

ORIGINAL

IN THE SUPREME COURT OF OHIO

IN THE MATTER OF: : Case No. 13-1932

CAMPBELL, BRAYDEN : On Appeal from the Clark County  
 : Court of Appeals, Second Appellate  
 : District

: Court of Appeals  
 : Case No. 13-CA-0072

: :

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MEMORANDUM IN SUPPORT OF JURISDICTION OF  
 APPELLANT, CASSIDY CAMPBELL

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**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION**

This cause presents a critical issue for appellate proceedings involving the termination of parental rights and privileges. The issue in this matter is whether App.R. 5 applies in cases involving the termination of parental rights and privileges.

Both the United States Supreme Court and this Honorable Court have established that the right to raise one's children is an "essential" and "basic civil right." *In re Murray* (1990), 52 Ohio St.3d 155, 157 citing *Stanley v. Illinois* (1972), 405 U.S. 645, 651. Parents have a "fundamental liberty interest" in the care, custody, and management of the child. *Santosky v. Krainer* (1982), 455 U.S. 745, 753. Further, it has been deemed "cardinal" that the custody, care and nurture of the child reside, first in the parents. *H.L. v. Matheson* (1981), 450 U.S. 398, 410. In *In re Smith* (1991), 77 Ohio App.3d 1, 16, 601 N.E.2d 45, the court noted, "Permanent termination of parental rights has been described as 'the family law equivalent of the death penalty in a criminal case.'"

In this case, the State filed for permanent custody of the minor child and Mother, on advice of counsel, relinquished her parental rights. Several months after the close of this matter Mother was provided with information that, had it been provided to her at the time of her decision would have ultimately altered her decision to relinquish her parental rights. The court of appeals determined in this case that App.R. 5 does not apply to the termination of parental rights regardless of the reasons for the delay. That decision violates the due process rights in cases involving the termination of parental rights established by this state. Judge Jeffrey Froelich,

dissented in part but concurred in judgment stating, "I would hold that Appellant has the right to file for a delayed appeal".

Our system provides criminal cases with the safeguard of delayed appeals because it recognizes that we as imperfect beings are not infallible and that errors in judgment can occur. Such as in a murder trial where the defendant was found guilty and DNA evidence is later discovered that could prove the defendant's innocence. For this reason the appellate courts make an informed decision in each criminal case based on the facts and the reasoning of why those facts were not presented in a timely manner.

These same standards should apply in cases terminating parental rights as the impact upon the parties is just as substantial. A parental bond is a bond that goes to the very fabric of our existence and one that can never truly be replaced. This bond is as vital to the child as it is the parent and "\*\*\*\*must be afforded every procedural and substantive protection the law allows", *In re Hayes* (1997), 79 Ohio St.3d 46, 48, 679 N.E.2d 680, quoting *Smith*.

Considering the substantial and lifelong impact on all involved, each delayed appeal should be heard with deference and scrutiny applied so that the decision is based on its merits, not simply disallowed despite the circumstances because of a failure in our system to abide by the Constitution and our inherent rights.

To promote the purposes and preserve the integrity of the legal system, and to assure due process to all parties in the termination of parental rights, this court must grant jurisdiction to hear this case and review the decision of the court of appeals.

## STATEMENT OF THE CASE AND FACTS

This is a permanent custody case which originated in the Clark County Juvenile Court. On October 25, 2011, Appellee filed an ex parte motion for custody of the minor child, Brayden Campbell, which the juvenile court granted. The trial court found Mother/Appellant, Cassidy Campbell indigent and appointed her counsel. On December 26, 2011, CCDCFS was granted temporary custody of the minor child and appointed a Guardian Ad Litem.

