

[Cite as *In re C.J.*, 2010-Ohio-3202.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 94210 and 94233

IN RE: C.J. AND M.B.

Minor Children

Appeal By
S.P.

JUDGMENT:
AFFIRMED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD-03900265 and AD-04900301

BEFORE: Celebrezze, J., Rocco, P.J., and Sweeney, J.

RELEASED: July 8, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} S.P.¹ (“appellant”) appeals the juvenile court’s denial of her motions to intervene in two juvenile cases. Because appellant lacks standing to intervene in either of these cases, her sole assignment of error is overruled.

{¶ 2} This appeal concerns the custody of two minor children, C.J. and M.B. (“the children”). The children were committed to the permanent custody of the Cuyahoga County Department of Children and Family Services (“CCDCFS”)² and were placed in the home of appellant’s mother, J.G., a foster-care provider. Appellant and her children also lived with J.G.

{¶ 3} On July 31, 2008, the children were removed from J.G.’s home after CCDCFS substantiated complaints of abuse. On June 11, 2009, a magistrate determined that it would not be in C.J.’s best interest to return to J.G.’s home. Another magistrate made a similar determination with regard to M.B. on July 14, 2009. Appellant filed her motions to intervene on August 27, 2009.

{¶ 4} After the magistrates denied her motions to intervene, appellant filed objections to the magistrates’ decisions, but her objections were overruled and the magistrates’ decisions were upheld. This appeal followed

¹The parties are referred to herein by their initials in accordance with this court’s established policy regarding non-disclosure of identities in juvenile cases.

²CCDCFS was awarded permanent custody of C.J. on August 21, 2003 and permanent custody of M.B. on March 14, 2006.

wherein appellant argues that the juvenile court abused its discretion in denying her motions to intervene.

Law and Analysis

Final, Appealable Order

{¶ 5} CCDCFS first argues that the juvenile court's denial of appellant's motions to intervene is not a final, appealable order and thus this appeal should be dismissed. Absent a final order, an appellate court may not hear an appeal. Section 3(B)(2), Article IV, Ohio Constitution. R.C. 2505.02 sets forth six appealable orders, only two of which could pertain to appellant's case. An order is final and appealable when it "affects a substantial right in an action that in effect determines the action and prevents a judgment[.]" R.C. 2505.02(B)(1). A "substantial right" is defined as "a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." R.C. 2505.02(A)(1).

{¶ 6} While intervention may constitute a substantial right, the denial of a motion to intervene does not affect a substantial right when the purpose behind the motion may be litigated in another action. *Richardson v. Richardson*, Scioto App. No. 09CA3293, 2009-Ohio-6492, ¶7 ("Although intervention constitutes a substantial right under R.C. 2505.02(A)(1), "[t]he denial of a motion to intervene, when the purpose for which intervention was sought may be litigated in another action, does not affect a substantial right * * * that determines the action and prevents the judgment."").

{¶ 7} The only discernable purpose upon which appellant's motions to

intervene were based was her desire to adopt the children.³ Juvenile courts do not have jurisdiction to make adoption determinations — such proceedings fall within the purview of the probate court. Although the juvenile court could not grant appellant the remedy she sought, she may file a petition for adoption in the probate division of the common pleas court, and thus her substantial rights were not affected when the juvenile court denied her motions to intervene. See, e.g., *Matter of Smith* (Feb. 18, 1994), Allen App. No. 1-93-74.

{¶ 8} We must next determine whether the denial of appellant's motions to intervene constitutes a final, appealable order pursuant to R.C. 2505.02(B)(4), which sets forth the test to be applied when a provisional remedy is denied. First, however, we must decide whether appellant's motions to intervene were provisional remedies. A provisional remedy is one that is ancillary to another action. R.C. 2505.02(A)(3). "A proceeding 'ancillary' to an action is "one that is attendant upon or aids another proceeding."" *State v. Upshaw*, 110 Ohio St.3d 189, 2006-Ohio-4253, 852 N.E.2d 711, ¶16.

{¶ 9} Appellant's motions to intervene were certainly attendant upon the juvenile court's custody determinations and would thus be considered provisional remedies.⁴ We must therefore determine whether the juvenile court's decision to

³ This is also evidenced by appellant's merit brief, in which she says that she "wished to have [the children] returned to her home and adopt them."

