

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

Nos. 1363, 1365, 1367

September Term, 2015

IN RE: ADOPTION/GUARDIANSHIP OF
D.C.

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Meredith,
Graeff,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: February 3, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case arises from an order of the Circuit Court for Baltimore City terminating the parental rights of L.C., appellant, to his three minor children, appellees. Mr. C. noted an appeal, but his assigned counsel failed to file a brief or a request for an extension of time by the due date, and this Court dismissed the appeal. After his Motion for Reconsideration was denied, Mr. C. filed a motion in the circuit court, asking the court to extend the time to note an appeal from the order granting the petition to terminate parental rights. The circuit court denied the motion.

On appeal, Mr. C. presents several questions for our review,¹ which we have combined and rephrased, as follows:

Did the circuit court err in denying Mr. C.’s motion for an extension of time to file a notice of appeal?

¹ Mr. C. presented the following questions for this Court’s review:

- (1) Did the failure of Mr. C.’s appellate counsel to file a brief in support of his appeal of an order terminating his parental rights constitute ineffective assistance of counsel entitling Mr. C. to an extension of time to note an appeal of the trial court’s judgment granting the Baltimore City Department of Social Service’s petition to terminate Mr. C.’s parental rights.
 - A. Was Appellate counsel’s performance deficient?
 - B. Did Appellate counsel’s failure to file a brief prejudice Mr. C.?
- (2) Was this Court’s denial of prior counsel’s Motion for Reconsideration law of the case, barring Mr. C. from raising the issue of ineffective assistance of counsel before the Circuit Court?
- (3) If it is necessary to evaluate the merits of Mr. C.’s appeal, does Mr. C. have meritorious issues to raise on appeal of the trial court’s order terminating his parental rights?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellee children came to the attention of the Baltimore City Department of Social Services (“BCDSS”), also an appellee, in January 2013, when the youngest of the three children was born testing positive for benzodiazepines and THC. Shelter for the children initially was denied. On February 20, 2013, however, after Mr. C. and B.M., appellees’ mother, lost their housing during a police raid that uncovered controlled dangerous substances in their house, the children were sheltered by BCDSS. On February 28, 2013, each child was adjudicated a Child in Need of Assistance and committed to BCDSS.² The children subsequently were placed in foster care.

On April 20, 2014, BCDSS filed petitions for guardianship with the right to consent to adoption or long term care short of adoption for each of the three children. Ms. M. consented to the granting of the petitions, on the condition that her children be adopted by their current foster caregivers. Mr. C. objected and proceeded to trial, contesting the termination of his parental rights (“TPR”). On January 9, 2015, the circuit court granted all three petitions, terminating Mr. C’s parental rights.³

² A “child in need of assistance” (“CINA”) is one who requires court intervention because the child has been abused or neglected, or has a developmental disability or mental disorder; and his or her “parents/guardian, or custodian are either unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code (2015 Supp.) § 3-801(f) of the Courts and Judicial Proceedings Article.

³ In terminating Mr. C’s parental rights to his children, whose ages at the time were four, three and one, the court noted that Mr. C. had a serious “heroin (continued . . .)

On January 29, 2015, Mr. C. filed a timely notice of appeal. The deadline to file the brief was May 1, 2015. On May 15, 2015, when no brief had been filed, this Court dismissed Mr. C's appeal pursuant to Maryland Rule 8-602(a)(7). On May 26, 2015, Mr. C.'s counsel filed in this Court a request for reconsideration, stating that the failure to file a timely brief was due to counsel's error and requesting that this Court reconsider its dismissal of Mr. C's appeal. On June 15, 2015, the request for reconsideration was denied.

