SUPREME COURT OF FLORIDA

IN THE INTEREST OF E. P., A CHILD,

TERRI JOHNSON,

Petitioner,

v.

DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES,

Respondent.

_____/

Case No.: 70,678
DCA Case No.: 86-884

APPEAL FROM THE SECOND DISTRICT COURT OF APPEAL

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PREFACE

The parties will be referred to as Petitioner and the Respondent respectively.

The Petitioner, Terri Johnson, was the respondent in the trial court proceeding and was the appellant in the district court proceeding.

The Respondent, Florida Department of Health and Rehabilitative Services, was the petitioner in the trial court proceeding and was the appellee in the district court proceeding.

The following symbols will be used in Respondent's Brief:

A - Appendix
R - Record on Appeal

CERTIFIED QUESTION OF GREAT PUBLIC IMPORTANCE

DOES FLORIDA RULE OF JUVENILE PROCEDURE 8.820(b)(3) RESCIND FLORIDA RULE OF APPELLATE PROCEDURE 9.020(g) THEREBY LIMITING THE TIME FOR TAKING AN APPEAL TO THIRTY DAYS AFTER RENDITION OF THE FINAL JUDGMENT INSTEAD OF THIRTY DAYS AFTER RENDITION OF A FINAL ORDER ON THE MOTION FOR REHEARING?

STATEMENT OF THE CASE AND OF THE FACTS

On November 16, 1984, the Department of Health and Rehabilitative Services, Respondent, filed a petition, pursuant to Chapter 39 of the Florida Statutes, in the trial court alleging that the minor child E.P. had been neglected. (R 1-2). The petition alleged that the child was found bruised and scratched on her upper left thigh. The petition further alleged that the mother, Terri Johnson, Respondent, had refused to discuss the cause of the bruise and was initially resistive in allowing the counselor to examine the child. (R 1-2). On December 11, 1984, the trial court entered an order placing the child in foster care under the protective supervision of Respondent. (R 3).

On July 1, 1985, Respondent filed a petition, pursuant to Section 39.41(1)(e), Fla. Stat. (1985), requesting that the child be returned to her custody. (R 7). Following the hearing on July 2, 1985, the trial court ordered that E.P. be returned to the custody and care of the mother under the protective supervision of Respondent. (R 8-9). The conditions of supervision were that the mother continue her program of counseling and therapy with Family Service Association of Greater Tampa Inc., provide for the child's financial needs by maintaining payment of rent, utilities, food and medical expenses, and that the child be enrolled in a licensed day care facility during the daytime hours. The child had previously been

adjudicated dependent and had been placed in the custody of her mother, the Petitioner, on July 10, 1985. (A 1).

On February 11, 1986, Petitioner served a motion for rehearing directed to the order of January 30, 1986, which placed the child in foster care. (A 5).

The trial court, after hearing, entered an order on March 11, 1986, denying the Motion for Rehearing. (A 8). Petitioner filed her Notice of Appeal in the district court on April 4, 1986, more than thirty (30) days after entry of the order appealed. (A 11).

The district court, upon motion by Respondent, dismissed the appeal as having been "untimely" filed under Fla. R. Juv. P. 8.820(b)(3). In the Interest of E.P., __ So.2d __, 12 FLW 1251, 1252 (Fla. 2d DCA 1987). (A 12).

The district court acknowledged the conflict between Fla. R. Juv. P. 8.820(b)(3) and Fla. R. App. P. 9.020(g), and certified the question to the Supreme Court pursuant to Fla. R. App. P. 9.030(a)(2)(A)(v). (A 12).

SUMMARY OF ARGUMENT

Florida Rule of Juvenile Procedure 8.820(b)(3) rescinds Florida Rule of Appellate Procedure 9.020(g) as to appeals in juvenile dependency cases thereby limiting the time for taking an appeal to thirty days after rendition of the final judgment instead of thirty days after rendition of a final order on the motion for rehearing. Pursuant to Fla. R. Juv. P. 8.820(b)(3), "A motion for rehearing shall not toll the time for the taking of an appeal."

The Florida Rules of Juvenile Procedure are intended to provide a just, speedy, and efficient determination of the procedures covered by them and are construed to secure simplicity in procedure and fairness in administration. The courts generally follow a policy of expediting appeals which affect child custody, child support, placement, juvenile dependency or delinquency. Florida Rules of Juvenile Procedure 8.820(b)(3) simply implements the intent of the court to provide speedy and efficient determination of the issues before the court in juvenile proceedings.

Furthermore, the adoption of Fla. R. Juv. P. 8.820 in 1984, which was subsequent to the 1977 revision of the Florida Rules of Appellate Procedure, is evidence of the Florida Supreme Court's intent to limit the time for appeal in juvenile cases to a period of thirty days from the rendition of the final order regardless of any motion for rehearing.

