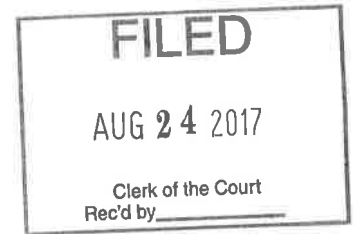


IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

IN RE BENTLEY D.

Circuit Court for Washington County
No. 34545



No. E2016-02299-SC-RDO-PT

ORDER

On November 7, 2016, the Circuit Court for Washington County terminated the parental rights of the father, David D. (“Father”), to his minor child, Bentley D. Father timely filed a notice of appeal signed by his attorney, but not by Father himself. On July 13, 2017, the Court of Appeals, *sua sponte*, filed an order directing Father to show cause why his appeal should not be dismissed for lack of jurisdiction, citing *In re Gabrielle W.*, No. E2016-02064-COA-R3-PT, 2017 WL 2954684, at *4 (Tenn. Ct. App. July 11, 2017). In *In re Gabrielle W.*, the Court of Appeals held, as a matter of first impression, that an appellant’s failure to sign the notice of appeal violates the direct language of Tennessee Code Annotated section 36-1-124(d) and is “a jurisdictional default,” requiring dismissal of the appeal. *Id.*

On July 24, 2017, Father filed a response to the show cause order. The response included a challenge to the constitutionality of section 36-1-124(d). On August 14, 2017, the Tennessee Attorney General filed a notice of intent to defend the constitutionality of the statute.

To date, the Court of Appeals has relied on *In re Gabrielle W.* to dismiss appeals for lack of jurisdiction in nine other cases. See *In re Homer D., et al.*, No. M2017-00298-COA-R3-PT, 2017 WL 3611042 (Tenn. Ct. App. Aug. 22, 2017); *In re Daéjrien T.*, No. E2017-00051-COA-R3-PT, 2017 WL 3600461 (Tenn. Ct. App. Aug. 21, 2017); *In re David P., et al.*, No. E2017-00245-COA-R3-PT, 2017 WL 3535014 (Tenn. Ct. App. Aug. 17, 2017); *In re Nevaeh B.*, No. W2016-01769-COA-R3-PT (Tenn. Ct. App. Aug. 14, 2017); *In re Audrina E., et al.*, No. E2017-01178-COA-R3-PT, 2017 WL 3475526 (Tenn. Ct. App. Aug. 14, 2017); *In re Jayden R., et al.*, No. M2016-02336-COA-R3-PT, 2017 WL 3469708 (Tenn. Ct. App. Aug. 11, 2017); *In re Kendall H.*, No. E2017-01034-COA-R3-PT, 2017 WL 3446818 (Tenn. Ct. App. Aug. 11, 2017); *In re Mya V.*, No. M2016-

02401-COA-R3-PT, 2017 WL 3209181 (Tenn. Ct. App. July 28, 2017);¹ *In re Catherine J.*, No. W2017-00491-COA-R3-PT, 2017 WL 3141825 (Tenn. Ct. App. July 24, 2017).² This situation—potential dismissal of an appeal based on section 36-1-124(d)—“has recently arisen in a multitude of parental rights termination cases.” *In re Jayden R., et al.*, 2017 WL 3469708, at *9 (Bennett, J., dissenting).

When there is a compelling public interest, Tennessee Code Annotated section 16-3-201(d)(3) authorizes this Court, upon its own motion, to assume jurisdiction over an undecided case in which a notice of appeal is filed with an intermediate state appellate court. It appearing that this case involves an issue of compelling public interest, this Court hereby assumes jurisdiction of this appeal pursuant to Tennessee Code Annotated section 16-3-201(d)(3). The Clerk is directed to immediately transfer this cause from the Court of Appeals to the Supreme Court.

For briefing and oral argument, the issues before this Court are limited to the following: (1) whether failure to comply with Tennessee Code Annotated section 36-1-124(d) is a jurisdictional defect; and (2) whether Tennessee Code Annotated section 36-1-124(d) is unconstitutional based on separation of powers, due process, and/or equal protection grounds. Father shall file, no later than fifteen (15) days from the date of entry of this order, a supplemental brief addressing these issues. Responsive briefs in this case, including the Attorney General’s brief pursuant to Rule 32(c) of the Tennessee Rules of Appellate Procedure and the appellees’ brief, shall be filed no later than fifteen (15) days from the date Father files his supplemental brief. The Clerk is directed to set this case for oral argument on October 11, 2017, at the 9:30 a.m. session, in Nashville.

PER CURIAM

¹ The Court of Appeals dismissed the father’s appeal but reached the merits of the mother’s appeal.

² The sixty-day time for filing an application for permission to appeal to this Court has not expired in *In re Gabrielle W.* or any of these other cases. In the interests of justice, the Clerk is directed to provide a copy of this order to the appellants and their attorneys in *In re Gabrielle W.* and each of these other cases.