Circuit Court for Prince George's County
Case No. CAE17-06052

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1749

September Term, 2017

IN THE MATTER OF SANTOS NOHE LOPEZ PEREZ

Nazarian,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: December 18, 2018

Martin Lopez Lopez, the appellant, filed an unopposed petition (the "Petition") for guardianship of his nephew, Santos Nohe Lopez Perez, and requested that the circuit court enter factual findings that would make Santos[1] eligible for the federal government to award him Special Immigrant Juvenile ("SIJ")[2] status. After a brief hearing on August 18, 2017, the circuit court, in an order entered on August 31, awarded guardianship of Santos to Martin, but denied Martin's request for factual findings to support SIJ status. Martin moved to alter or amend the judgment and for a new trial on September 7, 2017. The court

[1] For the sake of clarity and meaning no disrespect, we will refer to the parties and their family members by their first names. *See Karsenty v. Schoukroun*, 406 Md. 469, 477 n.2 (2008).

[2] A "Special Immigrant" is an immigrant "who has been declared dependent on a juvenile court in the United States … or placed in the custody of … an individual or entity appointed by a State or juvenile court … and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment" or due to a similar state-law basis, and for whom a judge has determined it would not be in the child's "best interest to be returned to" his or her "parents' previous country of nationality[.]" 8 USCA § 1101(a)(27)(J). A "juvenile court" is a court in the United States with the jurisdiction to make determinations regarding the custody and care of juveniles. 8 CFR § 204.11(a). We have delineated the findings of fact the circuit court must make:

1) The juvenile is under the age of 21 and unmarried;
2) The juvenile is dependent on the court or has been placed under the custody of an agency or an individual appointed by the court;
3) The court has jurisdiction under state law to make judicial determinations about the custody and care of juveniles;
4) Reunification with one or both of the juvenile's parents is not viable due to abuse, neglect, or abandonment or a similar basis under state law; and
5) It is not in the "best interest" of the juvenile to be returned to his parents' previous country of nationality.

In re Dany G., 223 Md. App. at 714-15. If a state court enters these findings, the juvenile may petition the United States Customs and Immigration Services for SIJ status. *Martinez v. Sanchez*, 235 Md. App. 639, 645 (2018). A child who is granted SIJ status may then apply for legal permanent residency. *Id.*

denied the motion on September 22, 2017, and the order was entered on September 26, 2017.

On October 12, 2017, Martin attempted to file a notice of appeal of the circuit court's decision. The clerk of the court returned the notice of appeal as unfiled on October 23, however, because it lacked a certificate of service. Thirty-one days after the court denied his motion to alter or amend the judgment and for a new trial, on October 27, Martin filed a notice of appeal containing certificates attesting that Santos and his parents were served. Martin presented one question for our review:

> "Did the Circuit Court err in ruling on the request for Special Immigration Juvenile Status?"

Because Martin's notice of appeal was filed more than 30 days following entry of the court's order, we lack jurisdiction to consider the merits of his appeal.

BACKGROUND

Martin, through his attorney, filed a petition on March 3, 2017, for guardianship and requesting that the court enter a predicate order making factual findings necessary to allow Santos to apply for SIJ status with the federal government. The petition alleged that Santos was born and raised in Guatemala, where he was forced to leave school in the fourth grade to work in the fields as an unpaid agricultural worker with his father, during which his duties included fumigation without protective gear. The petition stated that Santos left home in 2015 to come to the United States in a plan supported by his parents; he arrived undocumented on June 7. Martin alleged that he was financially and emotionally fit to provide for Santos as his guardian and that his guardianship would be in Santos's best

interest. Included with the petition was the consent of Santos's parents "to the appointment of a guardian and waiver of service of process." The petition also included Santos's consent to guardianship, but no waiver of process.

The circuit court entered an amended show cause order on June 5, 2017, demanding that Santos and his mother, Esterla Perez Cervantes ("Esterla"), who resides in Guatemala, state why Martin should not be granted guardianship of Santos, and ordering that Santos and his mother be served a copy of the court's order. The order also notified the parties of a show-cause hearing scheduled for August 18, 2017.

