

Rel: October 26, 2018

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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

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Ex parte G.L.C.

PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF CIVIL APPEALS

(In re: G.L.C.

v.

C.E.C. III)

(Baldwin Juvenile Court, JU-17-164.01;  
Court of Civil Appeals, 2160980)

BRYAN, Justice.

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G.L.C. ("the mother") petitioned this Court for a writ of certiorari seeking review of the judgment of the Court of Civil Appeals dismissing her appeal as untimely. See G.L.C. v. C.E.C. III, [Ms. 2160980, May 25, 2018] \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2018). We granted the petition, and we reverse the judgment of the Court of Civil Appeals and remand the cause.

#### Facts and Procedural History

On March 6, 2017, C.E.C. III ("the father") filed a petition in the Baldwin Juvenile Court ("the juvenile court") seeking to terminate the parental rights of the mother, alleging that the mother had abandoned their son, A.B.C. ("the child"). The juvenile court appointed an attorney to represent the mother, and the juvenile court subsequently conducted a hearing on the father's petition. On August 16, 2017, the juvenile court entered a final judgment terminating the mother's parental rights to the child. The mother did not file a postjudgment motion challenging the juvenile court's judgment; therefore, pursuant to Rule 4(a)(1)(E), Ala. R. App. P., and Rule 28(C), Ala. R. Juv. P., the mother had 14 days, or until August 30, 2017, to file her notice of appeal. The notice of appeal and docketing statement that appear in the

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record were stamped filed on August 31, 2017, but that date had been changed by hand to August 30, 2017. The notice of appeal and the docketing statement are signed by the mother, not the court-appointed attorney who represented her during the termination-of-parental-rights proceeding. The date next to the mother's signature on the notice of appeal is August 31, 2017, but it had been changed to August 30, 2017; the date next to the mother's signature on the docketing statement is August 31, 2017.<sup>1</sup>

On September 6, 2017, the Court of Civil Appeals docketed the mother's appeal. The same day, the father's attorney sent an e-mail to Tina Hadley, a docket specialist in the Baldwin County circuit clerk's office ("the circuit clerk's office"), inquiring about the altered dates on the mother's notice of appeal. Hadley responded immediately and stated:

"[The mother] attempted to file Aug[ust] 30[th] which was her 14th day. The girls in juvenile sent her upstairs to me and security had locked the door as it was then 4:30 and the door is actually on an automatic lock. I verified with Juvenile that she had been here and been turned away. I corrected the dates so that she met her time frame since it was not her fault."

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<sup>1</sup>On September 1, 2017, the juvenile court entered an order appointing a different attorney to represent the mother in "the appellate action."

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On September 15, 2017, the father filed in the juvenile court a motion to dismiss the mother's appeal as untimely filed. After the mother filed a response, the juvenile court conducted a hearing on the motion to dismiss on October 31, 2017. The mother testified that she came to the Baldwin County courthouse on August 30, 2017, and a security officer "sent [her] upstairs ... to file the appeal." The mother said that she went upstairs to the circuit clerk's office and waited for someone to help her. The mother stated that "it was about time for them to go" but she eventually told someone that she was there "to file [a] juvenile appeal." The individual whom she spoke to sent her "downstairs" -- apparently to the juvenile division of the circuit clerk's office -- but by the time she got there the doors were locked. The mother stated that she asked if she could leave the notice of appeal in an envelope but that "they said ... [she] would have to come the next day."

The mother testified that she returned to the "downstairs" clerk's office the following day -- August 31 -- to file her notice of appeal because that was where she had been told to go the previous day. But, when she appeared at

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the clerk's office downstairs, "they" sent her back to the circuit clerk's office upstairs to file her notice of appeal. When the mother returned to the circuit clerk's office upstairs, someone finally accepted her notice of appeal, and it was stamped filed on August 31.

Hadley testified that the mother came to the circuit clerk's office on August 31, 2017, with her notice of appeal already filled out and filed her notice of appeal from the judgment terminating her parental rights. Hadley agreed that all the date stamps on the mother's notice of appeal had been changed from August 31 to August 30 even though the mother had not actually filed her notice of appeal on August 30. Hadley indicated that she changed all the dates on the mother's notice of appeal from August 31 to August 30 because the mother had been to the circuit clerk's office on August 30 to file her notice of appeal but had been unable to do so.