ARGUMENT

I.

THE HISTORY OF PRACTICE IN JUVENILE PROCEEDINGS AND OF THE RULES OF JUVENILE PROCEDURE REQUIRES THAT THE CERTIFIED QUESTION BE ANSWERED IN THE AFFIRMATIVE

Respondent points out that there were no formal rules of procedure applicable to juvenile cases prior to 1972 when the Supreme Court adopted the Florida Rules of Juvenile Procedure effective January 1, 1973. In re Transition Rule 11, 270 So.2d 715 (Fla. 1972). The applicable provisions of the Rules of Civil Procedure and the statutory provisions of Chapter 39, Florida Statutes, constituted the "rules" of juvenile procedure. See, In the Interest of D.A.W., 178 So.2d 745, 747, (Fla. 2d DCA 1965).

Petitioner's reliance on In the Interest of V.D., 245 So.2d 273 (Fla. 4th DCA 1971), and In the Interest of D.A.W., supra, for the proposition that during the "pre-rules" period the courts uniformly recognized motions for rehearing in juvenile cases and further recognized such motions as tolling the time for taking an appeal by operation of Appellate Rules 1.3 and 3.2(b) and RCP 1.530 is misplaced. In V.D., counsel for the child filed a petition for a new trial after the trial judge adjudicated the minor a delinquent and ordered her committed for an indefinite period to the Florida State Industrial School for Girls. The petition for new trial was denied and counsel appealed the adjudication. The opinion did not infer or state that the filing of a petition for a new trial tolls the time for taking an appeal.

Effective January 1, 1985, the rules governing dependency cases and the rules governing delinquency cases were separated within the body of the Rules of Juvenile Procedure. Petition of Florida Bar, Rules of Juv. Proc., 462 So.2d 399 (Fla. 1984). Motions for rehearing in dependency proceedings were transferred to new Rule 8.820; motion for rehearing in delinquency proceeding remained at Rule 8.230.

Fla. R. Juv. P. 8.820(b)(3), as amended, provides:

> A motion for rehearing shall not toll the time for the taking of an appeal.

Thus, Rule 8.820(b)(3), as amended, clearly provides that a motion for rehearing does not toll the time for the taking of an appeal.

The decision of the First District in In the Interest of R.N.G., C.A.G. & S.E.G., 496 So.2d 988 (Fla. 1st DCA 1986), is clearly distinguishable from the case at bar. In R.N.G., on March 10, 1986, the trial court entered a final judgment of permanent commitment, and on April 9, 1986, the natural parents filed a timely notice of appeal. Prior to filing the notice of appeal, the parents filed a timely motion for rehearing. The court noted that since the motion for rehearing had not been ruled upon by the trial court, it was without jurisdiction to entertain the appeal and that the notice of appeal remained in "limbo" until the trial court ruled on the motion for rehearing.

The court in R.N.G., supra, noted that in the event that it receives notice that the trial court has denied the motion for rehearing, the notice of appeal will mature and jurisdiction will

vest in the court. Sub judice, had Petitioner timely filed her notice of appeal, then the notice of appeal would have matured and jurisdiction vested in the district court upon the trial court's denial of the Motion for Rehearing.

ARGUMENT

II.

THE PRINCIPLE THAT A FINAL ORDER IS NOT "RENDERED" FOR APPELLATE PURPOSES UNTIL THE LOWER TRIBUNAL HAS DISPOSED OF A TIMELY MOTION FOR REHEARING DOES NOT APPLY TO APPEALS TAKEN PURSUANT TO FLORIDA RULE OF JUVENILE PROCEDURE 8.820(b)(3)

Petitioner has cited several cases for the proposition that a timely motion for rehearing tolls the time for taking an appeal. However, all the cases cited by the Petitioner dealt with the tolling effect of motions for rehearings in non-juvenile related proceedings. Petitioner has cited no authority which provides for the position that a timely motion for rehearing in dependency proceedings tolls the time for the taking of an appeal. Fla. R. Juv. P. 8.820(b) controls the time and method of filing motions for rehearing in dependency cases.

In the case of In re Evans, 116 So.2d 783 (Fla. 3d DCA 1960), which was decided prior to the adoption of formal rules of procedure applicable to juvenile cases, an appeal from final child custody order of the juvenile court was taken to the district court of appeal. The court raised the issue of jurisdiction, sua sponte, when it appeared that the appeal was taken after the ten (10) day limit provided by Section 39.14, Florida Statutes (1959), had expired, and accordingly dismissed the appeal. It is to be noted that the court made reference to the necessity of a shorter appeal time in this special proceeding. The court stated:

> There is sound basis in reason and logic why appeals from special statutory proceedings should be limited to a period of time less than that normally provided for appeals from final judgments. Accelerating the time for appeals so that the status of the juvenile may be promptly settled was within the legitimate discretion of the legislature and comes within the exception in Rule 3.2(b) Fla. App. Rules . . .