Santos and Martin, the only witnesses who appeared at the court's August 18 hearing, testified to the facts enumerated in Martin's petition, and the court gave a brief oral ruling, presented here in its entirety:

> Well based on the request to appoint a guardian and the young man's consent to guardianship, the [c]ourt will appoint his uncle [Martin] as guardian of [Santos]. However, the [c]ourt finds that [Santos] is not eligible for special immigrant juvenile status. [Santos] is 19 years old, lives on his own, made his way to America on his own. So it does not appear that he needs any protection of the [c]ourt.
>
> That will be the [c]ourt's order.[3]

[3] Although we cannot reach the merits of this case, it appears that the trial judge may have erred in refusing to enter an SIJ predicate order without making the statutorily prescribed findings of fact. The conclusory statements offered by the trial court are insufficient because "[t]he state court must make specific findings of fact regarding the child's eligibility for SIJ status." *In re Dany G.*, 223 Md. App. 707, 714 (2015); *see also Martinez v. Sanchez*, 235 Md. App. 639, 646-47 (2018). While a trial court is certainly not required to find facts in favor of the party requesting SIJ findings, the court *is* required to address the factual issues enumerated by the federal statute. *Martinez*, 235 Md. App. at 646-47; *In re Dany G.*, 223 Md. App. at 714-15. Accordingly, if we had jurisdiction to consider Martin's appeal, we would likely have vacated and remanded the trial court's judgment because of two significant flaws.

First, the court did not articulate factual findings regarding the viability of Santos's reunification with his parents due to abuse, neglect, or abandonment. 8 U.S.C.A. §

On August 31, the court entered its written order granting Martin guardianship of Santos but refusing to enter the findings of fact necessary for SIJ status.

On September 7, 2017, Martin filed an "amended motion to alter/amend the judgment and for a new trial," which largely reiterated the testimony presented by Martin and Santos at trial. The court signed an order denying the motion on September 22, and the order was entered on September 26, 2017.

On October 12, 2017, Martin filed a notice of appeal, which was returned to him by the clerk with a form that read the following:

1101(a)(27)(J); *In re Dany G.*, 223 Md. App. at 715. A trial court must apply the state law definitions of "abuse," "neglect," and "abandonment" and "without regard to where the child lived at the time the events [of abuse or neglect] occurred." *In re Dany G.*, 223 Md. at 717. "We are [] mindful that if parents in Maryland allow or force their child to leave school at the age of [14], this factor would lead to a finding that the child was neglected." *Id.* at 721. Here, the trial court, in cabining its findings to Santos's circumstances since coming to the United States, overlooked instances of abuse and neglect that occurred in Guatemala—such as being forced to leave school in the fourth grade and being forced to work in hazardous conditions without compensation, and being abandoned by his parents. *See id.* at 718 ("We will not *voluntarily* select a standard [for evaluating SIJ petitions] that automatically sends a child back to wretched conditions that our state has found to be abusive, neglectful, or to constitute abandonment solely because those conditions are considered acceptable in the child's home country." (emphasis in original)); *see also Romero v. Perez,* ___ Md. ___, ____, No. 27, September Term 2018 (filed December 7, 2018) (per curiam) (ordering that this Court vacate the circuit court's order that failed to make the requisite SIJ findings and ordering the circuit court to enter an amended order that includes the SIJ finding that "[the minor's] reunification with his mother is not viable due to the unrefuted evidence of neglect presented to the Circuit Court"), *rev'g* 236 Md. App. 503 (2018).

Second, the trial court failed to apply Maryland's best-interest standard. 8 U.S.C.A. § 1101(a)(27)(J); *In re Dany G.*, 223 Md. App. at 721-22. In an SIJ determination, the "fact finder is called upon to evaluate the child's life chances . . . and predict with whom the child will be better off in the future." *Id.* (quoting *Montgomery Cnty. v. Sanders*, 38 Md. App. 406, 419 (1977)). From his brief opinion we discern no evaluation as to Santos's life chances should he remain in the United States or return to Guatemala.

