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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2017-2018

2160980

G.L.C.

v.

C.E.C. III

**Appeal from Baldwin Juvenile Court
(JU-17-164.01)**

PER CURIAM.

G.L.C. ("the mother") appeals from a judgment of the Baldwin Juvenile Court ("the juvenile court") terminating her parental rights to the child she had with C.E.C. III ("the father").

2160980

The record indicates that the juvenile court entered its judgment terminating the mother's parental rights on August 16, 2017. Because the judgment from which she appealed was issued by a juvenile court and no postjudgment motion was filed, the mother had 14 days, or until August 30, 2017, to timely file her notice of appeal. See Rule 4(a)(1)(E), Ala. R. App. P. The paperwork that the mother filed in connection with her notice of appeal was initially dated August 31, 2017. The date-stamps on the filed copies indicate that the notice of appeal was filed on August 31, 2017. However, most of those dates were altered to reflect a filing date of August 30, 2017.

On September 6, 2017, the attorney for the father wrote to Tina Hadley, the court specialist in the Baldwin Circuit Court clerk's office whose initials appeared next to the date changes. In the letter, the father's attorney requested an explanation as to why the dates had been altered. That same day, Hadley responded by e-mail, writing that the mother had attempted to file her notice of appeal on August 30, 2017. Hadley continued:

"The girls in Juvenile sent her upstairs to me and security had locked the door as it was then 4:30 and

2160980

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. The reason I did my thing on 9/1 [the date the notice of appeal was entered on the State Judicial Information System] is because I was unable to get to it on 8/31. I am allowed 7 days to docket it after it is filed."

When the mother filed her notice of appeal, she did not file a security for costs or a bond, and she did not file an affidavit of substantial hardship or seek a waiver of costs.

On September 15, 2017, the father filed in the juvenile court a motion to dismiss the mother's appeal on the ground that it was untimely. The juvenile court held an evidentiary hearing on the motion on October 31, 2017. The evidence adduced at the hearing, at which Hadley and the mother testified, reflected events as Hadley had explained in her September 6, 2017, e-mail to the father's attorney. Hadley testified that, before August 30, 2017, she had spoken with the mother by telephone and had sent her the proper forms to complete the notice appeal but that she did not see the mother until August 31, 2017. Evidence indicated that when the mother brought the notice of appeal to the courthouse on August 30, 2017, she was not permitted to leave it with the

2160980

clerk's office. During her testimony, which corroborated Hadley's explanation, the mother acknowledged that she had returned with her notice of appeal to the circuit clerk's office on August 31, 2017, and that the notice was filed that day.

On October 31, 2017, the same day the hearing was held, the juvenile court purported to enter an order dismissing the mother's appeal. However, because the time the mother had in which to file a notice of appeal had already expired, and because she had already filed a notice of appeal, the juvenile court no longer had jurisdiction to consider the father's motion to dismiss, and the order dismissing the appeal was void. See Ex parte Madison Cty. Dep't of Human Res., [Ms. 2160883, Nov. 17, 2017] ___ So. 3d ___, ___ (Ala. Civ. App. 2017); and D.V.P. v. T.W.P., 905 So. 2d 853, 856 (Ala. Civ. App. 2005). Nonetheless, as the father points out in his appellate brief, the timeliness of the mother's notice of appeal affects this court's jurisdiction to consider the matter. Thus, on April 4, 2018, this court entered an order reinvesting the juvenile court with jurisdiction for 14 days for the limited purpose of making a factual determination as

2160980

to the date the notice of appeal was filed. The juvenile court complied with this court's order, and on April 12, 2018, it entered an order stating that, "[a]fter reviewing the facts, pleadings, and transcripts available to this court," it determined that the mother had filed her notice of appeal on August 31, 2017--15 days after the judgment terminating the mother's parental rights was entered. The juvenile court ordered that the State Judicial Information System ("SJIS") be corrected to reflect that August 31, 2017, was the date of filing of the mother's notice of appeal.

In responding to the mother's brief on appeal, the father maintains that this court does not have jurisdiction over this matter because, he argues, the mother's notice of appeal was untimely filed. In her reply brief, the mother asserts that because she appeared at the clerk's office on August 30, 2017--the 14th day after the juvenile court entered the judgment terminating her parental rights--and presented her notice of appeal to the clerk's office, her appeal was timely. In support of her argument, the mother cites Rubin v. Department of Industrial Relations, 469 So. 2d 657 (Ala. Civ. App. 1985).