At the conclusion of the hearing, the juvenile court stated:

"I think that I have to find that it was not timely filed. Do I think the clerk's office needs a better ... standard operating procedure for dealing with folks that walk up to this courthouse at 4:28 and 52 seconds? Yes. Yes, I do. But I don't -- I don't know what their procedure is for that. There

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probably is some procedure and somebody probably did not follow it. But I don't know what it is. Because I know that things can be filed when the physical building is locked. So I know you can do it, that it's possible. But I'm not sure what that procedure is, and I do think the clerk's office could have handled it better. But it wasn't filed in time, ultimately, and the remedy for that is not to change the date on the paperwork. So I'll have to grant the motion to dismiss."

On October 31, 2017, the juvenile court entered an order dismissing the mother's appeal. On April 4, 2018, the Court of Civil Appeals, citing Ex parte Madison County Department of Human Resources, [Ms. 2160883, November 17, 2017] \_\_\_ So. 3d \_\_\_ (Ala. Civ. App. 2017), and D.V.P. v. T.W.P., 905 So. 2d 853, 856 (Ala. Civ. App. 2015), issued an order stating that the juvenile court did not have jurisdiction to enter an order dismissing the mother's appeal and that, therefore, that order was void. However, the Court of Civil Appeals reinvested the juvenile court with jurisdiction for 14 days "for the limited purpose of making a factual determination as to the date the notice of appeal was filed." On April 12, 2018, the juvenile court entered an order stating that, "[a]fter reviewing the facts, pleadings, and transcripts available, it is hereby determined that [the mother] filed her notice of appeal on

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August 31, 2017. This was 15 days after this Court's final order."

The Court of Civil Appeals subsequently issued an opinion dismissing the mother's appeal as untimely filed. See G.L.C., supra. The mother filed a timely petition for a writ of certiorari in this Court seeking review of the Court of Civil Appeals' decision.

#### Standard of Review

"On certiorari review, this Court accords no presumption of correctness to the legal conclusions of the intermediate appellate court. Therefore, we must apply de novo the standard of review that was applicable in the Court of Civil Appeals." Ex parte S.L.M., 171 So. 3d 673, 677 (Ala. 2014) (quoting Ex parte Helms, 873 So. 2d 1139, 1143 (Ala. 2003), quoting in turn Ex parte Toyota Motor Corp., 684 So. 2d 132, 135 (Ala. 1996)).

#### Analysis

The mother asks this Court to consider, as a matter of first impression, whether a notice of appeal may be deemed timely filed when the filer "physically appears at the clerk's office and presents a notice of appeal to the clerk before the

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expiration of the filing deadline, with [the] intention that it be received and filed, only to have the clerk's office decline to receive and file that notice at the time of presentment." With the question framed in that manner, we must first consider the father's argument that, pursuant to the ore tenus standard of review, this Court must accept the juvenile court's factual finding that the mother's notice of appeal was filed on August 31, 2017. We agree, but we also note that there is no dispute that the mother's notice of appeal was not actually filed in the circuit clerk's office until August 31, 2017; no witness testified otherwise. The mother is asking this Court to hold that her notice of appeal is deemed filed one day earlier based on the evidence that she appeared in the circuit clerk's office on August 30 and presented her notice of appeal for filing, but it was not accepted.

Thus, the pertinent factual question in this case is whether the mother appeared in the circuit clerk's office on August 30, 2017, and presented her notice of appeal for filing before the circuit clerk's office closed. Although the father suggests that the juvenile court heard disputed testimony on

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this issue, the record does not support such a conclusion. The record does indicate that parts of the mother's testimony could be construed as inconsistent,<sup>2</sup> but all the evidence in the record indicates that the mother had appeared at the circuit clerk's office on August 30 to file her notice of appeal but someone in the circuit clerk's office erroneously sent her to another part of the courthouse instead of accepting the notice of appeal. Regardless, even if there was disputed evidence presented as to this issue, the record indicates the juvenile court accepted the mother's testimony that she had appeared at the circuit clerk's office on August 30 and attempted to file her notice of appeal shortly before the office closed. At the conclusion of the hearing on the father's motion to dismiss, the juvenile court stated on the record that the circuit clerk's office needed a "better ... standard operating procedure for dealing with folks that walk

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<sup>2</sup>For example, the mother testified that her notice-of-appeal forms were already filled out when she appeared at the circuit clerk's office on August 30 to file her notice of appeal, but the notice of appeal documents in the record were initially dated August 31. This discrepancy was accounted for by the mother in two ways: she stated that the copy in the record "may have been the second copy that I tried to redo neatly with ... typing"; she also stated that she "probably had the dates mixed up."

