Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-193

NOVEMBER TERM, 2009

In re J.G.	}	APPEALED FROM:
	}	
	}	Human Services Board
	}	
	}	FAIR HEARING NO. H-07/08-305

In the above-entitled cause, the Clerk will enter:

Petitioner challenges the Human Services Board's order dismissing his appeal as untimely filed. He asserts that he was provided inadequate notice of his right to appeal and that the Department for Children and Families (DCF) should be estopped from claiming that his appeal was untimely. We affirm.

The record indicates the following. In November 2007, J.G., who was then fourteen years old, admitted to committing a lewd act in violation of 13 V.S.A. § 2632(a)(8). The victim, T.S., was thirteen years old. DCF commenced an investigation to determine if it should substantiate the report that J.G. had sexually abused a child and place J.G.'s name on the child protection registry. See 33 V.S.A. § 4916(a)(2) (in cases involving sexual abuse or serious physical abuse of a child, the Commissioner of DCF in his or her sole judgment may list a substantiated report on the registry pending any administrative review). In January 2008, DCF mailed notice to J.G.'s attorney that it had substantiated the report and determined that J.G. should be listed on the registry. The notice stated that if J.G. disagreed with this determination, he had thirty days in which to appeal. The letter also included a pamphlet explaining J.G.'s appeal rights and providing more information about the registry.

Counsel filed a timely appeal from this decision, and an administrative review occurred in February 2008. See 33 V.S.A. § 4916(a)(3); id. § 4916a. J.G.'s attorney and his guardian ad litem attended the review. DCF issued its decision shortly thereafter, but due to an administrative error, its decision was not mailed until April 18, 2008. The review decision explained the legal and factual basis for DCF's determination, including its finding that J.G. had fondled T.G.'s breasts and vagina and had used force and coercion in doing so. The letter concluded with the following language in bold letters:

> **After review of all available information I find that legal and policy standards have been met and that it is appropriate that your name be placed in the Child Abuse and Neglect Registry. If you disagree with this decision, and you wish to appeal further, you should advise the Human Services Board, by writing to it within 30 days [from when] this letter was date stamped by the Post Office.**

The letter included the Board's mailing address and telephone number.

J.G. did not appeal from this decision within thirty days of the date that this letter was mailed. Instead, J.G.'s attorney sought to appeal on July 2, 2008, almost two-and-a-half months later. Counsel acknowledged that her request was "beyond the stated guidelines," but noted that DCF had mailed its written decision more than seven days after the administrative review conference. See 33 V.S.A. § 4916a(g), (i). After the appeal was docketed, the State moved for summary judgment, arguing in relevant part that the Board lacked jurisdiction because the appeal was untimely filed. J.G. opposed this motion, asserting that he had been provided inadequate notice concerning his right to appeal. Alternatively, J.G. asserted that the totality of the circumstance in this case and the prejudice he would suffer by having his name placed on the registry provided sufficient good cause to waive the thirty-day appeal period.

In a written order, the Board dismissed the appeal as untimely filed. It rejected J.G.'s assertion that DCF failed to adequately inform him of his appeal rights, noting that the cases on which J.G. relied involved situations where there had been inadequate notice of the decision itself and not a lack of notice regarding appeal rights. The Board found that J.G. had been provided with clear and thorough notice of DCF's decision, and that DCF had not been inaccurate in specifying a thirty-day time limit for appeal. At worst, the Board stated, DCF's language was not as unequivocal as it could have been in emphasizing that the thirty-day appeal deadline was absolute. Nonetheless, one could not conclude that the inadvertent use of the word "should," standing alone, was sufficient to require what would amount to a waiver of the statutory appeal limit as a matter of equity or due process.

