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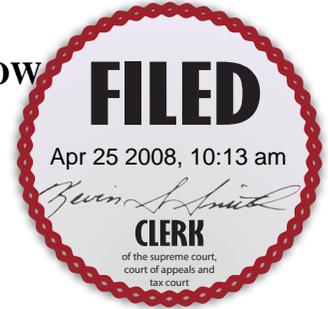
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IN THE
COURT OF APPEALS OF INDIANA

IN THE MATTER OF: B.F. AND T.F.,)
CHILDREN IN NEED OF SERVICES)

AUDREY FAVER,)
)
Appellant-Respondent,)

vs.)

No. 49A05-0709-JV-515

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner,)

and)

CHILD ADVOCATES, INC.,)

Appellee-Guardian Ad Litem.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marilyn Moores, Judge
The Honorable Beth Jansen, Magistrate
Cause Nos. 49D09-0604-JC-16906 and 49D09-0604-JC-16907

April 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Audrey Faver (“Mother”) appeals from the trial court’s denial of her request for visitation with her children, B.F. and T.F., during the pendency of child in need of services (“CHINS”) proceedings and the trial court’s failure to appoint a public defender to represent her in the CHINS proceedings. Mother also alleges that she was denied the effective assistance of counsel in violation of the state and federal constitutions. We dismiss Mother’s appeal for lack of jurisdiction.

Issue

The dispositive issue is whether we have jurisdiction to consider Mother’s appeal.

Facts and Procedural History¹

Mother is the biological parent of T.F., born December 14, 2004, and B.F., born November 15, 2005. The children’s alleged father is deceased. On April 24, 2006, the Marion County Department of Child Services (“DCS”) filed a CHINS petition alleging that

Mother had “left her infant children in the home unsupervised” and “was later arrested for possession of marijuana and two counts of neglect of dependant.” Appellant’s App. at 25. At the initial hearing on that date, Mother said that she did not think she needed an attorney, and the trial court found that Mother had knowingly waived her right to counsel. Mother admitted to the allegations in the CHINS petition. DCS informed the court that the children were currently in foster care and requested that the court authorize supervised visitation and continued foster care or relative care, if appropriate. Mother stated that the children’s godmother, Charlene Payne, could care for the children during the pendency of the CHINS proceedings. The court told Mother to give DCS information regarding Payne, indicated that the permanency plan was to reunify the children with Mother, and set a disposition hearing for May 10, 2006.

When Mother failed to appear at the May 10 disposition hearing, the court suspended her visitation and issued a bench warrant for her arrest. Mother also failed to appear at a review hearing on September 7, 2006, at which DCS informed the court that the children were in separate foster homes. The court admonished DCS to “find a foster home where they can be placed together.” Tr. at 9. DCS advised the court that B.F.’s foster parent was interested in adoption.

¹ Mother’s counsel has violated the Indiana Rules of Appellate Procedure in several important respects. The appellant’s brief does not contain a copy of the appealed judgment or order as required by Indiana Appellate Rule 46(A)(10). The statement of the case is almost purely argument, rather than a brief description of “the nature of the case, the course of the proceedings relevant to the issues presented for review, and the disposition of those issues by the trial court[.]” Ind. Appellate Rule 46(A)(5). Likewise, the statement of facts is inappropriately rife with argument and testimonial excerpts. *Cf.* Ind. Appellate Rule 46(A)(6)(b) (“The facts shall be stated in accordance with the standard of review appropriate to the judgment or order being appealed.”); Ind. Appellate Rule 46(A)(6)(c) (“The statement [of facts] shall be in narrative

Mother and Payne appeared at a review hearing on November 16, 2006. DCS informed the court that Mother had signed adoption consents, stated that the permanency plan had changed to adoption, and recommended that the children be placed with Payne. The court set another review hearing for January 4, 2007.

At the January 4 review hearing, DCS and the guardian ad litem (“GAL”) recommended that both children be placed with Payne, and Mother requested that Payne adopt the children. The court ordered both children placed with B.F.’s foster parents and set another review hearing for April 12, 2007.

At the April 12 review hearing, Mother requested supervised visitation and a public defender. The court denied Mother’s request for visitation and did not address her request for a public defender. The court noted that the permanency plan was for adoption and set another review hearing for May 17, 2007.

At the May 17 review hearing, DCS requested overnight visitation with Payne, and Mother requested supervised visitation. The court denied both requests and set another review hearing for August 22, 2007, to “determine the status of the termination.” *Id.* at 44.

