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ARKANSAS COURT OF APPEALS

DIVISION II
No. CV-17-838

KRISTIN CHELSTROM APPELLANT V. BRANDY CHELSTROM AND RANDALL CHELSTROM APPELLEES	**Opinion Delivered:** March 14, 2018 APPEAL FROM THE MONTGOMERY COUNTY CIRCUIT COURT [NO. 49PR-17-36] HONORABLE JERRY RYAN, JUDGE DISMISSED WITH PREJUDICE

MIKE MURPHY, Judge

Appellant Kristin Chelstrom appeals from an order entered in the Montgomery County Circuit Court granting the adoption of her child, EC, to appellees Brandy and Randall Chelstrom (the Chelstroms). We dismiss for lack of jurisdiction.

Kristin is the adopted daughter of the Chelstroms. On June 9, 2017, the Chelstroms filed a petition to adopt their granddaughter, EC, who was born December 6, 2016. Before filing the adoption petition, Kristin purportedly signed a consent to adoption, which was dated March 26, 2017, but was not acknowledged by a notary public, nor did it contain any language about the amount of time the mother had to withdraw the consent. That same day, Kristin signed a revocation of consent to appointment of guardians (that was in favor of Scott and Mindy Schales); it, too, was not acknowledged by a notary public, but Kristin

later conceded that she signed it.[1] After an uncontested hearing for which Kristin was not present and that took place in the court's chambers where no transcript was made, the adoption decree was entered June 20, 2017. In granting the adoption, the decree stated in pertinent part,

> 1. This Court has jurisdiction of this matter. Petitioners are the maternal grandparents of the child to be adopted, and have guardianship of the child pursuant to a probate matter in this jurisdiction. The child is currently living with the petitioners.
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> . . . .
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> 3. Based upon Petitioners' testimony, the Court finds it is in the child's best interest for the child to be adopted by Petitioners. The Petitioners have been the child's grandparents and caretakers for the majority of her life.

Notably, the decree made no mention of the consent that Kristin executed on March 26.

Upon learning of the adoption of EC via text message from the Chelstroms, Kristin filed a petition to open adoption records, a motion for new trial claiming she did not consent to the adoption, and a notice of appeal and designation of record on June 30, 2017. On July 10, 2017, the Chelstroms responded to the motions. On July 19, 2017, Kristin replied to the Chelstroms' response to motion for new trial and motion to set aside adoption decree. A hearing was conducted that same day on July 19, 2017, during which Kristin testified that she did not sign the consent to adoption but that she did sign the revocation of consent to the appointment-of-guardians form. Both documents were dated March 26, 2017. The

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[1]The Chelstroms were named as guardians shortly after EC's birth, but on February 13, 2017, Kristin signed a revocation of consent to guardianship. Three days later, on February 16, 2017, Kristin entered her consent to guardianship of EC to her aunt, Melinda Schales. It is unclear from the record whether "Mindy" mentioned in the March 26, 2017 revocation of consent to guardianship is the "Melinda" that is referred to in the February 16 consent.

Chelstroms testified that they witnessed Kristin willingly sign the consent form. Brandy Chelstrom testified that EC had never spent a night away from their home and that it was Kristin's idea for the Chelstroms to adopt EC. Brandy Chelstrom also stated that she and her husband waited approximately seventy days after Kristin had signed the consent form to give her an opportunity to reconsider.

Kristin's motion for new trial was deemed denied on July 31, 2017. Despite being one day late, the circuit court filed an order denying the motion for new trial. However, the circuit court lost jurisdiction to consider Kristin's motion because it had been deemed denied by operation of law. The court's order was consequently void and of no effect. *See Carruth v. Carruth*, 2013 Ark. App. 213, at 3, 427 S.W.3d 117, 119.