On July 6, 2015, appellant filed in the circuit court a Motion for Appropriate Relief for Ineffective Assistance of Appellate Counsel and for a Stay of Judgment Terminating Parental Rights and Granting Guardianship to the Baltimore City Department of Social Services and Request for Hearing. In that motion, Mr. C. argued that his appellate counsel's failure to file a timely brief constituted ineffective assistance of counsel, and he requested that the circuit court grant him an additional thirty days to file a belated notice of appeal from the January 9, 2015, order terminating his parental rights. On July 29, 2015, the circuit court denied appellant's motion, concluding that "extending the time to file a

(. . . continued) addiction/dependency and other drug abuse," a mental health history, including a "situational bi-polar diagnosis," housing instability, lack of employment, and an extensive criminal history. The court further found that Mr. C. had refused multiple opportunities for drug treatment, and efforts by Baltimore City Department of Social Services for reunification were not successful. Given the length of time that the children had been in foster care (two years), that the children were well adapted to their foster care family, and the likely emotional effect on the children if custody were changed to Mr. C., given the "certain chaotic and unstable circumstances life in [his] care would mean" for the children, the court found "clear and convincing exceptional circumstances requiring termination of parental right[s]."

belated appeal would inappropriately thwart the Court of Special Appeals' dismissal of the appeal and denial of the Motion for Reconsideration." This appeal followed.

DISCUSSION

Mr. C. contends that the circuit court erred in denying his motion. In support, he asserts that the failure of his

appellate counsel to file a brief in support of his appeal of an order terminating his parental rights constituted ineffective assistance of counsel, entitling [him] to an extension of time to note an appeal of the trial court's judgment granting the [BCDSS's] petition to terminate [his] parental rights.

Although Mr. C. cites *In re: Chaden M.*, 189 Md. App. 411 (2009), *aff'd*, 422 Md. 298 (2011), for the proposition that a parent is entitled to the effective assistance of counsel in a TPR proceeding, he cites no persuasive authority that would allow the circuit court to grant the remedy that he sought, i.e., an extension of time to note an appeal.

Appellees argue that the circuit court did not have the authority to grant the motion or give Mr. C. a remedy for counsel's failure to timely file his brief, noting that there is no statutory right analogous to criminal post-conviction relief in a TPR proceeding. We agree.

We begin by noting the sole issue before us. There is no contention here that the appeal was not properly dismissed when Mr. C's attorney failed to timely file a brief. *See* Rule 8-602(a)(7) (appeal may be dismissed for failing to timely file brief). Rather, the sole contention is that the circuit court erred in denying Mr. C's request for an extension of the 30-day time period to note an appeal from the TPR order. *See* Rule 8-202(a) (except as otherwise provided, a notice of appeal shall be filed within 30 days after entry of the order sought to be appealed). Mr. C., however, has not cited, nor have we found, any statute,

rule, or other authority permitting a trial court to extend the time to note an appeal in a TPR proceeding. And as this Court has made clear, a court does not have the power to extend the time for filing a notice of appeal in the absence of a statute, rule, or constitutional provision conferring that power. *Ruby v. State*, 121 Md. App. 168, 174 (1998) (There is no provision “in the Maryland Rules, or elsewhere, authorizing a trial court to extend the time within which notice of an appeal to the Court of Special Appeals shall be filed.”), *vacated on other grounds*, 353 Md. 100 (1999). *Accord Cornwell v. State*, 1 Md. App. 576, 577-78 (same), *cert. denied*, 246 Md. 739 (1967).⁴

Other jurisdictions have addressed this specific issue and determined that the trial court lacks the authority to extend the time to appeal a TPR order. *See In re: S.M.B.*, 735 S.E.2d 122, 123 (Ga. Ct. App. 2012) (trial court lacks authority to extend time to seek review of termination order); *In re: K.J.*, 36 N.E.3d 804, 809 (Ohio Ct. App. 2015) (unlike criminal defendants, a parent has no right to file a delayed appeal from a TPR order, even if “the failure to appeal results from patently ineffective assistance of trial counsel in failing to timely perfect the appeal”). The circuit court here properly reached the same conclusion, and it properly denied Mr. C’s motion.

**JUDGMENT AFFIRMED. COSTS TO
BE PAID BY APPELLANT.**

⁴ In a criminal case, the General Assembly has provided for a collateral civil remedy to challenge a judgment of conviction, i.e., a petition for post-conviction relief. *See* Md. Code (2015 Supp.) § 7-102 of the Criminal Procedure Article. There is no such statutory remedy in a termination of parental rights case.