

IN THE COURT OF APPEALS OF OHIO  
SIXTH APPELLATE DISTRICT  
FULTON COUNTY

In re O.S.

Court of Appeals No. F-14-012

Trial Court No. 2142037

**DECISION AND JUDGMENT**

Decided: March 13, 2015

\* \* \* \* \*

D.P., pro se.

\* \* \* \* \*

**YARBROUGH, P.J.**

**I. Introduction**

{¶ 1} This is an accelerated appeal from the judgment of the Fulton County Court of Common Pleas, Juvenile Division, dismissing appellant's, D.P., "motion to intervene and return the minor child to the biological mother." We affirm.

## A. Facts and Procedural Background

{¶ 2} Appellant is the biological mother of O.S., a minor. On October 9, 2014, appellant, pro se, initiated the present action by filing a “motion to intervene and return the minor child to the biological mother.” In her motion, appellant alleged that she previously lived with her mother, L.T., and her mother’s live-in boyfriend, K.B. Appellant stated that she was no longer welcome in her mother’s house and, rather than abruptly moving O.S., had begun the process of transitioning to her new place. Appellant offered that she was now married and currently lived in a house in a nice neighborhood in Wood County. She also alleged that although custody of O.S. has never been taken away from her, L.T. was refusing to allow appellant to visit O.S. or to take him out of Fulton County. Appellant requested that the juvenile court intervene and order L.T. to release O.S. to appellant. The motion was served on L.T.

{¶ 3} With her motion to intervene, appellant also filed an “application for custodian,” in which she listed herself as the both the applicant and the natural parent of O.S. She did not list any other natural parents, guardians, or custodians of O.S.

{¶ 4} In response, L.T. filed a motion to dismiss appellant’s motion. L.T. reasoned that the juvenile court lacked jurisdiction, and that jurisdiction remained with the probate court, which had awarded guardianship of O.S. to K.B.<sup>1</sup> L.T. also argued that the motion should be dismissed because the matter was not initiated by the filing of a

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<sup>1</sup> L.T. states that K.B. is not her live-in boyfriend, but is in fact appellant’s father. Appellant later replies that she has a different biological father and that K.B. and L.T. are not married, thus K.B. is L.T.’s live-in boyfriend.

complaint, appellant has failed to join the court-appointed guardian as required by Civ.R. 19, appellant has failed to identify the real party in interest in violation of Civ.R. 17, the motion fails to state a claim upon which relief may be granted because L.T. has no parental or guardianship rights over O.S., and the motion is frivolous.

{¶ 5} On October 22, 2014, appellant filed an amended and supplemental motion to intervene. In her amended motion, appellant stated that when she signed the “Waiver of Notice and Consent” (Form 15.1) in the probate court, she understood that she was giving guardianship of O.S. to K.B. in the event she died. According to appellant, it was not her understanding that she would be voluntarily giving away her parental rights. Further, appellant alleged that statements made by K.B. during the investigation in the probate matter were untrue. Appellant offered that she is now 27 years old, has received a certificate in early childhood education from the Ohio State University, and has received a certificate of completion from a cosmetology school. She also asserted that her husband has graduated college and is employed as a paralegal, and has accomplished many other things. Appellant requested that the court intervene and terminate K.B. as guardian over O.S., and to release O.S. to his biologically “fit” mother.

{¶ 6} On October 24, 2014, the juvenile court granted L.T.’s motion to dismiss. The court noted that appellant failed to file a complaint as required by Civ.R. 3, failed to include the name and addresses of the parties as required by Civ.R. 10, and failed to join O.S.’s guardian as a party as required by Civ.R. 19. Further, the court recognized that L.T. is not a party in interest, that appellant has failed to state a claim upon which relief

may be granted pursuant to Civ.R. 12(B)(6), and that the court lacks jurisdiction pursuant to Civ.R. 12(B)(1). Therefore, the juvenile court dismissed the action without prejudice.

### **B. Assignments of Error**

{¶ 7} Appellant has timely appealed the October 24, 2014 judgment, offering three assignments of error for our review:

I. The trial court erred and abused its discretion by ruling that appellant failed to properly commence this action by filing a complaint with the court pursuant to Civil Rule 3.

II. The trial court erred and abused its discretion that appellant failed to state a claim for relief.

III. The trial court erred and abused its discretion by dismissing appellant's motion for lack of jurisdiction.

### **II. Analysis**

{¶ 8} We will begin our analysis with appellant's third assignment of error. "When ruling on a Civ.R. 12(B)(1) motion to dismiss for lack of subject-matter jurisdiction, trial courts must determine whether a claim raises any action cognizable in that court." *Dargart v. Ohio Dept. of Transp.*, 171 Ohio App.3d 439, 2006-Ohio-6179, 871 N.E.2d 608, ¶ 12 (6th Dist.). "Appellate courts review trial court judgments regarding motions to dismiss for lack of subject-matter jurisdiction de novo." *Id.*

{¶ 9} Here, it is apparent from her filings in the juvenile court that appellant is seeking to terminate the guardianship over her son O.S. However, under R.C.

2101.24(A)(1)(e), the *probate court* has “exclusive jurisdiction: \* \* \* To appoint and remove guardians \* \* \*, direct and control their conduct, and settle their accounts.”

Therefore, we agree with the juvenile court that it lacks subject-matter jurisdiction over appellant’s motion, and the matter must be dismissed.

{¶ 10} Accordingly, appellant’s third assignment of error is not well-taken.

Furthermore, our resolution of appellant’s third assignment of error renders her other assignments of error, pertaining to alternative reasons to dismiss appellant’s motion, moot.

### III. Conclusion

{¶ 11} For the foregoing reasons, the judgment of the Fulton County Court of Common Pleas, Juvenile Division, is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.  
*See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

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JUDGE

Arlene Singer, J.

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JUDGE

Stephen A. Yarbrough, P.J.  
CONCUR.

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JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.