Children Services originally became involved with Appellant from a referral for assistance in housing, employment, and setting up benefits. As the social worker was closing the case a new referral came in with concerns that Appellant had overdosed and that the child was not being properly supervised. The social worker was able to arrange for Appellant and child to move into the Hannah House; however, shortly after the move into Hannah House, the social worker received concerns that Appellant was not participating in the program and that she was being removed from Hannah House. Due to these circumstances and the social workers concerns that Appellant was unable to provide for child's medical treatment for a cleft palate and additionally the minor child's basic needs CCDCFS filed for temporary custody.

A case plan was established for reunification but unfortunately Appellant was unable to complete the case plan and CCDCFS filed for permanent custody on 10/25/2012.

On October 25, 2012, Steve and Susan Franko, filed a motion to be made a party to the proceeding and a complaint for legal custody. CCDCFS filed a memorandum in opposition to the Franko's motions and subsequently the trial court held a motion hearing in which it denied the Franko's motions.

On February 13, 2013, on the advice of her court appointed counsel, Appellant acknowledged and agreed that she had substantially failed to complete her case plan and agreed that permanent custody would enable the child to obtain stability and predictability. The minor child is currently residing with foster parents.

Appellant did not originally file an appeal in this case as she relied on the advice of trial counsel which informed her she had no appealable issues.

Appellant later discovered, after the time for appeal expired, that information was withheld from her by her appointed counsel that would have had a direct impact on her decision to relinquish her rights. Appellant asserts that if she had been properly informed of all facts in this case that she would have taken the matter to trial.

On August 27, 2013, Appellant filed a Motion for Leave to File a Delayed Appeal which the Second Appellate Court overruled stating that it lacked subject matter jurisdiction to proceed.

It is from this decision that Appellant appeals to this Court.

### **ARGUMENT IN SUPPORT OF PROPOSITION OF LAW**

**Proposition of Law No. I: The delayed appeal provisions of App.R. 5 extend to cases involving the termination of parental rights and privileges.**

The evident issue in this case is whether App.R. 5 extends to cases involving the termination of parental rights and privileges. The underlying and fundamental issue before this Court however, is whether the due process rights this State has consistently afforded in the termination of parental rights cases encompasses the right to a delayed appeal.

In *In re Hoffman*, 776 N.E.2d 485, 97 Ohio St.3d 92, 2002-Ohio-5368 this Court quoted the United States Supreme Court:

"The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood [776 N.E.2d 488] relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures." Id. at 753-754, 102 S.Ct. 1388, 71 L.Ed.2d 599

In *Lassiter v. Dept. of Social Serv. of Durham Cty., North Carolina* (1981), 452 U.S. 18, 24-25, 101 S.Ct. 2153, 68 L.Ed.2d 640, the United States Supreme Court stated, "For all its consequence, 'due process' has never been, and perhaps can never be, precisely defined. \* \* \* Rather, the phrase expresses the requirement of 'fundamental fairness,' a requirement whose meaning can be as opaque as its importance is lofty. Applying the Due Process Clause is therefore an uncertain enterprise which must discover what 'fundamental fairness' consists of in a particular situation by first considering any relevant precedents and then by assessing the several interests that are at stake."

The Fifth District Court of Appeals in *In re Westfallen Children*, 5th Dist. No. 2006 CA 00196, 2006-Ohio-6717, allowed a father to file a delayed appeal and set forth his assignments of error for the court's consideration where the trial court granted the motion for permanent custody and terminated appellant's parental rights.

The Sixth Appellate Court certified this very issue to this Court when its decision in *In re T.M.*, 2010-Ohio-5506, L-10-1245, L-10-1246, was in direct conflict with *Westfallen*. The Sixth Appellate Court acknowledged the due process rights afforded parties in termination of parental rights cases even stating that they "share aspects of criminal proceedings" but was unwilling to encompass the right to include delayed appeals. The appellate court noted that App.R. 5 was amended on July 1, 2003, and that the amendment did not specifically include the termination of parental rights. The court asked this Court for guidance.

