

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1995

September Term, 2015

IN RE: ADOPTION/GUARDIANSHIP OF
R. S. AND R. S.

Berger,
Arthur,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: April 28, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

We are asked to determine whether the Circuit Court for Baltimore City, sitting as a juvenile court, properly denied a Motion to Vacate an Order Terminating Parental Rights where the parent failed to timely file an objection.

BACKGROUND

On July 24, 2015, the Baltimore City Department of Social Services (the “Department”) filed petitions for Guardianship With Right to Consent to Adoption or Long-Term Care Short of Adoption of R. S. and R. S.¹ (the Termination of Parental Rights, hereinafter “TPR Petitions”). The children’s mother, Christina R. (“Ms. R.”) was served with copies of the TPR Petitions and a show cause order on three separate occasions: *first*, in court during a CINA review hearing on July 29, 2015; *second*, in person at her home on August 1, 2015; and *third*, through certified mail a few days later. As required by Maryland Rule 9-105(e), each copy of the show cause order was imprinted with the warning: **“IF YOU DO NOT MAKE SURE THAT THE COURT RECEIVES YOUR NOTICE OF OBJECTION ON OR BEFORE THE DEADLINE STATED, YOU HAVE AGREED TO A TERMINATION OF YOUR PARENTAL RIGHTS.”** An “objection form” was included for Ms. R. to fill out and return to the clerk’s office, if she wished to challenge the TPR Petitions.

On September 17, 2015, the juvenile court held a hearing to consider the proposed termination. The juvenile court found that Ms. R. had been served with notice of the TPR

¹ Pursuant to a February 29, 2016 Order of this Court, we substitute the names of both of the children in this case with their initials.

Petitions on August 1, 2015, and that neither she nor her counsel filed an objection within 30 days thereafter. As a result, the juvenile court granted the Department’s TPR Petitions and the clerk docketed an Order that day terminating Ms. R.’s parental rights to both children.² (“TPR Order) Md. Code Ann., Family Law Art. § 5-320(a)(1)(iii)(C).

On October 20, 2015, 33 days after the TPR Order was docketed, Ms. R. filed a motion to vacate the TPR Order. Thereafter, the juvenile court conducted a hearing on Ms. R.’s motion to vacate. At that hearing, Ms. R. claimed that she had objected to the TPR Petitions prior to the September 17 hearing. Although she could not remember the exact date on which she mailed her objection, Ms. R. testified that she had “mailed the whole pack, and that [objection] paper along with the pack, to the courthouse.” Ms. R. testified that she did not address the objection specifically to the clerk’s office, which would have been “Clerk of the Court, Baltimore City Juvenile Justice Center, 300 North Gay Street, Room A3320, Baltimore, Maryland, 21202,” but rather addressed the envelope to the courthouse’s physical address, “111 North Calvert Street, Baltimore, Maryland 21202.” The juvenile court considered Ms. R.’s testimony and denied Ms. R.’s motion to vacate because she had failed to timely file an objection to the TPR Petitions. Ms. R. filed this appeal.

² Nelson S., the children’s father, was also served with copies of the TPR Petitions, but filed no objection, and therefore was deemed to have consented to the TPR Petitions. He neither joins this appeal, nor notes his own.

DISCUSSION

Ms. R. argues that the juvenile court erred in denying her motion to vacate the TPR Order.³ We determine that the juvenile court did not err because Ms. R. failed to timely file both her motion to vacate the TPR Order and her objection to the TPR Petitions.

I. Motion to Vacate

Ms. R. did not file her motion to vacate within the time limit. She also failed to either assert or provide evidence of why her motion should succeed under the more stringent standard used when reviewing a late-filed motion. As a result, the juvenile court did not possess the power to vacate the TPR Order. A “motion to vacate ... filed more than 30 days after the judgment was entered ... is ... deemed to have been filed under Md. Rule 2-535(b).” *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475 (1997) “Under ... [Rule 2-535(b)], a court may revise an enrolled judgment upon a finding of fraud, mistake, clerical mistake, or other irregularity if, in addition, the movant establishes that she acted in good faith and with ordinary diligence and that she has a meritorious defense.” *Id.* The denial of a motion to vacate filed under Rule 2-535(b) is