2160980

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.

"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).

"Thus, when [appellant] 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."

Rubin, 469 So. 2d at 658. Relying on Rubin, the mother contends that she "presented" her notice of appeal to the circuit clerk on August 30, 2017. Therefore, she says, her appeal was timely. We disagree.

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.'

2160980

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.

2160980

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

2160980

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).

The dissenting opinion attempts to draw an analogy between this case and a case decided by the Oregon Court of Appeals, State v. Faust, 244 Or. App. 138, 261 P.3d 24 (2011). We believe that the cases are distinguishable, however. Faust involved the question of whether a notice of appeal had been "given" to the clerk's office for filing. The appeal in Faust, which was from a municipal court to a circuit court, was governed by Oregon statutes providing that a notice of appeal was "filed" "if it [was] given to a municipal court clerk with the intention that it be filed." 244 Or. App. at 141, 261 P.3d at 25. The Faust court explained that "the term 'filing' has a well-defined legal meaning, which the court has applied in various statutory contexts, to mean that the filing of a document occurs when the document is given to the clerk with the intention that it be filed." Id. (citing Stull v. Hoke, 326 Or. 72, 78-79, 948 P.2d 722, 725 (1997)). Faust timely gave his notice of appeal to the municipal-court clerk, who refused to "take" the appeal because, the clerk said,

2160980

incorrectly, that the appeal was to "be taken to the Court of Appeals.'" 244 Or. App. at 142, 261 P. 3d at 26. Nonetheless, the clerk stamped the papers, indicating that the notice of appeal had been given to the clerk within the time allowed for a timely filing. Id.

In concluding that Faust had timely filed his notice of appeal, the Oregon appellate court stated:

"[N]o reported cases elaborate on whether 'giving' a document to a clerk requires that the clerk physically touch or take possession of the document. Requiring actual touching or physical possession of the document would allow a clerk to defeat a party's rights by refusing to touch or take possession of a document, something we conclude that the legislature did not intend. See Charco, Inc. v. Cohn, 242 Or. 566, 570-71, 411 P.2d 264 (1966) (vindication of a party's rights cannot depend on the 'pleasure or caprice of the clerk') (internal quotation marks omitted). There is sufficient evidence in the record that defendant gave the notice of appeal to the clerk when he presented it for filing on March 31, 2008.¹

"

¹Moreover, the record in this case shows that the clerk stamped the document with a stamp that indicated that the document was to be filed in the Court of Appeals; this raises an inference that the clerk touched and took possession of the document, however briefly. Accordingly, even if 'giving' a document to a clerk required physical possession or touching by the clerk, there was sufficient evidence that that occurred in this case."

2160980

244 Or. App. at 142-43, 261 P.3d at 26. Thus, the factual and legal issues involved in Faust were different from the considerations at issue in this case.

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. There is nothing in the record to identify "the girls in Juvenile." We cannot discern from the record whether "the girls" were employees of the clerk's office or some other employees of the juvenile court. We have no corroborating evidence from the employees "in Juvenile." The clerk's office closed at its regularly scheduled closing time. The mother's notice of appeal was not received by, or "given" to, to use the parlance of the Oregon court's opinion, the clerk's office until August 31, 2017. The record supports the juvenile court's determination that the notice of appeal was not delivered or filed with the clerk's office until August 31, 2017. Accordingly, based on the record before us, we have no choice but to conclude that the notice of appeal was untimely.

2160980

We recognize that this result appears to be harsh. We share the juvenile court's concern that the procedures that the Baldwin Circuit Court clerk's office employs for allowing people to file papers once the doors are locked are in need of revision. Nonetheless, our supreme court has held:

"The only jurisdictional prerequisite for an appeal is the timely filing of a notice of appeal. Edmondson v. Blakey, 341 So. 2d 481, 484 (Ala. 1976); see also 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.')."