This Court recognized a conflict in *T.M. and Westfallen* and agreed to hear the matter; however, the parties failed to follow the procedural requirements and the matter was dismissed.

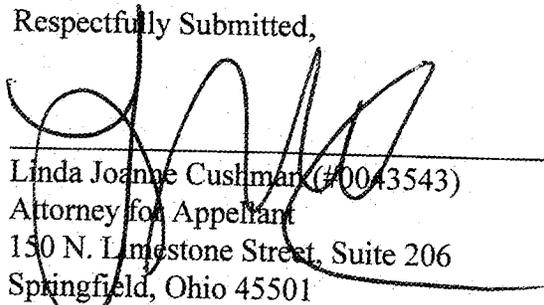
In *In re L.S.*, 2007-Ohio-1583, No. 23523, Ninth District, Judge J. Carr noted the issue at hand and set forth a perfect example of when a delayed appeal should be granted in a permanent custody case, “What is disconcerting about this finding is the fact that appellant was not appointed counsel for three weeks after the withdrawal of her trial counsel. Then counsel is notified only of his appointment and the scheduling of a “sunset hearing” for the next month. Counsel would have no reason to know upon his appointment that a 60(B) motion had just been granted and that he had less than a week to perfect an appeal. In criminal, delinquency and serious youth offender proceedings the remedy would be to file a motion for a delayed appeal. See, App.R. 5. Unfortunately, there is no similar mechanism for a permanent custody proceeding. In the interim, serious concerns regarding due process issues are left unaddressed in the civil law equivalent of a death penalty case.”

### CONCLUSION

For the reasons discussed above, this case raises a substantial constitutional question relating to due process, and involves matters of public and great general interest. The appellant requests that this court grant jurisdiction and allow this case so that the important issue presented in this case will be reviewed on the merits.

Respectfully Submitted,

Respectfully Submitted,



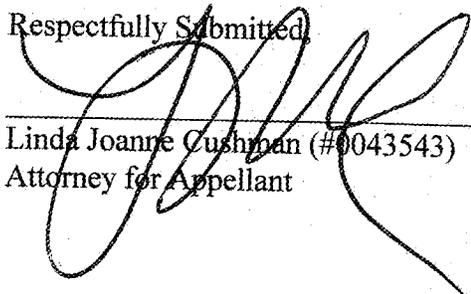
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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Memorandum in Support of Jurisdiction was served upon the Lisa Fannin, 50 E. Columbia Street, Springfield, Ohio 45501, by regular U.S. mail on this 9 day of December 2013.

Respectfully Submitted,



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Linda Joanne Cushman (#0043543)  
Attorney for Appellant

IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
CLARK COUNTY

IN THE MATTER OF: B.C.

Appellate Case No. 2013-CA-72

Trial Court Case No. 2011-1489

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**DECISION AND FINAL JUDGMENT ENTRY**

October 24, 2013

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**PER CURIAM:**

This matter is before the court on Appellant's August 27, 2013 motion to file a delayed appeal. Appellant, the mother of the minor children, filed a notice of appeal on August 27, 2013 from the February 12, 2013 judgment entry of the Clark County Common Pleas Court, Domestic Relations Division, Juvenile Section, granting permanent custody of the minor child to Family and Children's Services of Clark County.

For the following reasons, Appellant's motion is not well-taken.

App.R. 4(A) provides that "[a] party shall file the notice of appeal required by App.R. 3 within thirty days of the later of entry of the judgment or order appealed or, in a civil case, service of the notice of judgment and its entry if service is not made on the party within the

three day period in Rule 58(B) of the Ohio Rules of Civil Procedure.”