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up to this courthouse at 4:28 and 52 seconds"; that "[t]here probably is some procedure and somebody probably did not follow it"; and that "the clerk's office could have handled it better; but that, "ultimately," the mother's notice of appeal was not filed in time. The clear implication from those statements can only be that the juvenile court believed the mother's testimony that she had been to the circuit clerk's office on August 30 to file her notice of appeal but that she was not able to successfully do so.

Although the Court of Civil Appeals also accepted this factual conclusion, it held that the mother's notice of appeal was untimely filed. The court stated: "In applying Alabama law in this case, we conclude that, although the mother attempted to bring her notice of appeal to the court on August 30, 2017, the court clerk did not actually receive the notice of appeal until August 31, 2017." G.L.C., \_\_\_ So. 3d at \_\_\_. In reaching the conclusion that the mother's notice of appeal was untimely because the circuit clerk's office did not receive the notice of appeal until August 31, the court relied primarily upon Holmes v. Powell, 363 So. 2d 760, 761-62 (Ala. 1978), and D.T. v. State, 1 So. 3d 74, 76 (Ala. Civ. App.

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2008). The Court of Civil Appeals summarized the holdings in those cases as follows:

"In Holmes v. Powell, 363 So. 2d 760, 761-62 (Ala. 1978), our supreme court held that

"Rule 3(a), [Ala. R. App. P.,] states that "[I]n civil cases an appeal ... shall be taken ... by filing a notice of appeal with the clerk of the trial court, within the time allowed by Rule 4." The language of Rule 4 is equally mandatory. The language of neither permits the earlier postmark appearing upon an envelope to be a substitute for filing with the clerk. As Judge Holmes recently observed in Moutry v. State, 359 So. 2d 388, 390 (Ala. Civ. App. 1978), a case dealing with a similar issue:

"A document has not been filed until it has actually been received by the court; mere mailing is not enough. See Blades v. U.S., 407 F.2d 1397 (9th Cir. 1969)."

"See also Townsend v. Board of Building Appeals, 49 Ohio App. 2d 402, 361 N.E.2d 271 (1976); Walsh v. Tucker, 454 Pa. 175, 312 A.2d 11 (1973).'

"In the context of an appeal from a judgment entered by a juvenile court, this court has noted that Rule 28(C), Ala. R. Juv. P., provides: "Written notice of appeal shall be filed within 14 days of the date the judgment, order, or decree appealed from is filed in the clerk's office, whether the appeal is to an appellate court or to the circuit court for trial de novo." (Emphasis added.)' D.T. v. State, 1 So. 3d 74, 76 (Ala. Civ. App. 2008).

"In D.T., D.T. had had until February 22, 2008, to file his notice of appeal. On February 21, 2008, he sent his notice of appeal to the Dale Circuit Court clerk via an overnight-delivery service. Nonetheless, the clerk's office did not receive the notice of appeal until February 26, 2008. Id. This court held that the notice of appeal was untimely, explaining:

"'D.T. states in his brief to this court that he sent the notice to the clerk's office on February 21, 2008, via an overnight delivery service. D.T. states that his "counsel has not received a satisfactory explanation from [the delivery service] for the delay." However, the placing of a notice of appeal with an overnight delivery service for transmittal is not sufficient to constitute a "filing" under Rule 28(C).

"'As this court has explained:

"'"Whereas, service of papers is complete upon mailing, filing is not complete until the notice is delivered to the proper filing officer. See Henson v. Henson, 261 Ala. 63, 73 So. 2d 100 (1954); Covington Bros. Motor Co. v. Robinson, 239 Ala. 226, 194 So. 663 (1940); Rule 5(e), [Ala. R. Civ. P.].

"'".... A document has not been filed until it has actually been received by the court; mere mailing is not enough. See Blades v. U.S., 407 F.2d 1397 (9th Cir. 1969); see also 16A Words and Phrases, 'Filing.'"

"Moutry v. State, 359 So. 2d 388, 389-90 (Ala. Civ. App. 1978). See also Alabama Medicaid Agency v. Peoples, 557 So. 2d 1281 (Ala. Civ. App. 1990) (holding that sending of notice of appeal via certified mail was insufficient to constitute filing under Rule 4, Ala. R. App. P.). Because D.T.'s notice of appeal was not received by the clerk of the Dale Circuit Court until after the time provided by Rule 28(C), Ala. R. Juv. P., had lapsed, D.T.'s notice of appeal was not filed within the time allowed by the Alabama Rules of Juvenile Procedure. Accordingly, D.T.'s appeal must be dismissed. Rule 2(a)(1), Ala. R. App. P.'