³ Ms. R. submits a second argument claiming that the juvenile court improperly excluded evidence regarding her efforts to comply with drug treatment and Department instructions. Because the evidence offered by Ms. R. was irrelevant to the determination of whether she timely filed her objection, we determine that the decision by the juvenile court to exclude the evidence was a sound exercise of the court’s discretion. *See In re Lavar D.*, 189 Md. App. 526, 598-99 (2009) (“[T]he determination of what evidence is material and relevant is a matter left to the sound discretion of a trial court.”).

“appealable, but the only issue before [this Court] is whether the trial court erred as a matter of law or abused its discretion in denying the motion.” *Id.*

Here, Ms. R. filed her motion to vacate 33 days after entry of the TPR Order, and therefore filed under Rule 2-535(b) pursuant to which, she was required to demonstrate “fraud, mistake, clerical mistake, or other irregularity” in the original judgment. Ms. R. does not argue, nor is there evidence of any fraud, mistake, clerical mistake, or other irregularity, and, as a result the juvenile court did not have power to vacate the TPR Order. We conclude that because Ms. R. did not timely file her motion to vacate, and then failed to either assert or provide evidence of fraud, mistake, clerical mistake, or other irregularity, the juvenile court lacked the revisory power to vacate the TPR Order. We find no error of law nor abuse of discretion in the denial of Ms. R.’s motion to vacate.

II. Objection to the TPR Petitions

Ms. R. also failed to object to the TPR Petitions within the 30-day time limit. An objection tells the juvenile court that the parent does not consent to the termination and that she wishes to challenge the TPR Petition. For a juvenile court to grant guardianship of a child, § 5-320 of the Family Law Article (“FL”) requires each of the child’s living parents to consent either in writing, on the record before the juvenile court, or “by failure to file a timely notice of objection.” FL § 5-320(a)(1)(iii)(C); *In re Adoption/Guardianship No. T97036005*, 358 Md. 1, 6 (2000) (“If a parent does not note a timely objection [to a TPR proceeding], the court then deems the parent to have consented [to the TPR] by operation of law.”). For a parent to object successfully to a termination, she must do so within 30

days. Md. Rule 9-107(b)(1). Under Maryland Rule 1-322(a) an objection is deemed filed only when received by the court and “absent some extraordinary circumstance that would require a different result as a matter of due process, a Circuit Court has no authority to accept a late-filed objection but must treat the case, ... as though it were uncontested.” *In re Adoption/Guardianship Nos. T00130003, T00130004*, 370 Md. 250, 261 (2002).

Ms. R. cannot challenge the TPR Order because she failed to file her objection to the TPR Petitions within 30 days and there is no evidence of an “extraordinary circumstance” to excuse her failure to timely object. *First*, Ms. R. did not properly file an objection within 30 days. Ms. R. testified that the TPR Petitions were served, and the record shows that she was served on three different occasions. Ms. R. contends that “she did file a timely objection though it was absent from the file.” The only evidence that Ms. R. filed an objection, however, is her own testimony, which is that she mailed the objection to a court house building, instead of the clerk’s office as instructed. Because the clerk did not receive Ms. R.’s objection within the 30-day period, her objection was not filed, and, by operation of law, she consented to the TPR. *Second*, there is no evidence in the record of any “extraordinary circumstance” that could have prevented Ms. R. from timely filing her objections. Under the circumstances, the juvenile court had no choice but to deny Ms. R.’s motion to vacate the TPR Order.

Ms. R. failed to timely file both her motion to vacate the TPR Order and her objection to the TPR Petitions. *First*, she failed to file her motion to vacate the TPR Order within 30 days, and then failed to either assert or provide evidence of fraud, mistake,

clerical mistake, or other irregularity to succeed under the more stringent standard used when reviewing a late-filed motion. *Second*, she failed to file her objection to the TPR Petitions within 30 days. Either failure provides sufficient grounds for affirming the denial of the motion to vacate by juvenile court.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**