

## Juvenile Law Case Summaries

By  
**Robert O. Dawson**  
Bryant Smith Chair in Law  
University of Texas School of Law

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### ***Mailed notice of appeal timely filed [In re L.R.] (01-2-25).***

On May 10, 2001, the El Paso Court of Appeals held that a notice of appeal mailed by certified mail on the last day for giving timely notice of appeal was timely given under the so-called mailbox rule.

¶ 01-2-25. In the Matter of L.R., UNPUBLISHED, No. 08-01-00095-CV, 2001 WL 495900, 2001 Tex.App.Lexis \_\_\_\_ (Tex.App.—El Paso 5/10/01)[Texas Juvenile Law (5th Edition 2000)].

Facts: Pending before this Court are the State's motions to reconsider our granting to L.R. the opportunity to file an out-of-time appeal, and to dismiss the juvenile's appeal for lack of jurisdiction.

On August 9, 2000, L.R. was found to have engaged in delinquent conduct by committing the offense of burglary of a vehicle and was placed on probation. On November 14, 2000, the State's motion to modify the disposition was granted. On November 30, 2000, after a disposition hearing by a juvenile referee, L.R. was committed to the Texas Youth Commission. L.R. sent a motion for new trial by certified mail, return receipt requested, to the trial court clerk on January 2, 2001, and the motion was received by the clerk on the following day. The motion for new trial is file-stamped as filed with the district clerk on January 4, 2001. L.R. filed a notice of appeal on February 27, 2001.

On February 27, 2001, the Public Defender was appointed as appellate counsel for L.R. Appellate counsel filed a notice of appeal on March 5, 2001. Counsel also filed a motion with this Court requesting permission to file an out-of-time appeal. As per this Court's request, L.R.'s trial attorney filed an affidavit to demonstrate that the motion for new trial was timely filed with the trial court clerk by certified mail. Subsequently on March 21, 2001, we granted, without written order, the motion to file an out-of-time appeal. We are now asked to reconsider our ruling on that motion.

Held: Motion to reconsider denied.

Opinion Text: In order to invoke this Court's jurisdiction in an appeal from a juvenile court order, an appellant must follow the requisites for the perfection of appeal in civil cases generally. [FN1] A timely notice of appeal is necessary to perfect appeal and invoke this Court's jurisdiction. [FN2] In order to perfect appeal in a civil case, a notice of appeal must be filed within 30 days after the judgment is signed, or within 90 days if any party timely files a motion for new trial. [FN3]

FN1. See Tex.Fam.Code Ann. § 56.01(b) (Vernon 1996 & Supp.2001); In re T.L.C., 948 S.W.2d 41, 42 (Tex.App.—Houston [14th Dist.] 1997, no pet.).

FN2. Tex.R.App.P. 25.1(a), (b).

FN3. Tex.R.App.P. 26.1(a)(1).

Here, the last date allowed for timely filing of the notice of appeal or motion for new trial was January 2, 2001. [FN4] Under Tex .R.Civ.P. 5, a document is deemed timely filed if it is sent to the proper clerk by first-class United States mail, in a properly addressed and stamped envelope, on or before the last day for filing, and it is received not more than ten days tardily. [FN5] Additionally, a legible postmark affixed by the United States Postal Service is prima facie evidence of the date of mailing. [FN6] The trial attorney's uncontroverted affidavit states that the motion for new trial was sent in an envelope to the clerk of the trial court, by certified mail, return receipt requested. Attached to

the affidavit is a copy of the U.S. Postal Service certified mail receipt, postmarked January 2, 2001, and the return receipt, postmarked January 3, 2001. In addition, the attorney states in the affidavit that he faxed a copy of the motion to the trial court on January 2, 2001. We find the attorney's affidavit sufficient to establish compliance with Rule 5. [FN7] We therefore conclude that the motion for new trial was timely filed.

FN4. Tex.R.App.P. 4.1(a), 26.1; Tex.R.Civ.P. 329b(a).

FN5. Tex.R.Civ.P. 5.

FN6. Id.

FN7. See *Lofton v. Allstate Ins. Co.*, 895 S.W.2d 693, 693-94 (Tex.1995) (in absence of postmark or certificate of mailing, uncontroverted affidavit may be sufficient to establish date of mailing under mailbox rule in former TEX.R.APP.P. 4(b)); cf. *Arnold v. Shuck*, 24 S.W.3d 470, 472-73 (Tex.App.--Texarkana 2000, pet. denied) (court found disputed affidavit, although competent summary judgment evidence, did not establish each element of the mailbox rule under Tex.R.Civ.P. 5).

Thus, the notice of appeal was timely filed on February 27, 2001. Accordingly, L.R. properly perfected appeal to invoke the jurisdiction of this Court.

#### CONCLUSION

Having concluded that L.R. timely perfected an appeal, we deny the State's motion for reconsideration and motion to dismiss the appeal.

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