Dunning v. New England Life Ins. Co., 890 So. 2d 92, 96 (Ala. 2003) (emphasis added). The timely filing of a notice of appeal is not a discretionary matter to be decided by a clerk's office or even a trial court. As the juvenile court determined (and as the evidence before that court supports), the notice of appeal was filed more than 14 days after the juvenile court entered its judgment terminating the mother's parental rights. Therefore, we are compelled to conclude that the appeal is untimely. This court lacks jurisdiction over an untimely appeal; therefore, the appeal must be dismissed. S.S. v. T.Y., 177 So. 3d 218, 221 (Ala. Civ. App. 2015).

2160980

APPEAL DISMISSED.

Thompson, P.J., and Pittman and Moore JJ., concur.

Thomas, J., concurs in the result, with writing.

Donaldson, J., dissents, with writing.

2160980

THOMAS, Judge, concurring in the result.

I concur in the dismissal of G.L.C.'s appeal. However, in my opinion, the reason that the juvenile court's October 31, 2017, order purporting to dismiss the mother's appeal is void is because, once G.L.C. filed her notice of appeal, the juvenile court lost "'jurisdiction to act except in matters entirely collateral to the appeal.'" Portis v. Alabama State Tenure Comm'n, 863 So. 2d 1125, 1126 (Ala. Civ. App. 2003) (quoting Ward v. Ullery, 412 So. 2d 796, 797 (Ala. Civ. App. 1982)). "Furthermore, 'while an appeal is pending, the trial court "can do nothing in respect to any matter or question which is involved in the appeal, and which may be adjudged by the appellate court.'" Johnson v. Willis, 893 So. 2d 1138, 1141 (Ala. 2004) (quoting Reynolds v. Colonial Bank, 874 So. 2d 497, 503 (Ala. 2003), quoting in turn Foster v. Greer & Sons, Inc., 446 So. 2d 605, 608 (Ala. 1984)). A court is imbued with the power to determine its own jurisdiction, see Jefferson Cty. Comm'n v. Edwards, 32 So. 3d 572, 583 (Ala. 2009) ("A court has jurisdiction to determine its own jurisdiction."); thus, this court, and not the juvenile court, was required to determine whether G.L.C.'s

2160980

notice of appeal was timely filed so as to properly invoke our jurisdiction.

2160980

DONALDSON, Judge, dissenting.

The question presented in this appeal is whether the notice of appeal was timely filed.

On March 7, 2017, C.E.C. III ("the father") filed in the Baldwin Juvenile Court ("the juvenile court") a petition to terminate the parental rights of G.L.C. ("the mother") to their child. The mother filed an affidavit of substantial hardship, which the juvenile court granted, and appointed counsel who represented the mother in the proceedings.

On August 16, 2017, the juvenile court entered a judgment terminating the parental rights of the mother to the child. Rule 28(C), Ala. R. Juv. P., provides that a "[w]ritten notice of appeal shall be filed within 14 days of the date of the entry of the order ... appealed from, whether the appeal is to an appellate court or to the circuit court for trial de novo." See also Rule 4(a)(1)(E), Ala. R. App. P. Accordingly, the mother had until August 30, 2017, to perfect an appeal from the August 16, 2017, judgment terminating her parental rights.

The mother, acting without counsel, filed a notice of appeal with the Baldwin Circuit clerk using Administrative Form ARAP-1. The notice of appeal indicates that the mother

2160980

was appealing from the August 16, 2017, judgment of the juvenile court to this court. Some information in the juvenile court's records indicates that the notice of appeal was filed on August 30, 2017, which would make the appeal timely.

On September 15, 2017, the father filed in the juvenile court a motion to dismiss the appeal as untimely filed. In his motion to dismiss, the father noted discrepancies in the juvenile court's records regarding the date that the notice of appeal was filed. He asserted that the notice of appeal was not filed until August 31, 2017, which would make the appeal one day late.

Although the juvenile court no longer had jurisdiction over the proceedings, a hearing was held in the juvenile court on the motion to dismiss on October 31, 2017. A transcript of that hearing has been made a part of the record in this appeal without objection. The transcript shows that the mother and an employee of the circuit clerk's office testified at the hearing.