The Board explained that its jurisdiction to consider appeals such as this one was purely statutory. The law imposed a thirty-day appeal limit, and if no appeal was taken, DCF's decision was final. 33 V.S.A. § 4916b(a), (d). The statute did allow the Board to grant a waiver and allow such review "upon good cause shown," id. § 4916b(d), but the Board found that J.G. failed to demonstrate good cause here. J.G. essentially argued that "good cause" existed due to the wording of DCF's appeal notice, and that DCF should be equitably estopped from challenging the timing of the appeal. The Board found that the elements of equitable estoppel were unsatisfied in this case. It noted that J.G. had been represented by an attorney and that his attorney received the notice in question. While J.G. did not argue that DCF intended that he file an untimely appeal by using the word "should," even if that were the case, no attorney could reasonably maintain that he or she was "ignorant of the true facts" regarding an appeal deadline that was clearly set forth by statute. The attorney in question was not new to the case; moreover, she had represented J.G. throughout the review process. The Board found that counsel could not reasonably argue that she relied on some inadvertent wording in the notice to her client's detriment when the primary cause of the late filing of the appeal appeared to have been her own lack of care and diligence. Because the elements of equitable estoppel were not met, and no other good cause was shown, the Board dismissed the appeal for lack of jurisdiction. J.G. appealed from this decision.

J.G. maintains that DCF was required to use mandatory language to inform him of the deadline for filing an appeal as a matter of due process. He cites Burke v. Kodak Retirement Income Plan, 336 F.3d 103, 109 (2d Cir. 2003), as support for this assertion. He argues that the notice sent to him does not conform to 33 V.S.A. § 4916b, and he reiterates his claim that DCF should be estopped from arguing that his appeal was untimely. Finally, J.G. argues that placing his name on the registry would contradict the stated goals of the Vermont juvenile justice system and that the circumstances of this case constitute good cause to waive the statutory deadline.

We find these arguments unpersuasive. While J.G. alludes to the merits of the underlying case, asserting that he has a colorable claim, that issue is not before us. The only issue on appeal is whether

the Board erred in determining that it lacked jurisdiction. As the Board recognized, the timely filing of an appeal is a jurisdictional requirement. Section 4916b(a) specifically states that "[w]ithin 30 days of the date on which the administrative reviewer mailed notice of placement of a report on the registry, the person who is the subject of the substantiation may apply in writing to the human services board for relief." If review is not requested, DCF's decision "shall be final, and the person shall have no further right for review under this section." Id. § 4916b(d). As previously noted, "[t]he board may grant a waiver and permit such a review upon good cause shown." Id.

J.G. was plainly provided adequate notice of DCF's decision and informed of his right to appeal, satisfying both due process and 33 V.S.A. § 4916a(i). See Town of Randolph v. Estate of White, 166 Vt. 280, 285 (1997) (holding that as a matter of due process, notice of a zoning violation must state the facts that support the finding of a violation, the action the state intends to take, and information on how to challenge the notice); 33 V.S.A. § 4916a(i) (DCF must "advise the person of the right to appeal the administrative reviewer's decision to the human services board in accordance with section 4916b of this title."). Section 4916b allows an individual to appeal to the Board within thirty days, and the notice provided J.G. was consistent with this provision. DCF did not fail in its obligation by using the word "should," nor is it reasonable for counsel to argue that she believed this word somehow converted the plain statutory deadline into a "guideline." This is particularly true given that counsel represented J.G. throughout the proceedings, and she had earlier been provided a pamphlet outlining the appeal process. Counsel cannot reasonably plead ignorance of the law. See Graphic Commc'n Int'l Union v. Quebecor Printing Providence, Inc., 270 F.3d 1, 8 (1st Cir. 2001) (finding no excusable neglect where counsel's failure to comply with a rule that was mandatory and jurisdictional resulted from ignorance of the law and inattention to detail; and explaining that to find such neglect "excusable" would "only serve to condone and encourage carelessness and inattention in practice").