___ All cost must be paid in advance or a waiver filed. The filing fee for a Notice of Appeal is $121.00[.]

___ Certificate of Service is **not included**/not complete[.]

___ Reference Number does not match captioned court.

_X_ **OTHER REASON**: Your Notice of Appeal was returned to you for not having a Certificate of Service. Your check in the amount of $60.00 is being returned to you as well.

Should you have any questions please contact the Appeals office[.]

Martin re-filed his notice on October 27, this time including included a certificate attesting that he served Santos, Esterla, and Santos's father, Santos Teodoro Lopez y Lopez.

DISCUSSION

Martin argues on appeal that the trial court erred in declining to render factual findings that Santos met the eligibility requirements for SIJ status under 8 U.S.C.A. § 1101(A)(27)(J). The few facts mentioned by the circuit court in its oral opinion, he contends, are irrelevant to an SIJ status determination under 8 U.S.C.A. § 1101(A)(27)(J). Specifically, he states that the circuit court failed to render findings about abuse and neglect suffered by Santos and whether it would be in Santos's best interest to remain in the United States or to return to Guatemala.

Unfortunately, we cannot reach the merits of Martin's appeal because it was not timely filed.

Certificate of Service

The Clerk of the Circuit Court for Prince George's County was correct to refuse to file Martin's October 12 notice of appeal because it lacked a certificate of service or waiver

thereof. Maryland Rule 1-321(a) requires that the parties to an action be served with "every pleading and other paper filed after the original pleading." A notice of appeal is a paper requiring a certificate of service. *See Lovero v. Da Silva*, 200 Md. App. 433, 453 (2011) (holding that the court clerk was required to refuse for filing a notice of appeal lacking a certificate of service under Rule 1-323); *see also Bond v. Slavin*, 157 Md. App. at 351. Consistent with the Maryland Rules, a party filing a notice of appeal must include an admission or waiver of service or a "signed certificate showing the date and manner" in which the filing party effected service. Md. Rule 1-323.

Ordinarily, when a party files a pleading paper in the court, the clerk of the court has a ministerial duty to record the pleading or paper as filed and to enter such pleading or paper on the docket. *Lovero*, 200 Md. App. at 443. Accordingly, "[e]xcept as otherwise expressly provided by law," the clerk "has no discretion in the matter and no right to make a judicial determination of whether the paper complies with the [Maryland] Rules or ought to be filed." *Id.* (citation omitted).

Maryland courts have held, however, that a clerk should file a party's notice of appeal even if it is defective in a variety of ways—such as lack of a proper caption on an original document, the incorrect name of the court and docket number, an unpaid filing fee, or a deficient certificate of service do not prevent the clerk's acceptance and filing of a paper or pleading. *Id.* (internal citations omitted); *Bond v. Slavin*, 157 Md. App. 340, 351-52 (2004). This is because "it is the practice of this Court to decide appeals on the merits rather than on technicalities." *State v. Andrews*, 227 Md. App. 350, 370 (2016) (citation omitted). The Court of Appeals has recognized similarly that "our cases, and those of the

Court of Special Appeals, have generally been quite liberal in construing timely orders for appeal." *Id.* (citing *Newman v. Reilly*, 314 Md. 364, 386 (1988)). Describing the philosophy behind the permissiveness of the courts, the Court of Appeals quoted its federal analogy: because "the timely filing of the notice of appeal has been characterized as jurisdictional, it is important that the right to appeal not be lost by mistakes of mere form." *Newman*, 314 Md. at 387 (quoting Notes of the Advisory Committee on the Federal Rules of Appellate Procedure, 1979 Amendment, Note to Rule 3, subdivision c). Further, the Court of Appeals has held that "substantial compliance with the Rules is sufficient if the purpose of the Rules is gratified." *Blundon v. Taylor*, 364 Md. 1, 18 (2001) (internal citation omitted).

