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IN THE
COURT OF APPEALS OF INDIANA

LATONNA WHITT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0611-CR-535
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Kenneth R. Scheibenberger, Judge
Cause No. 02D04-0602-FD-89

August 16, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Latonna Whitt appeals her conviction for Class D felony interference with custody. We affirm.

Issue

The sole dispositive issue is whether Whitt has waived review of her claim of error.

Facts

Whitt was embroiled in a custody dispute with Terrence Nelson over the parties' child, J.W. On January 30, 2004, the Allen County Circuit Court entered an order granting custody of J.W. to Nelson. A temporary judge signed the order. On March 24, 2004, in an order approved by Judge Thomas Felts of the Allen County Circuit Court, custody of J.W. with Nelson was continued. Whitt later was granted parenting time with J.W.

Sometime between July and September 2005, Whitt removed J.W. from Indiana after failing to return J.W. to Nelson after having visitation. The State charged Whitt with Class D felony interference with custody for violating the January 30, 2004 custody order. At a jury trial conducted on October 24, 2006, the State introduced into evidence a copy of the January 30, 2004 custody order. The jury found Whitt guilty as charged, and she now appeals.

Analysis

Whitt frames her argument on appeal as whether there was sufficient evidence presented at trial to support her conviction. However, her sole basis for that challenge is

that the January 30, 2004 order granting custody of J.W. to Nelson was void because it was signed by a temporary judge, and the State failed to present evidence that the temporary judge was appointed in accordance with the law governing such appointments. We conclude Whitt's argument is more properly characterized as a challenge to the admissibility of evidence, specifically the admissibility of the January 30, 2004 order.

We review rulings on the admission of evidence for an abuse of discretion. Jacobs v. State, 802 N.E.2d 995, 998 (Ind. Ct. App. 2004). The failure to make a contemporaneous objection to the admission of evidence at trial results in waiver of the error on appeal. Jackson v. State, 735 N.E.2d 1146, 1152 (Ind. 2000). The contemporaneous objection rule "requires parties to voice objections in time so that harmful error may be avoided or corrected and a fair and proper verdict will be secured." Purifoy v. State, 821 N.E.2d 409, 412 (Ind. Ct. App. 2005), trans. denied. A contemporaneous objection to evidence also allows the party seeking to introduce the evidence an opportunity to present foundational evidence, which opportunity does not exist on appeal. See id. at 412-13.

Whitt has not provided this court with a transcript of her trial. She only has provided us with exhibit six, which is a copy of the January 30, 2004 order, and exhibit eight, which is a chronological case summary from the underlying custody proceedings. Without a transcript, however, we do not know whether Whitt objected to this evidence. If she did not object, then the State was unfairly deprived of an opportunity to produce any foundational evidence that the temporary judge who signed the January 30, 2004

order was properly appointed; if she did object, then we have no record of the State's response to that objection.

The mere fact that a temporary judge signed the order does not make it facially void, as Whitt contends. It would only be void if there was an irregularity in the order appointing the temporary judge, or if such an order was entirely lacking before the temporary judge issued her ruling. See A.P. v. Porter County Office of Family and Children, 734 N.E.2d 1107, 1111 (Ind. Ct. App. 2000), trans. denied. Resolution of the validity of the temporary judge's appointment requires documentation outside of the January 30, 2004 order itself. We have no way of knowing whether the State was given the opportunity to provide such documentation during Whitt's trial.

We also observe, "'Any objections to the authority of an attorney appointed to try a cause must be made at the time when he assumes to act or they will be deemed waived on appeal.'" Floyd v. State, 650 N.E.2d 28, 32 (Ind. 1994) (quoting Survance v. State, 465 N.E.2d 1076, 1082 (Ind. 1984)). Here, we cannot discern whether Whitt ever lodged an objection to the temporary judge's authority to award custody of J.W. to Nelson, either in her criminal trial for interference with custody or in the underlying custody proceeding itself. Because Whitt cannot establish that she ever objected to the temporary judge's authority, she has waived her claim of error in this appeal. See id.

Additionally, "On appeal, it is the appellant's duty to present an adequate record clearly showing the alleged error." Lightcap v. State, 863 N.E.2d 907, 911 (Ind. Ct. App. 2007). Whitt has not done so here. Failure to present an adequate record waives review

of the alleged error. See id. We will not presume that reversible error occurred on the basis of the inadequate record Whitt has presented.

Whitt contends in her reply brief, "The cost of preparation of a complete transcript for the narrow issue being appealed was prohibitive as the State of Indiana is well aware of." Reply Br. p. 2. However, Indiana Appellate Rule 9(F)(4) states in part, "In Criminal Appeals, the Notice of Appeal must request the Transcript of the entire trial or evidentiary hearing, unless the party intends to limit the appeal to an issue requiring no Transcript." The issue Whitt presents requires a transcript. We also note that the cost of transcript preparation, even if substantial, does not infringe upon a defendant's right to appeal. See Wright v. State, 772 N.E.2d 449, 461 (Ind. Ct. App. 2002). Furthermore, if Whitt could establish indigency she would be entitled to preparation of a transcript at public expense. See id. at 461-62; see also Ind. Code § 33-40-8-5. Whitt is represented by private counsel and does not claim indigency. We cannot excuse Whitt's failure to provide this court with a transcript and cannot review her claimed error.

Conclusion

Whitt has waived her claim of error by failing to provide this court with a transcript of her trial. We affirm.

Affirmed.

NAJAM, J., and RILEY, J., concur.