The mother testified that she personally appeared at the Baldwin County courthouse on August 30, 2017, with a notice of appeal. The mother testified that she filled out much of the

2160980

form before going to the courthouse on August 30 but that some portions were not completed because she "was running out of time to get down here." She testified that, when she arrived at the courthouse, she went to the circuit clerk's office but was directed to go to a different office in the courthouse; that, when she went to that office, the doors were locked because the office was closed for the day; and that she returned to the courthouse the next day (August 31) and was directed to the circuit clerk's office, at which time her notice of appeal was accepted. Specifically, the mother testified that on August 30:

"I came here to this courthouse in the -- the clerk -- or security officer sent me upstairs ... to file the appeal. And walked into the clerk's office, and I was waiting on somebody in there to say, 'Can I help you' or whatever. Sat there for a few minutes, and then somebody walked in. They asked, 'Could I help you,' so after they were done with them, I -- it was about time for them to go, so I went up there and was wondering why they didn't acknowledge me. And they -- I said I was here to file my juvenile appeal, and I guess they heard juvenile stuff and so they sent me downstairs. So I went downstairs and the doors were already locked. So I had to come back the next day to -- to do the appeal, I did ask if I could leave it with an envelope -- in an envelope or -- or anything but ... They said I have -- I'd have to come the next day."

2160980

Her testimony about what transpired at the courthouse on August 30 was explained further in questioning at the hearing:

"Q. So they asked you, 'Can I help you?' You said, 'I'm here to file my juvenile appeal'; is that right?

"A. Yes, sir.

"Q. Okay. And when you presented that for filing, did they accept it from you at that time?

"A. No, sir.

"Q. Okay. They sent you downstairs --

"A. Yes, sir.

"Q. -- to the clerk's office down here.

"A. Yes, sir.

"Q. Now, did you know at that time that, actually, where you needed to file appeals is upstairs?

"A. No.

". . . .

"Q. You were just doing -- you were just doing what they told you?

"A. Yes, uh-huh.

"Q. And so you go downstairs and the door's locked?

"A. Yes, sir.

"Q. Okay. And at that time, the courthouse starts closing; is that right?

2160980

"A. Yes, sir.

"Q. And you asked them, 'Can I just leave this with y'all, anything'; is that right?

"A. Yes, sir.

"Q. Did anybody accept your appeal at that time that you presented it?

"A. No, sir.

"Q. Okay. Now, you came back on the next day?

"A. Yes, sir.

"Q. Is that right? And did you come to the clerk's office downstairs on the next day?

"A. Uh-huh, yes, sir.

"Q. Okay. Did you do that because the people upstairs told you needed to go downstairs?

"A. Yes, sir.

"Q. When you went to the clerk's office downstairs, did they send you back upstairs?

"A. Yes, sir.

"Q. Okay. Did you come to realize at that time that that is where you needed to be?

"A. Yes, sir.

"Q. And at that time, did someone finally accept your presentment --

"A. Yes.

"Q. -- for this notice of appeal?

2160980

"A. Yes, sir."

The employee of the circuit clerk's office testified that she had had telephone conversations with the mother after the entry of the August 16, 2017, judgment and that she sent the notice-of-appeal form to the mother. The employee also testified that, although she did not see the mother on August 30, she was made aware that the mother had been at the courthouse on August 30 to file the notice of appeal, and she had made certain entries in the record in an attempt to document the mother's presence on August 30.

As I read it, the transcript of the hearing indicates that, although the juvenile-court judge found that the appeal could not be considered timely filed because the clerk's office did not receive it until August 31, the mother's testimony was found to be credible, i.e., she had indeed appeared at the courthouse on August 30 for the purpose of filing the notice of appeal and could not do so because the doors were closed and locked. Following the testimony, the juvenile-court judge stated:

"All right. I think that I have to find that it was not timely filed. Do I think the clerk's office needs a better standing -- standard operating procedure for dealing with folks that walk up to

2160980

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 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."

On October 31, 2017, the juvenile court entered an order purportedly dismissing the mother's appeal. However, the juvenile court no longer had jurisdiction to consider the father's motion to dismiss, and the order dismissing the appeal was void. See Ex parte Madison Cty. Dep't of Human Res., [Ms. 2160883, Nov. 17, 2017] ___ So. 3d ___ (Ala. Civ. App. 2017); and D.V.P. v. T.W.P., 905 So. 2d 853, 856 (Ala. Civ. App. 2005). The father has asked us to dismiss the appeal on the basis that the notice was untimely filed, and therefore we must examine our jurisdiction. See, e.g., Evans v. Anderson, 176 So. 3d 232, 236 (Ala. Civ. App. 2015) (explaining that "we are required to examine whether we have jurisdiction over [an] appeal").