We are not persuaded otherwise by Burke v. Kodak Retirement Income Plan, cited by J.G. In that case, the aggrieved party was provided no notice of her right to appeal from the denial of her request for survivor benefits under an Employee Retirement Income Security Act (ERISA) plan. Instead, the denial letter directed claimant to a page in a handbook that contained information unrelated to appeal rights. The appeal information was provided in a paragraph elsewhere in the handbook. The court of appeals explained that under the relevant federal statute and regulations, a denial letter must notify the claimant of appeal procedures under the plan, including the time limits applicable to administrative review. Burke, 336 F.3d at 107. A notice that failed to substantially comply with these requirements would not trigger a time bar contained within the plan. Id. The court found employer's notice inadequate in Burke because it did not expressly state that claimant had ninety days in which to appeal. Id. at 108. Even if the denial letter had cross-referenced the time limitation's provision in the handbook, the court continued, the language requiring appeal within ninety days was "opaque." Id. The handbook stated that "If you remain dissatisfied and wish to appeal, you should, within 90 days of the date the claim was denied (or within 90 days of the date the claim is assumed to be denied), write a letter to the plan administrator asking for a review." Id. In the context of the case, the court found the handbook's use of the word "should" to be "grossly uninformative." Id. The court did not hold that "should" could never be construed as mandatory, but reasoned that under the circumstances of the case, it declined to equate "should" with "shall" or "must." Id. It reasoned that given these factors, the claimant was denied the opportunity for the full and fair review contemplated by the ERISA statute and Department of Labor regulations. Id. at 109.

This case is not like Burke, even putting aside that Burke involved notice requirements under federal laws and regulations not at issue here. DCF plainly informed J.G. of his right to appeal in its

decision letter, and its use of "should" would not suggest to a reasonable attorney that the statutory deadline was merely a "guideline."

We fail to see, moreover, how DCF's delay in mailing its review decision constitutes "good cause" for J.G. to file an untimely notice of appeal. As we have observed,

> A notice of appeal serves two functions—it informs the parties and the tribunals concerned that the proceedings are not concluded so they may respond accordingly, and it invokes appellate jurisdiction by accomplishing the transfer of the cause to the reviewing authority while the question sought to be reviewed remains open to appeal. We require strict adherence to deadlines for filing notices of appeal primarily to serve the goal of finality.

Casella Constr., Inc. v. Dep't of Taxes, 2005 VT 18, ¶ 6, 178 Vt. 61 (quotations omitted). There is no dispute that J.G.'s attorney received DCF's decision shortly after it was mailed, and thus, she was required by law to file her appeal within thirty days. The late filing was due to factors exclusively within counsel's control. Cf. In re Town of Killington, 2003 VT 87A, ¶¶ 17, 19, 176 Vt. 60 (noting that courts draw an appropriately "hard line" when late filling of an appeal is due to matters within attorney's control, and concluding as a matter of law that late filing due to attorney's inattention to detail did not constitute excusable neglect). The fact that DCF's decision was mailed out late is irrelevant, and it does not excuse counsel's actions.

We need not discuss the doctrine of equitable estoppel raised by J.G. in any detail. Even assuming arguendo that the doctrine somehow applied in this case, it could not confer jurisdiction on the Board where none exists. As noted above, the Board appropriately concluded that DCF's actions did not provide J.G. with good cause. Finally, we reject J.G.'s suggestion that because the consequences of being placed on the registry are "harsh," that establishes good cause for his untimely appeal. Crediting this argument would obviate the thirty-day appeal period set forth by statute; any and all individuals could raise this same argument. There is simply no support for counsel's assertion that implementing the law regarding the child protection registry "directly contradicts the purposes of the juvenile justice system." The Legislature sought to establish a registry "that balances the need to protect children and the potential employment consequences of a registry record for persons who are substantiated for child abuse and neglect." 33 V.S.A. § 4911(5). To this end, it created a specific statutory scheme, including multiple avenues of appeal. Counsel is solely responsible for any "harsh" consequences due to her failure to abide by the statute. We agree with the Board that J.G. failed to demonstrate good cause for his untimely appeal, and the appeal was properly dismissed.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice