

Chapter 18 – Appeals

18.1 Overview

In recognition of the fact that childhood is brief and final decisions in dependency cases must be rendered as quickly as possible to ensure permanency for the children involved, the Pennsylvania Supreme Court has adopted a special set of expedited Children’s Fast Track (CFT) appellate rules. All appeals from orders involving dependency, termination of parental rights, adoptions, custody, and paternity are designated as CFT appeals. (See Pa.R.A.P. 102.) The expedited CFT rules streamline the requirements for filing appeals and submitting records, transcripts, and trial court opinions and speed the processes used by the higher courts to decide appellate issues.

18.2 Children’s Fast Track (CFT) Rules at a Glance

The distinctive features of appeals under the CFT rules, which became effective March 16, 2009, and apply to all appeals from orders involving dependency, termination of parental rights, adoptions, custody, and paternity, are noted below:

Notice of appeal and concise statement of errors:

- The notice of appeal shall include a statement advising the appellate court that the appeal is a Children’s Fast Track appeal. Pa.R.A.P. 904(f).
- The clerk must stamp the notice of appeal with “Children’s Fast Track” designation in red ink. Pa.R.A.P. 905(b).
- The concise statement of errors complained of on appeal shall be filed and served with the notice of appeal. Pa.R.A.P. 1925(a)(2)(i).

The late filing of a Rule 1925 statement by the appellant will not lead to the automatic finding of waiver. In *In re K.T.E.L.*, 983 A.2d 745, 747 (Pa.Super. 2009), the Superior Court held that in a Children’s Fast Track matter, the failure to file a Rule 1925 statement contemporaneously with the notice of appeal pursuant to Rule 905(a)(2) and Rule 1925(a)(2) results in a defective notice of appeal and should be disposed of on a case by case basis.

Opinion and record:

- Upon receipt of the notice of appeal and the concise statement, if the reasons for the subject order do not already appear in the record, the judge who entered the order shall, within thirty days, file at least a brief opinion indicating the reasons for the order. Pa.R.A.P. 1925(a)(2)(ii).

- The record on appeal, including transcripts and exhibits necessary for the determination of the appeal, must be transmitted to the appellate court within thirty days after the notice of appeal is filed. Pa.R.A.P. 1931(a)(2).

Dispositive motions:

- Dispositive motions must be filed within ten days of filing the concise statement of errors complained of on appeal or within ten days of the trial court's filing of its Pa.R.A.P.1925(a)(2) opinion, whichever period expires last. Pa.R.A.P. 1972(b).

Anders Briefs:

- When counsel believes there are no meritorious issues for appeal, counsel may file a brief with the appellate court requesting to withdraw from representation pursuant to *Anders v. California*, 386 U.S. 738 (1967). Along with the *Anders* brief, counsel should also file a separate petition to withdraw from representation with the appellate court's prothonotary. (See *In re V.E.*, 611 A.2d 1267 (Pa.Super. 1992), in which the Superior Court extended the *Anders* principles to appeals involving the termination of parental rights.) The briefing requirements of *Anders* are appropriate and applicable in an appeal from an order terminating parental rights. *In re S.M.B.*, 856 A.2d 1235, 1237 (Pa.Super. 2004). The Pennsylvania Supreme Court addressed the *Anders* briefing requirements for briefs filed pursuant to briefing schedules established after August 25, 2009. (See *Commonwealth v. Santiago*, 978 A.2d 349 (Pa. 2009)).

18.3 Trial Judge's Role in Expediting Appeals

Although the responsibility for expediting CFT appeals rests largely with the appellate court, all parties should seek to ensure these cases are given priority and heard in a timely manner. There are several ways trial judges can help ensure the expedited process runs smoothly.

First, the judge should be sure to place on the record a comprehensive discussion of the reasons for the final order in the case. Pa.R.A.P. 1925(a)(2)(ii) requires the judge who entered the order giving rise to the notice of appeal, if the reasons for the order do not already appear of record, to file of record within 30 days at least a brief opinion of the reasons for the order, or for the rulings or other errors complained of, which may, but need not, refer to the transcript of the proceedings.

If the reasons for the order appear of record, Pa.R.A.P. 1925(a)(1) permits the judge to specify in writing the place in the record where such reasons appear. This is a useful alternative in dependency cases that are appealed because the CFT rules impose a 30-day (as opposed to the usual 60-day) deadline for transmitting the record, including

the transcript and exhibits necessary for the determination of the appeal, to Superior Court.

Second, in exercising its responsibility to prepare and transmit the record to the appellate court, the trial court should give priority to cases involving termination of parental rights or adoption making sure that processes are in place for speedy preparation and transmission of the record.

Finally, if an adoptive home for the child must be found, the trial court must ensure the search for an adoptive family continues pending the decision on the appeal in the same manner as if the case were not being appealed. If an appropriate family is found for the child, visits and placement in the home should proceed while the appeal is pending. The risk that the appeal might be granted is overshadowed by the detriment an extended delay would cause the child if the search were placed on hold during the appeals process if the trial court's ruling was upheld.

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