

SUPREME COURT OF THE STATE OF DELAWARE

Welsch v. Division of Family Services (DFS)

No. 340, 2019 · No. No. 340, 2019 · Decided September 17, 2019

SUMMARY

The Delaware Supreme Court dismissed Jimmy Welsch’s appeal from a Family Court order terminating his parental rights because the notice of appeal was received after the applicable thirty-day deadline. The Court held that counsel had no duty to docket the appeal because Welsch did not timely inform counsel of his desire to appeal, and Delaware does not apply the prison mailbox rule.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Gary F. Traynor; Justice Valihura; Justice Seitz; Justice Traynor
JURISDICTION	Delaware
DECIDED	September 17, 2019
DOCKET	No. 340, 2019
DISPOSITION	dismissed
PROCEDURAL POSTURE	Appeal from a Family Court order terminating the appellant's parental rights; the Supreme Court issued a notice to show cause why the appeal should not be dismissed as untimely.
STANDARD OF REVIEW	The court applied the jurisdictional deadline for filing a notice of appeal and reviewed whether the untimely filing fell within the exception for delay attributable to court-related personnel.
PRECEDENTIAL VALUE	Published Delaware Supreme Court order
PARTIES	Jimmy Welsch v. Division of Family Services (DFS)

TOPICS

- appellate procedure
- appellate jurisdiction
- termination of parental rights
- parental rights
- family law procedure

PRACTICE AREAS

- Appellate Procedure
- Family Law
- Termination of Parental Rights

QUESTIONS PRESENTED

1. Whether the appeal should be dismissed because the notice of appeal was received after the thirty-day jurisdictional deadline.
2. Whether the appellant's incarceration and deposit of the notice of appeal in a prison mailbox satisfied Delaware's filing requirement under a prison mailbox rule.
3. Whether counsel had a continuing obligation to docket the appeal under Delaware Supreme Court Rule 26.1(a) when the appellant did not timely inform counsel of his desire to appeal.

HOLDINGS

1. Counsel did not have a duty to docket the appeal because Welsch did not timely inform counsel of his desire to appeal.
2. A notice of appeal must be received by the Court within the applicable filing period, and Welsch's notice was untimely because it was received after the thirty-day deadline.
3. Delaware does not recognize a prison mailbox rule under which a pro se prisoner's notice of appeal is deemed filed when delivered to prison authorities for forwarding.

KEY QUOTATIONS

“Time is a jurisdictional requirement.” (at 3)

“Delaware has declined to adopt the prison mailbox rule, wherein a pro se prisoner’s notice of appeal is deemed “filed” at the moment it is delivered to prison authorities for forwarding to the Court.” (at 3)

FACTUAL BACKGROUND

The Family Court terminated Welsch's parental rights on July 1, 2019. His attorney sent him a letter advising him of his right to appeal and identifying July 31, 2019, as the filing deadline. Welsch asserted that he attempted to contact counsel from prison on July 11 and deposited his notice of appeal in the prison mailbox on July 29 or 30, but the notice was not received by the Supreme Court until August 5.

PROCEDURAL HISTORY

The Delaware Family Court entered an order terminating Welsch's parental rights on July 1, 2019. Welsch's notice of appeal was received by the Delaware Supreme Court on August 5, 2019, after the July 31, 2019 deadline. After receiving responses from Welsch and his former Family Court attorney, the Supreme Court dismissed the appeal as untimely.

DISPOSITION

dismissed

CASES CITED

- Carr v. State, 554 A.2d 778, 779 (Del.), cert. denied, 493 U.S. 829 (1989)

- *Bey v. State*, 402 A.2d 362, 363 (Del. 1979)
- *Smith v. State*, 47 A.3d 481, 483-87 (Del. 2012)

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