⁴ This is not to say that the denial of every motion to intervene would be considered the denial of a provisional remedy. See *Gehm v. Timberline Post & Frame*, 112 Ohio St.3d 514, 2007-Ohio-607, 861 N.E.2d 519, ¶27 ("We therefore hold that a motion to intervene for the purpose of establishing a record in a separate action is not an ancillary proceeding to an action and does not qualify as a provisional remedy for the purposes of R.C. 2505.02.").

deny her motions to intervene would be considered a final, appealable order pursuant to R.C. 2505.02(B)(4).

{¶ 10} R.C. 2505.02(B)(4) provides that an order is final and appealable if it “denies a provisional remedy and * * * both of the following apply:

{¶ 11} “(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

{¶ 12} “(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.”

{¶ 13} The juvenile court’s denial of appellant’s motions to intervene denied appellant the remedy she was seeking with regard to these actions, and thus R.C. 2505.02(B)(4)(a) was met. The application of R.C. 2505.02(B)(4)(b) is more problematic.

{¶ 14} Final judgment in these cases was technically entered in 2003 and 2006 when permanent custody of the children was awarded to CCDCFS. Because appellant was not involved in the children’s lives at that point, she had no way of appealing the juvenile court’s custody determinations. Since there is no final order to be issued in the foreseeable future of these cases, we find that R.C. 2505.02(B)(4)(b) was met and the denial of appellant’s motions to intervene constitutes a final, appealable order.

Standing

{¶ 15} CCDCFS also argues that appellant lacked standing to intervene in

these cases. Whether an individual has standing is a matter of law. *Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, 846 N.E.2d 478, ¶90. As an appellate court, we review standing determinations de novo. *Skirvin v. Kidd*, 174 Ohio App.3d 273, 2007-Ohio-7179, 881 N.E.2d 914, ¶14. A de novo standard of review affords no deference to the trial court's decision, and we independently review the record. *Gilchrist v. Gonsor*, Cuyahoga App. No. 88609, 2007-Ohio-3903.

{¶ 16} For guidance, we must look to the Ohio Rules of Juvenile Procedure, which specify who may be a party to a custody action. According to Juv.R. 2(Y), “Party’ means a child who is the subject of a juvenile court proceeding, the child’s spouse, if any, the child’s parent or parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child’s custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court.” Based on this definition, appellant, as the daughter of the children’s former foster mother, had no right to become a party in either of these cases.

{¶ 17} This case is similar to *Matter of Smith* (Feb. 18, 1994), Allen App. No. 1-93-74. In *Smith*, the child’s foster parents filed a motion to intervene claiming that they wished to adopt the child. The court held that “unless the court specifically orders a child’s foster parents to be joined in a custody action, foster parents have no right under the rules of juvenile procedure to participate as parties in the adjudication of the rights of natural parents and their children.” *Id.* at 2. The court went on to recognize the limited rights foster parents have with

respect to the children who are entrusted into their care. *Id.* Indeed, “[s]uch persons care for a dependent or neglected child only as agents for the state, who is the child’s permanent or temporary legal custodian, in most cases.” *Id.*⁵

{¶ 18} Although appellant expressed concern for the children and a desire to obtain custody of them, she has no legally recognizable interest related to the children’s care and custody. She was never entrusted with the care of the children nor is she related to the children in any way. Her desire to adopt the children is not sufficient to confer standing, and her sole assignment of error is overruled.

Conclusion

{¶ 19} Because appellant was denied a provisional remedy and would not be afforded a meaningful remedy on appeal from a final judgment, the denial of her motions to intervene constitutes a final, appealable order pursuant to R.C. 2505.02(B)(4). Because appellant has never been entrusted with the care of the children and is not related to them in any way, she does not have standing to intervene in either of these cases. Appellant’s sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

⁵The court in *Smith* also noted that in Ohio, adoption proceedings do not take place in the juvenile court. “Adoption is a specific statutory action which may be initiated by proceeding pursuant to R.C. Chapter 3107, by filing a petition in the appropriate common pleas court, probate division. Therefore, the juvenile division of the common pleas court has no jurisdiction to hear an action relating to adoption.”

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

KENNETH A. ROCCO, P.J., and
JAMES J. SWEENEY, J., CONCUR