At the beginning of the August 22 review hearing, the court asked Mother if it had appointed her a public defender. Mother replied, “No ma’am.” *Id.* at 45. The court stated that it would appoint “a public defender for [Mother] under the termination matter” and then “switch[ed] gears” to the CHINS proceeding. *Id.* at 46. DCS recommended that Mother be granted visitation and stated that if she continued “to participate as she [had] been and

form and shall not be a witness by witness summary of the testimony.”). We strongly encourage counsel to comply with the appellate rules in future cases.

continues to get positive recommendation from home base counselor, DCS would consider dismissal of [the] termination at that point. We do need to get a facilitation set in the TPR and would like the CHINS reheard in about 45 to 60 days.” *Id.* at 47. The GAL agreed with DCS’s recommendations. At the conclusion of the hearing, the court remarked,

I will show reasonable efforts have been offered and available to prevent or eliminate the need for removal. Those efforts have been unsuccessful and are not completed, that would allow for placement back in the home and case closure. I will note that with the filing of the termination matter, the plan of permanency is that these children be adopted. That is our new plan. That is our new goal. At this time, I am swayed by, by the phraseology of the [home-based counselor] . Everyone tells me mother’s done well and we should reward her, but the [counselor] focuses primarily on what’s best for these children. And in light of that, at this time, mother’s visits will be suspended. The termination matter has been set for a facilitation. I will set a placement and jurisdictional review hearing under the CHINS in approximately 90 days [i.e., December 12, 2007].

Id. at 52-53. On August 22, 2007, the trial court entered an order to this effect, from which Mother now appeals. *See* Appellant’s App. at 1 (notice of appeal).

Discussion and Decision

DCS contends that we do not have jurisdiction to consider Mother’s appeal. We agree.

Indiana Appellate Rule 5 provides in pertinent part that this Court has jurisdiction “in all appeals from Final Judgments of Circuit, Superior, Probate, and County Courts” and “over appeals of interlocutory orders under Rule 14.” Appellate Rule 2(H) states,

A judgment is a final judgment if:

- (1) it disposes of all claims as to all parties;
- (2) the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the

- claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties;
- (3) it is deemed final under Trial Rule 60(C);
- (4) it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59 or Criminal Rule 16; or
- (5) it is otherwise deemed final by law.

None of these considerations applies to the trial court's August 22 order; thus, it is not a final judgment.

Appellate Rule 14 governs interlocutory appeals and reads in pertinent part as follows:

A. Interlocutory Appeals of Right. Appeals from the following interlocutory orders are taken as a matter of right by filing a Notice of Appeal with the trial court clerk within thirty (30) days of the entry of the interlocutory order:

- (1) For the payment of money;
- (2) To compel the execution of any document;
- (3) To compel the delivery or assignment of any securities, evidence of debt, documents or things in action;
- (4) For the sale or delivery of the possession of real property;
- (5) Granting or refusing to grant, dissolving, or refusing to dissolve a preliminary injunction;
- (6) Appointing or refusing to appoint a receiver, or revoking or refusing to revoke the appointment of a receiver;
- (7) For a writ of habeas corpus not otherwise authorized to be taken directly to the Supreme Court;
- (8) Transferring or refusing to transfer a case under Trial Rule 75; and
- (9) Issued by an Administrative Agency that by statute is expressly required to be appealed as a mandatory interlocutory appeal.

B. Discretionary Interlocutory Appeals. An appeal may be taken from other interlocutory orders if the trial court certifies its order and the Court of Appeals accepts jurisdiction over the appeal.

- (1) Certification by the Trial Court. The trial court, in its discretion, upon motion by a party, may certify an interlocutory order to allow an immediate appeal.

....

- (2) Acceptance of the Interlocutory Appeal by the Court of Appeals. If the trial court certifies an order for interlocutory appeal, the Court of Appeals, in its discretion, upon motion by a party, may accept jurisdiction of the appeal.

....

C. Statutory Interlocutory Appeals. Other interlocutory appeals may be taken only as provided by statute.

The trial court's order does not fall under any of the categories enumerated in Appellate Rule 14(A); thus, Mother was not entitled to an interlocutory appeal as a matter of right. Because Mother did not seek to file a discretionary interlocutory appeal pursuant to Appellate Rule 14(B) and no basis exists for a statutory interlocutory appeal pursuant to Appellate Rule 14(C), we hereby dismiss Mother's appeal for lack of jurisdiction. *See, e.g., Moser v. Moser*, 838 N.E.2d 532, 534 (Ind. Ct. App. 2005) ("This court may dismiss appeals upon its own motion when it discovers it does not have jurisdiction. An appeal from an interlocutory order is not allowed unless specific authority is granted by the Indiana Constitution, statutes, or the rules of court. Moreover, any such express authorization for an interlocutory appeal is strictly construed.") (citations and quotation marks omitted), *trans. denied* (2006).²

Dismissed.

BARNES, J., and BRADFORD, J., concur.

² DCS states that the CHINS action was dismissed and that Payne adopted the children with Mother's consent in November 2007. Appellee's Br. at 10. We agree with DCS that this series of events would have rendered Mother's appeal moot.