There is, however, a singular exception to the liberal construction of the timeliness of a notice of appeal: Maryland Rule 1-323 instructs that "the clerk shall not accept for filing a pleading or paper requiring service that does not contain an admission or waiver of service or a signed certificate showing the date and manner of making service." *Lovero*, 200 Md. App. at 443-44 (quoting *Director of Finance of Baltimore City v. Harris*, 90 Md. App. 506, 511-12 (1992)). Under applicable rules and case law, the clerk of the court was correct to refuse Martin's appeal because it lacked a certificate of service. Md. Rule 1-323; *Lovero*, 200 Md. App. at 443-44. A notice of appeal with a defective certificate of service may suffice for filing, but one with *no* certificate of service—or waiver thereof—will not. Therefore, even if a party has waived service (like Santos's parents did in their March 3 petition to the circuit court), Maryland Rule 1-323 required Martin to include with his filing—as he did when he refiled on October 27—an "admission *or waiver* of service

or a signed certificate showing the date and manner of making service." (Emphasis added). Because Martin failed to include a certificate of service with his October 12 notice of appeal, that notice is not "filed" under the Maryland Rules. *Lovero*, 200 Md. App. at 445-46 ("[I]n adopting Rule 1-323, and its predecessors, the Court of Appeals intended that a pleading or paper requiring service that did not contain the appropriate proof of service was not to become a part of any court proceeding by being 'filed' in the court file of such proceeding.").

Timeliness

Martin filed his October 27 notice of appeal, which did include a certificate of service, 31 days after the circuit court's final judgment. This was untimely under the Maryland Rules. Maryland Rule 8-202(a) requires that, "[e]xcept as otherwise provided in this Rule or by law, the notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken." The Court of Appeals has held repeatedly that the rule is jurisdictional. *See Brownstones at Park Potomac Homeowners Ass'n v. JPMorgan Chase Bank, NA*, 445 Md. 12, 15 (2015); *Lovero*, 200 Md. App. at 441-42. "Failure of an aggrieved party to so file [within 30 days] terminates its right of appeal and the appellate court acquires no jurisdiction to hear that matter." *Ruby v. State*, 353 Md. 100, 113 (1999). Thirty-one days after the decision subject to appeal qualifies as late under Rule 8-202(a). *See Pickett v. Noba*, 114 Md. App. 552, 556-57 (1997) (holding that a defendant lost the opportunity to appeal when he filed a motion to revise judgment on the 31st day after judgment instead of a timely notice of appeal). Rule 1-203 provides that "[i]f the period of time allowed is more than seven days, intermediate" weekends and

holidays are counted, and that if "[t]he last day of the period" is a weekend or holiday, the "period runs until the end of the next day that is not" a weekend or holiday. Md. Rule 1-203 (a)-(a)(1). Additionally, if the "court on the last day of the period is not open, or is closed for a part of the day," the "period runs until the end of the next day[.]" Md. Rule 1-203(a)(2). The last day of the period for which Martin could have filed a timely appeal was Thursday, October 26, 2017, which was not a weekend or holiday, nor was the court otherwise closed. *See* Md. Rule 1-203(a)(1).

That Martin had previously attempted unsuccessfully to file a notice of appeal within the 30-day period does not save his untimely second notice of appeal. Because clerks in Maryland do not file notices of appeal lacking a certificate of service, there is nothing to which an untimely notice could "relate back." *See* Md. Rule 1-323; *Lovero*, 200 Md. App. at 443-44; *see also* 4 C.J.S. *Appeal and Error* § 17 (2018) ("Where an appellant's filing of a second notice of appeal does not relate back in time to the filing of his or her first notice of appeal, the appeal is untimely."). We must therefore conclude that Martin's October 27 notice of appeal was untimely. Because we never acquired jurisdiction over this appeal, we must dismiss. Md. Rule 8-202(a); *see also JPMorgan Chase Bank, NA*, 445 Md. at 15; *Lovero*, 200 Md. App. at 441-42.

APPEAL DISMISSED. APPELLANT TO PAY COSTS.