Similarly, there is sound basis in reason and logic why motions for rehearing in juvenile proceedings should not toll the time for taking an appeal as opposed to traditional appeals in equity where a timely motion for new trial tolls the time for taking an appeal. The courts generally follow a policy of expediting appeals which involve or effect child custody, child support, placement, juvenile dependency or delinquency.

If the Rules of Juvenile Procedure did not address the issue of whether the timely filing of a motion for rehearing tolls the time for taking an appeal, then the district could have looked to the Rules of Appellate Procedure for guidance. In In the Interest of D.B., T.B. and A.B., 383 So.2d 278 (Fla. 5th DCA 1980), the court considered a similar issue and stated in pertinent part, as follows:

> Although not specifically stated in the civil rules, we recognize that the juvenile rules would apply in any matter specifically addressed therein which might conflict with the civil rules, but where as here, the juvenile rules do not apply, we think the civil rules take over.

Sub judice, the juvenile rules are not silent regarding the issue before the Court and therefore, controls the issue before the Court. Accordingly, a motion for rehearing does not toll the time for the taking of an appeal.

Furthermore, since Fla. R. Juv. P. Rule 8.820 was adopted in 1984, subsequent to the 1977 revision of the Florida Rules of Appellate Procedure, it is evident that the Florida Supreme Court intended to limit the time for appeal in juvenile cases to a period of thirty days from the rendition of the final order, regardless of any motion for rehearing.

ARGUMENT

III.

THE CASE OF IN THE INTEREST OF R.N.G., C.A.G. & S.E.G. IS NOT IN CONFLICT WITH IN THE INTEREST OF E.P.

Petitioner's contention that the First District's decision in In the Interest of R.N.G., C.A.G. & S.E.G., supra, conflicts with the decision of the Second District in the instant case under review, In the Interest of E.P., __ So.2d __, 12 FLW 1251 (Fla. 2d DCA 1987), is without merit.

The issue presented in In the Interest of R.N.G., C.A.G. & S.E.G., supra, is clearly distinguishable from the issue presented by the instant appeal. Therein the natural parents filed a timely notice of appeal. Prior to filing the notice of appeal, however, the parents filed a timely motion for rehearing. The court noted that since the record indicated that the trial court had not ruled upon the motion for rehearing, it appeared the court was without jurisdiction to entertain the appeal and that the notice of appeal remained in "limbo" until the trial court ruled on the motion for rehearing. The district court further noted that in the event the trial court denies the motion for rehearing, the notice of appeal will mature and jurisdiction will vest in the district court. Sub judice, Petitioner did not timely file a notice of appeal.

ARGUMENT

IV.

FLA. W.C.R.P. RULE 4.141 IS CONSISTENT WITH FLA. R. JUV. P. 8.820(b)(3)

The "non-tolling" provision set forth in Fla. W.C.R.P. Rule 4.141 is consistent with the rule of practice set forth in Fla. R. Juv. P. 8.820(b)(3). Fla. W.C.R.P. 4.141 allows for the filing of a motion for rehearing directed to "an order not yet final" and further provides that the filing of such a motion "does not toll either the time within which an order becomes final or the time within which an appeal may be filed."

Petitioner alleges that there are important distinctions to be drawn between the Fla. W.C.R.P. and the Fla. R. Juv. P. and detailed reasons and documentation for the Workers' Compensation "exception" to the tolling principle. However, Respondent submits that there are also detailed reasons and documentation for the Rules of Juvenile Procedure "exception" to the tolling principle.

Fla. R. Juv. P. Rule 8.500 provides, in pertinent part, as follows:

> These rules shall govern the procedures in Circuit Court in the exercise of its jurisdiction relating to juvenile dependency proceedings. They are intended to provide a just, speedy, and efficient determination of the procedures covered by them and shall be construed to secure simplicity in procedure and fairness in administration.

Both the Florida Rules of Juvenile Procedure and the Florida Worker's Compensation Rules of Procedure were promulgated to provide a just, speedy and efficient determination of the procedures covered by them.

CONCLUSION

WHEREFORE, for the foregoing reasons, Respondent respectfully requests that the Court answer the certified question in the affirmative.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: **PRINCE J. MCINTOSH**, Esquire, Bay Area Legal Services, Inc., 700 Twiggs Street, Suite 800, Tampa, Florida 33602, this 30th day of July, 1987.

JOSEPH LEWIS, JR.
ASSISTANT ATTORNEY GENERAL