On appeal, Kristin challenges the adoption, arguing that the consent was not properly executed. As a threshold matter, we must address whether we have jurisdiction over this appeal. A timely notice of appeal is a jurisdictional requirement. *Jewell v. Moser*, 2012 Ark. 267, at 4. Lacking a timely notice of appeal, the court has no jurisdiction to consider other issues raised on appeal. *Id*. We are required to raise the issue of subject-matter jurisdiction on our own motion. *Id*.

Rule 4(b)(1) of the Arkansas Rules of Appellate Procedure–Civil governs the extension of time for filing a notice of appeal when a motion for new trial has been filed. Rule 4(b)(2) provides in pertinent part:

> A notice of appeal filed before disposition of any of the motions listed in paragraph (1) of this subdivision shall be treated as filed on the day after the entry of an order disposing of the last motion outstanding or the day after the motion is deemed denied by operation of law. Such a notice is effective to appeal the underlying judgment, decree, or order. A party who also seeks to appeal from the grant or denial of the motion shall within thirty (30) days amend the previously filed notice, complying

with Rule 3(e). No additional fees will be required for filing an amended notice of appeal.

Kristin filed a notice of appeal on June 30, 2017, from the order granting the adoption entered on June 20, 2017. In that notice, she acknowledged that she had a pending motion for new trial and that if that motion was denied, she would file an amended notice as required by Rule 4. Indeed, the motion was deemed denied on July 31, 2017, but no amended notice of appeal appears in the record.

Kristin concedes that she did not file an amended notice of appeal per Rule 4, which states that if the party "also seeks to appeal from the grant or denial of the motion [she] shall within thirty (30) days amend the previously filed notice, complying with Rule 3(e)." In her appellate brief, she argues that her original notice of appeal is sufficient to confer jurisdiction because our caselaw holds that if the notice substantially complies with Arkansas Rule of Appellate Procedure–Civil 3(e) then it is not fatal to appellate jurisdiction. However, this argument is misplaced. She cites cases that deal with substantial compliance in the initial (and only) notice of appeal. Here, we are not concerned with the compliance in her first notice of appeal, we are concerned with compliance with Rule 4 and the necessity of filing an amended notice of appeal in general.

We addressed a similar issue in *Gordon v. Draper*, 2013 Ark. App. 352, 428 S.W.3d 543. There, Gordon challenged on appeal the adoption of his child for lack of consent. After the adoption hearing, but before the circuit court entered its decree, Gordon filed a Rule 59 motion for new trial and alleged, for the first time, prejudicial misconduct on behalf of the court. *Id.* at 8, 428 S.W.3d at 547. The circuit court subsequently issued a decree approving the adoption on August 23, 2012. *Id.* For appeal purposes, Gordon's Rule 59

motion was treated as filed on August 24, 2012, pursuant to Rule 59(b). *Id*. Gordon filed his notice of appeal of the August 23, 2012 decree on September 24, 2012. His Rule 59 motion was deemed denied on September 24, 2012—pursuant to Arkansas Rule of Appellate Procedure–Civil 4(b)(1). *Id*. Gordon had thirty days to amend his notice of appeal to include the deemed-denied motion, under Arkansas Rule of Appellate Procedure–Civil 4(b)(2), but he did not amend his notice of appeal. *Id*. We held that because Gordon did not amend his notice of appeal that we did not have jurisdiction to hear the issue of prejudice that was raised in his motion for new trial.

Similarly, because Kristin did not amend her notice of appeal within thirty days from when her motion was deemed denied, we do not have jurisdiction to entertain her appeal. Further, as Kristin was not present at the initial hearing granting the adoption and the only objections raised were in connection with the motion for new trial, there are no preserved issues that need to be addressed from the original notice of appeal.

Accordingly, the appeal is dismissed.

Dismissed with prejudice.

ABRAMSON and GLOVER, JJ., agree.

Riggan Law, by: *Kimberly Eden*, for appellant.

Baker Schulze Murphy & Patterson, by: *J.G. "Gerry" Schulze* and *Ruthanne N. Murphy*, for appellees.