

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

IN THE MATTER OF:	:	MEMORANDUM OPINION
THE ADOPTION OF NICHOLAS LEE RADER	:	CASE NO. 2003-T-0066

Civil Appeal from the Court of Common Pleas, Probate Division, Case No. 2002 ADP 0069.

Judgment: Appeal dismissed.

Teresa Rice Daugherty, 48 West Liberty Street, Hubbard, OH 44425 (For Appellant, Donald Eugene Rader).

Michael A. Scala, 244 Seneca Avenue, N.E., P. O. Box 4306, Warren, OH 44482 (For Appellee, Joseph Kellar, Jr.)

DONALD R. FORD, P.J.

{¶1} On April 29, 2003, appellant, Donald Eugene Rader, filed a notice of appeal from an April 1, 2003 judgment of the Trumbull County Court of Common Pleas, Probate Division. In that judgment, the trial court dismissed appellant's petition for adoption of his step-son, Nicholas J. Kellar ("the minor child").

{¶2} On October 9, 2002, appellant filed a petition for adoption. Also on October 9, 2002, April Lee Rader ("April"), the mother of the minor child and the wife of appellant, filed a consent to adoption. A consent hearing was held on December 23,

2002. At that hearing, appellee, Joseph Kellar, Jr., the father of the minor child and the previous husband of April, objected to the adoption.

{¶3} A consent hearing was held on February 6, 2003, and February 14, 2003. Pursuant to the April 1, 2003 magistrate's decision, it was determined that the consent of appellee was necessary under R.C. 3107.07 and recommended that the adoption petition be dismissed.

{¶4} On January 30, 2004, the parties' attorneys supplemented the record with a joint written stipulation that appellee is deceased and passed away on January 14, 2004, according to the certificate of death.

{¶5} App.R. 29(A) provides that "[i]f a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the court of appeals, the personal representative of the deceased party may be substituted ***. *** [A]ny party may suggest the death on the record and proceedings shall then be had as the court of appeals may direct."

{¶6} In the present case, because appellee is now deceased, consent is no longer a viable issue. As such, we do not have a judicable controversy. Since no one may stand in the same shoes of a natural parent, substitution, pursuant to App.R. 29(A), is inapplicable. Thus, we suggest that the trial court consider appellant's new application for adoption.

{¶7} Accordingly, this appeal is, sua sponte, dismissed.

JUDITH A. CHRISTLEY and ROBERT A. Nader, JJ., concur.

ROBERT A. NADER, J., retired, of the Eleventh Appellate District sitting by assignment.