"D.T., 1 So. 3d at 76-77 (second emphasis added)."

G.L.C., \_\_\_ So. 3d at \_\_\_.

The mother argues that Holmes and D.T. are distinguishable from the present case because those cases concern the timely filing of a notice of appeal that had been mailed. Those cases held, quite logically, that a mailed notice of appeal cannot be "filed" in the clerk's office until it has been "received" by the clerk's office. We agree with the mother that this case presents a different circumstance: A notice of appeal was timely hand-delivered to the circuit clerk's office for filing but was not accepted by the circuit clerk's office.

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The mother argues that her notice of appeal should be deemed filed on August 30, 2017, the day she delivered the notice of appeal to the clerk's office and presented it for filing. The mother cites Rubin v. Department of Industrial Relations, 469 So. 2d 657 (Ala. Civ. App. 1985), among other cases, in support of her argument. In Rubin, the claimant in an action for unemployment-compensation benefits timely "presented the circuit clerk with a notice of appeal and an affidavit of substantial hardship, requesting initial waiver of docket fees and service fees." 469 So. 2d at 658. Although the circuit clerk accepted those documents from the claimant, the clerk did not "formally enter the case on the docket" until the trial judge granted the claimant indigent status, which did not occur until after the time for filing an appeal had passed. Id. In holding that the claimant's appeal was timely, the Court of Civil Appeals stated:

"It has long been held that in Alabama '[a] pleading or other paper may be said to have been duly filed when it is delivered to the proper filing officer.' Covington Bros. Motor Co. v. Robinson, 239 Ala. 226, 194 So. 663 (1940). See also Henson v. Henson, 261 Ala. 63, 73 So.2d 100 (1954). Timely delivery is sufficient even when the clerk fails to mark the pleading or other paper 'filed.' Home Insurance Co. v. Shriner, 235 Ala. 65, 177 So. 897 (1937).

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"Thus, when claimant timely presented the notice of appeal and affidavit of substantial hardship to the clerk, the case is deemed to have been filed, notwithstanding that the clerk failed to enter the case on the docket until the judge signed the affidavit."

469 So. 2d at 658.

The Court of Civil Appeals, in finding Rubin distinguishable from the present case, noted that the issue in Rubin "was whether a notice of appeal was untimely when the appellant failed to pay the appropriate filing fees or obtain a waiver of the initial filing fee by the date the notice of appeal was due." G.L.C., \_\_\_ So. 3d at \_\_\_. Although that is correct, Rubin also stands for the proposition that a clerk's failure to "formally enter the case on the docket" after it was delivered for filing has no bearing on whether that document will be considered "filed" for purposes of determining the timeliness of a notice of appeal. 469 So. 2d at 658. We further note that, although Rubin is distinguishable from the present case insofar as the clerk's office in Rubin accepted the claimant's notice of appeal when it was delivered to the clerk's office, both the clerk's failure to "docket" the notice of appeal in Rubin and the clerk's failure to accept the notice of appeal in this case

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were matters beyond the control of the individuals filing the notices of appeal.

As early as 1909, this Court recognized that a filer cannot be prejudiced by the clerk's failure to "do their part" once a document has been delivered to the clerk's office for filing. In Falley v. Falley, 163 Ala. 626, 50 So. 894 (1909), this Court stated:

"[A] paper was filed when it was delivered to the proper official charged with the duty of filing the paper and with making the appropriate indorsement thereon. It is evident that the act of affixing the proper indorsement on the paper is a duty to be performed by the officer, and with a failure of the officer to seasonably and properly indorse the paper the party delivering it cannot be prejudiced. He has done all that is required when he delivers the paper to the proper official."

163 Ala. at 628, 50 So. at 895 (emphasis added).

The component of this case that is unique is that, although she attempted to, the mother did not actually place the notice of appeal in the physical possession of someone in the circuit clerk's office when she appeared there on August 30. See Phillips v. Beene's Adm'r, 38 Ala. 248, 252 (1862) ("[W]here the law requires or authorizes a party to file a paper, it simply means that he shall place it in his official custody. That is all that is required of him. The party

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cannot be prejudiced by the omission of the officer to endorse the paper filed."); Falley, supra; and Rubin, supra. However, the only reason the mother did not do so was because she was erroneously told that she was in the wrong division of the circuit clerk's office for filing her notice of appeal. Although the mother did not give physical possession of the notice of appeal to someone in the clerk's office for filing on August 30, we do not know what else she could have done under the circumstances. She appeared in the proper clerk's office before the office closed on the 14th day after the entry of the judgment terminating her parental rights and informed the circuit clerk's office that she needed to file a notice of appeal in a juvenile matter. It was at that point that, under the direction of someone in the circuit clerk's office, the mother left the office without placing her notice of appeal in the possession of the circuit clerk's office for filing. Under the particular facts of this case, principles of equity require that the mother's notice of appeal be deemed filed on August 30, 2017. See Sparks v. Alabama Power Co., 679 So. 2d 678, 681 (Ala. 1996) (holding, where appellant's counsel relied on erroneous information given by the Jefferson

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County circuit clerk's office regarding whether the appellant's postjudgment motion had been ruled on and, in reliance on that erroneous information filed an untimely notice of appeal, that Rule 1, Ala. R. Civ. P., and Rule 1, Ala. R. App. P., required that "every litigant must receive fair and just treatment from the court system of this State" and concluding that the appellant's untimely appeal "must be taken as timely").<sup>3</sup>

This Court has held that "[t]he only jurisdictional prerequisite for an appeal is the timely filing of a notice of appeal." Dunning v. New England Life Ins. Co., 890 So. 2d 92, 96 (Ala. 2003) (citing Edmonson v. Blakey, 341 So. 2d 481, 484

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<sup>3</sup>Although the doctrine is not applied in this case, both this Court and the Court of Civil Appeals have applied the doctrine of equitable estoppel to conclude that an untimely filed notice of appeal was timely. See, e.g., Ex parte Four Seasons, Ltd., 450 So. 2d 110, 112 (Ala. 1984) (applying the doctrine of equitable estoppel to make an untimely appeal timely where "the untimeliness of the filing of their appeal was caused by misinformation furnished by the state's officer and relied upon by the petitioners to their detriment"); and East Colbert Store, Inc. v. Alabama Alcoholic Beverage Control Bd., 661 So. 2d 757 (Ala. Civ. App. 1994) (holding, where the Board misrepresented the appeals process in a letter to East Colbert Store and, in reliance on the directions for appealing set forth in the letter, East Colbert Store filed an untimely notice of appeal, that the doctrine of equitable estoppel applied because East Colbert Store had relied on the Board's misrepresentation in filing its notice of appeal).

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(Ala. 1976), and Committee Comments to Rule 3, Ala. R. App. P. ("Timely filing of the notice of appeal is a jurisdictional act. It is the only step in the appellate process which is jurisdictional.")). This Court does not wish to muddy the waters of this clear directive. However, when considering the particular circumstances of this case -- that the mother did everything she was supposed to do but was prevented from timely filing her notice of appeal based on erroneous information given to her by someone in the circuit clerk's office -- together with the fact that the mother was appealing the termination of her parental rights, we must conclude that equity requires that we deem the mother's notice of appeal timely filed.<sup>4</sup>

#### Conclusion

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<sup>4</sup>We note that, once parental rights have been terminated, Alabama law provides no method for regaining those rights. See V.M. v. State Dep't of Human Res., 710 So. 2d 915, 921 (Ala. Civ. App. 1998) ("[T]he termination of parental rights is a drastic measure, and we know of no means by which those rights, once terminated, can be reinstated."). See also Santosky v. Kramer, 455 U.S. 745, 759 (1982) ("[A] ... decision terminating parental rights is final and irrevocable. ... Few forms of state action are both so severe and so irreversible.").

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For the reasons set forth herein, we reverse the judgment of the Court of Civil Appeals and remand the cause for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

Bolin, Parker, Shaw, Main, Wise, Sellers, and Mendheim, JJ., concur.

Stuart, C.J., concurs specially.

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STUART, Chief Justice (concurring specially).

Many of the circuit clerk's offices in this State are similar to the circuit clerk's office in Baldwin County inasmuch as their various divisions are housed in separate areas and even on separate floors of their courthouses. When a party in good faith timely appears and proffers a document for filing at the wrong division of one of those circuit clerk's offices, that party's filing is timely. Such a party should, of course, be directed to the proper location to complete their filing, but barring evidence of bad faith, under no circumstances should their filing, in the event it is not completed for some reason beyond the party's control, thereafter be deemed untimely.