

## SUPREME COURT OF SOUTH DAKOTA

# The People of the State of South Dakota, ex rel. South Dakota Department of Social Services, in the Interests of L.R. and T.W., Minor Children and Concerning A.W. and T.R.

2014 S.D. 95 · No. #27171 · Decided December 23, 2014

### SUMMARY

The South Dakota Supreme Court considered whether a circuit court could amend a final dispositional order with a new date to permit a timely appeal after an earlier appeal had been dismissed as untimely. The court held that the minor corrections in the amended order did not create a new final order or restart the appeal period, and it dismissed the appeal as untimely.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                     |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of South Dakota                                                                                                                                                                                                                       |
| WRITING FOR THE COURT | Konenkamp, Justice; Gilbertson, Chief Justice; Zinter, Justice; Severson, Justice; Wilbur, Justice                                                                                                                                                  |
| JURISDICTION          | South Dakota                                                                                                                                                                                                                                        |
| DECIDED               | December 23, 2014                                                                                                                                                                                                                                   |
| DOCKET                | #27171                                                                                                                                                                                                                                              |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | Mother A.W. attempted a third appeal from an order terminating her parental rights after two prior appeals were dismissed. The Supreme Court considered the matter in response to a show-cause order regarding whether the third appeal was timely. |
| STANDARD OF REVIEW    | The Supreme Court independently examined appellate jurisdiction and timeliness, which it treated as jurisdictional issues subject to sua sponte review.                                                                                             |
| PRECEDENTIAL VALUE    | Published South Dakota Supreme Court opinion; precedential                                                                                                                                                                                          |
| PARTIES               | A.W., Mother v. State of South Dakota, ex rel. South Dakota Department of Social Services                                                                                                                                                           |

### TOPICS

appellate jurisdiction

final judgment rule

appellate procedure

termination of parental rights

family law

## PRACTICE AREAS

appellate procedure

family law

termination of parental rights

## QUESTIONS PRESENTED

1. Whether a circuit court may amend a final order with a new date to permit a new, timely notice of appeal after the Supreme Court has dismissed an earlier appeal as untimely.
2. Whether the amendments to the dispositional order were substantive or resolved a genuine ambiguity so as to restart the time for appeal.

## HOLDINGS

1. An amended final order does not restart the time for appeal when its revisions are immaterial and do not change matters of substance, resolve a genuine ambiguity, or disturb or revise legal rights and obligations that were finally settled by the prior judgment.
2. A.W.'s third appeal was untimely because the amended dispositional order did not create a new final order or restart the period for appeal.

## KEY QUOTATIONS

*“Only when the lower court changes matters of substance, or resolves a genuine ambiguity, in a judgment previously rendered should the period within which an appeal must be taken or a petition for certiorari filed begin to run anew.” (¶ 7)*

*“The amendments in the Amended Dispositional Order therefore did not create a new, final order that restarted the time for appeal.” (¶ 10)*

*“We order Mother’s appeal dismissed as untimely.” (¶ 11)*

## FACTUAL BACKGROUND

The circuit court terminated A.W.'s parental rights to her biological children, L.R. and T.W., in an abuse and neglect proceeding under SDCL chapter 26-8A. After her initial appeal was dismissed for failure to sign the notice of appeal, A.W. obtained a second notice of entry and later an amended dispositional order. The amended order made six bolded changes, including changing the order date from July 16, 2013, to August 5, 2014, but the Supreme Court characterized the changes as minor additions or corrections that did not alter substantive legal rights or obligations.

## PROCEDURAL HISTORY

The circuit court entered a dispositional order terminating A.W.'s parental rights on July 16, 2013. Her first appeal was dismissed because she failed to sign the notice of appeal, and her second appeal was dismissed as untimely because an updated notice of entry could not restart the appeal period. The circuit court later entered an amended dispositional order containing minor additions or corrections and changing the order date; A.W. filed a

third notice of appeal, which the Supreme Court dismissed as untimely because the amendments did not create a new final order.

## DISPOSITION

dismissed

## CASES CITED

- People ex rel. B.H., 2011 S.D. 26, 799 N.W.2d 408
- Johnson v. Kusel, 298 N.W.2d 91 (S.D. 1980)
- W. States Land & Cattle Co. v. Lexington Ins. Co., 459 N.W.2d 429 (S.D. 1990)
- State v. Phipps, 406 N.W.2d 146 (S.D. 1987)
- State v. Huftile, 367 N.W.2d 193 (S.D. 1985)
- Federal Trade Commission v. Minneapolis-Honeywell Regulator Co., 344 U.S. 206 (1952)
- Matton Steamboat Co. v. Murphy, 319 U.S. 412 (1943)
- Rabo Agrifinance, Inc. v. Rock Creek Farms, 2012 S.D. 20, 813 N.W.2d 122
- Interstate Printing Co. v. Department of Revenue, 459 N.W.2d 519 (Neb. 1990)
- In re A.S., 2000 S.D. 94, 614 N.W.2d 383
- In re Baby Boy K, 1996 S.D. 33, 546 N.W.2d 86
- People ex rel. S.H.E., 2012 S.D. 88, 824 N.W.2d 420
- People ex rel. P.K., 2006 S.D. 17, 711 N.W.2d 248
- In re L.S., 2012 S.D. 22, 812 N.W.2d 505
- In re J.Y., 502 N.W.2d 860 (S.D. 1993)

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