1 December 2023—fourteen days after entry of the Orders. Thus, written Notice of Appeal was not timely filed. “Failure to file a timely notice of appeal is a jurisdictional flaw which requires dismissal.” *Magazian v. Creagh*, 234 N.C. App. 511, 513, 759 S.E.2d 130, 131 (2014) (citing *Manone v. Coffee*, 217 N.C. App. 619, 623, 720 S.E.2d 781, 784 (2011)).

Moreover, “it is [the appellant]’s burden to produce a record establishing the jurisdiction of the court from which appeal is taken, and his failure to do so subjects th[e] appeal to dismissal.” *State v. Phillips*, 149 N.C. App. 310, 313-14, 560 S.E.2d 852, 855 (2022). The appellant’s burden includes showing notice of appeal was timely filed, and failure to do so is a jurisdictional error. *Bradley v. Cumberland Cnty.*, 262 N.C. App. 376, 382, 822 S.E.2d 416, 420 (2018).

Here, DSS does not address its delayed filing of its Notice of Appeal in the Record or in briefing. Indeed, in its Grounds for Appellate Review section of its briefing to this Court, DSS notes the relevant dates and merely states: “This appeal is authorized pursuant to N.C. Gen. Stat. §§ 7B-2602(4), 7B-2604(a), and 7B-2604(c).” Nor did DSS make any effort to redress this defect by filing a Petition for Writ of Certiorari in this Court. Thus, DSS failed to establish it timely filed its Notice of Appeal. Therefore, this Court does not have jurisdiction to review this case. Consequently, we are compelled to dismiss this appeal.

Conclusion

Accordingly, for the foregoing reasons, we dismiss DSS’s appeal.

DISMISSED.

Judges FLOOD and STADING concur.

Report per Rule 30(e).