We begin by noting that the decision of the trial court from which Appellant appeals is a final order. See, e.g., *In re Z.W.*, 2d Dist. Montgomery No. 23657, 2010-Ohio-1619. Moreover, the Civil Rules and the Appellate Rules pertaining to the filing of a civil notice of appeal apply to appeals from the juvenile court. *In re Anderson*, 92 Ohio St.3d 63, 67, 748 N.E.2d 67 (2001). To that extent, the trial court was obligated to comply with Civ.R. 58(B), which mandates that a trial judge direct “the clerk to serve upon all parties not in default for failure to appear notice of the judgment and its date of entry upon the journal.” Service then becomes complete upon the clerk serving the parties and noting such service in the appearance docket.

In relevant part, the court’s February 12, 2013 judgment entry provides the following:

“IT IS FURTHER ORDERED that this judgment entry shall be entered by the clerk in the journal on this date and further served within three days upon all parties not in default for failure to appear.”

This Court finds that the above paragraph satisfies the trial judge’s requirement under Civ.R. 58(B). Furthermore, the clerk entered a notation of service in the appearance docket on February 12, 2013 that reads: “JUDGMENT ENTRY ENTERED UPON JOURNAL THIS DATE AND SENT TO PARENT/CUSTODIAN AND/OR COUNSEL THIS DATE BY ORDINARY MAIL.”

Thus, the time for filing a notice of appeal ran for thirty days from February 12, 2013. Other than the limited exceptions provided for by App.R. 4(B), there is no authority for filing a notice of appeal in a juvenile case regarding the termination of parental rights after expiration of the time prescribed by App.R. 4(A). *In re T.M. & S.R.*, 6th Dist. Lucas Nos. L-

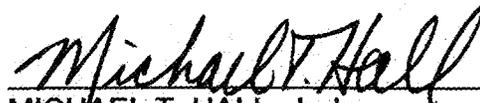
10-1245, L-10-1246, 2010-Ohio-5506. *But, see, In re Westfall Children*, 5th Dist. Stark No. 2006 CA 196, 2006-Ohio-6717.

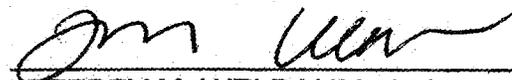
Because Appellant has failed to timely file her notice of appeal, this Court lacks subject matter jurisdiction to proceed. The above-captioned appeal is DISMISSED.

Appellant's October 10, 2013 Request for Stay is OVERRULED.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the Clerk of the Clark County Court of Appeals shall immediately serve notice of this judgment upon all parties and make a note in the docket of the mailing.

SO ORDERED.

  
MICHAEL T. HALL, Judge

  
JEFFREY M. WELBAUM, Judge

FROELICH, J., dissenting, in part, and concurring in judgment.

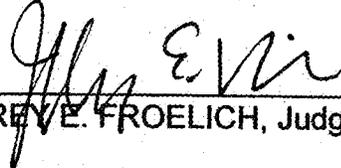
Although a conflict was certified between *In re T.M. & S.R.*, 6th Dist. Lucas Nos. L-10-1245, L-10-1246, 2010-Ohio-5506 and *In re Westfall Children*, 5th Dist. Stark No. 2006 CA 196, 2006-Ohio-6717, the matter was ultimately dismissed by the Supreme Court of Ohio for lack of prosecution. *In re T.M.*, 128 Ohio St.3d 1452, 2011-Ohio-1712, 944 N.E.2d 1177.

I would hold that Appellant has the right to file for a delayed appeal.

Regardless, such a motion must set forth the reasons for the failure to perfect a timely appeal, and the burden is on the appellant. *See, e.g., State v. Robinson*, 10th Dist.

Franklin No. 04AP-713, 2004-Ohio-4654, ¶ 2. Here, the trial court's judgment was entered February 12, 2013, and the notice of appeal was filed six months later; Appellant simply states that "she believed that there was nothing to appeal," and that she "was misinformed at the time of trial \* \* \*."

With the record before us, I would, as a matter of discretion, deny the motion and, therefore, concur in the dismissal of the appeal and overruling the request for a stay.

  
JEFFREY E. FROELICH, Judge

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