From my perspective, the mother's tender of the notice of appeal to the clerk's office on August 30 should be deemed a

2160980

"filing" of the notice for the purpose of invoking appellate jurisdiction under Rule 4(a)(1)(E), Ala. R. App. P., and Rule 28(C), Ala. R. Juv. P. It is well established that "[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, 229, 194 So. 663, 666 (1940); see also Dunning v. New England Life Ins. Co., 890 So. 2d 92, 96 (Ala. 2003); D.T. v. State, 1 So. 3d 74, 76-77 (Ala. Civ. App. 2008), and Holmes v. Powell, 363 So. 2d 760, 761-62 (Ala. 1978). I think the mother's actions on August 30 constitute a sufficient "delivery" of the notice of appeal in a timely manner. The important focal point is the date that the mother presented the notice with the intent that it be filed, not the date it was accepted by the clerk's office. Rule 77(a), Ala. R. Civ. P., provides that "[t]he circuit courts shall be deemed always open for the purpose of filing any pleading or other proper paper." The Committee Comments on 1973 Adoption of Rule 77 cite Freeman v. Andrea, 282 F. Supp. 525 (E.D. Pa. 1968), in which it was held that a complaint was deemed filed at the time the plaintiff's representative began waiting outside of a clerk's office for a deputy clerk to

2160980

arrive, rather than the time that the complaint was time-stamped by the clerk. I recognize that we have not been directed to existing Alabama caselaw to support this construction of the term "filing," but the construction seems to be consistent with the directive that we should construe the Alabama Rules of Appellate Procedure "to assure the just ... determination" of the proceedings. Rule 1, Ala. R. App. P.; see also Rule 1(c), Ala. R. Civ. P.

Moreover, the Court of Appeals of Oregon has addressed a situation analogous to this case in State v. Faust, 244 Or. App. 138, 261 P.3d 24 (2011). In Faust, an attorney attempted to file a notice of appeal with a trial-court clerk on the last day of the permissible period. The attorney was incorrectly told that the notice of appeal had to be taken to another court, and the appeal was later dismissed on the ground that it had been untimely filed. However, the Oregon Court of Appeals held that "sufficient evidence in the record [established] that [the appellant] gave a notice of appeal to the clerk when he presented it for filing [at the trial-court clerk's office]." 244 Or. App. at 143, 261 P.3d at 26. The court noted:

2160980

"[N]o reported cases elaborate on whether 'giving' a document to a clerk requires that the clerk physically touch or take possession of the document. Requiring actual touching or physical possession of the document would allow a clerk to defeat a party's rights by refusing to touch or take possession of a document, something we conclude that the legislature did not intend."

244 Or. App. at 142, 261 P.3d at 26.

Unlike cases involving a notice of appeal placed in the mail but not reaching the proper office until after the time for appeal has expired, the record shows that the mother personally appeared at the Baldwin Circuit clerk's office on August 30, 2017, with a notice of appeal directed to the August 16, 2017, judgment and asked that it be accepted for filing. It appears that the notice of appeal was not accepted because of a misunderstanding of the mother's intentions and a lack of sufficient time for the misunderstanding to be corrected due to the closing of the offices for the day. There is no indication that anyone with the Baldwin Circuit clerk's office did anything intentionally to prevent the mother from filing the notice in a timely manner; to the contrary, the clerk's office employee who testified attempted to have the record reflect the mother's actions on August 30. Unquestionably, it was not advisable for the mother to have

2160980

waited until late on the final day to go to the courthouse to file the notice of appeal, because she left no time to address any potential confusion or misunderstandings. Perhaps the mother should have slid the notice of appeal under the closed door. See Committee Comments on 1973 Adoption of Rule 77 (referencing the practice as "not inconsistent with the cooperative spirit of accommodation in emergencies by court personnel in present Alabama practice"). Regardless of what would have been the better practice for the mother to follow, she was present with a notice of appeal in the clerk's office on August 30, 2017, she tried to leave it with the office, and, according to her testimony, she was not permitted to do so. I think this constitutes delivery of the notice of appeal in a timely manner, albeit an awkward and ill-advised manner, but still a sufficient one to invoke appellate jurisdiction.

Therefore, I would hold that the appeal was timely filed and permit the appeal to proceed.