

[Cite as *In re R.W.*, 2015-Ohio-1031.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101742

IN RE: R.W. and T.W.
Minor Children

JUDGMENT:
REVERSED AND REMANDED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Juvenile Division
Case Nos. AD 08939557 and AD 11902585

BEFORE: Keough, J., Jones, P.J., and E.T. Gallagher, J.

RELEASED AND JOURNALIZED: March 19, 2015

ATTORNEYS FOR APPELLANT

Jay F. Crook
John W. Shryock
Shryock, Crook & Associates, L.L.P.
30601 Euclid Avenue
Wickliffe, Ohio 44092

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
By: Laura M. Brewster
Assistant County Prosecutor
Cuyahoga County Division of
Children and Family Services
8111 Quincy Avenue
Cleveland, Ohio 44104

GUARDIAN AD LITEM

Daniel J. Bartos
Bartos & Bartos, L.P.A.
20220 Center Ridge Road, Suite 320
Rocky River, Ohio 44116

KATHLEEN ANN KEOUGH, J.:

{¶1} This appeal is before the Court on the accelerated docket pursuant to App.R. 11.1

and Loc. App.R. 11.1. The purpose of an accelerated appeal is to allow the court to render a brief and conclusory opinion. *State v. Priest*, 8th Dist. Cuyahoga No. 100614, 2014-Ohio-1735, ¶ 1; App.R. 11.1(E).

{¶2} Appellant, Lashawnda Fuller, the maternal great-aunt of minor children R.W. and T.W., appeals from the trial court’s judgment denying her emergency motion to intervene. For the reasons that follow, we reverse and remand.

I. Background

{¶3} On October 11, 2011, the trial court granted permanent custody of R.W. (d.o.b. May 15, 2008) and T.W. (d.o.b. January 25, 2011) to the Cuyahoga County Division of Children and Family Services (“CCDCFS”). Subsequently, on August 1, 2013, the children were placed with Fuller in Litchfield Park, Arizona, with the intention that Fuller provide foster care services until such time as she could adopt the children. Fuller had completed foster parent training and her home was licensed and certified as a foster home.

{¶4} On October 21, 2013, Fuller moved pro se to intervene in the case so that she “would be able to give accounts to the court” relating “to incidents, facts, and information regarding [her] great-nieces.” Fuller supported her motion with a well-written and thoughtful affidavit noting that three other siblings of R.W. and T.W. remained in separate Ohio foster homes despite her willingness to adopt all the siblings, and expressing her concerns about how the cases were being handled and the care the siblings were receiving. CCDCFS moved to dismiss Fuller’s motion, and the trial court granted the agency’s motion.

{¶5} In November 2013, N.P., an older sister of R.W. and T.W., was placed with Fuller. In February 2014, CCDCFS filed a report with the court that R.W. was “happy and

doing well,” and that T.W. was “adjusting well.”

{¶6} Nevertheless, in May 2014, the guardian ad litem (“GAL”) filed a motion to disrupt the children’s placement in Arizona, alleging that R.W. and T.W. were not safe in Fuller’s home as a result of N.P.’s placement there. The GAL asked the court to remove R.W. and T.W. from Fuller’s home and place them with E.W., another sibling, who was in a foster home in Ohio. On May 12, 2014, after a hearing, the magistrate granted the GAL’s request to disrupt the children’s placement, noting that CCDCFS consented to the change.

{¶7} On May 29, 2014, however, CCDCFS filed a motion for review of placement and a request for an immediate hearing to re-evaluate the new placement for R.W. and T.W. ordered by the magistrate. In its motion, CCDCFS stated that it had consented at the May 12 hearing to return the children to Ohio based on a representation from an Arizona ICPC¹ agency that Fuller’s foster care license was set to expire on May 30, 2014. CCDCFS noted that it had received information that day from the Arizona ICPC agency that Fuller’s license would not expire and was, in fact, being renewed. In its motion, CCDCFS informed the court that “the children are doing well in their current placement and it is in their best interest to remain in their current placement at this time.”

{¶8} However, after a hearing on June 3, 2014, the magistrate issued an order that R.W. and T.W. be returned to Ohio by June 6, 2014. The magistrate found that Fuller’s foster care license had expired as of May 30, 2014, and that as of the hearing date, CCDCFS had not provided documentation that Fuller still had a valid foster care license. The magistrate’s order further noted that an adoption home study regarding placement with Fuller could not be

¹ Interstate Compact on the Placement of Children.

completed due to an abuse/neglect investigation that was proceeding in Arizona as a result of various actions by N.P.

{¶9} On June 5, 2014, Fuller filed an emergency motion to set aside the magistrate's order, a complaint for reinstatement as pre-adoptive residential placement, and an emergency motion to intervene. In her motion to intervene, Fuller asserted that she should be allowed to intervene in the matter to protect the best interests of R.W. and T.W., and because she had acted in loco parentis to R.W. and T.W. since their placement with her in August 2013. She further asserted that she had direct knowledge of issues raised by the GAL's motion to disrupt placement. For example, she averred that despite the magistrate's finding otherwise, her foster care license had been renewed and was effective through May 2016. She further averred that N.P. had been removed from her home in March 2014 (prior to the GAL's motion to disrupt placement), and was in the custody of CCDCFS in Ohio, so R.W. and T.W. were in fact safe in her home. Fuller attached documents to her motion that demonstrated she had a valid foster care license, the Arizona abuse/neglect investigation regarding N.P.'s actions had been closed as "unsubstantiated," and that N.P. had been removed from her home in March 2014, and returned to Ohio in April 2014.

{¶10} Neither the GAL nor CCDCFS filed a brief in opposition to Fuller's motions. Despite the urgency of Fuller's motions, the trial court did not rule on the motions until July 18, 2014, when it denied all of Fuller's motions without hearing or opinion. This appeal followed.

II. Analysis

{¶11} In her assignment of error, Fuller contends that the trial court erred to her prejudice when it denied her motion to intervene as a party to the proceeding. Fuller contends

that she stood in loco parentis to R.W. and T.W. for many months as their pre-adoptive foster care provider and, therefore, should have been allowed to intervene on that basis.

{¶12} One who is not a party to an action generally has no right of appeal. *State ex rel. Lipson v. Hunter*, 2 Ohio St.2d 225, 208 N.E.2d 133 (1965). However, one who has attempted to intervene as a party has the requisite standing. *Januzzi v. Hickman*, 61 Ohio St.3d 40, 45, 572 N.E.2d 642 (1991).

{¶13} We review a trial court's ruling on a motion to intervene for abuse of discretion. *In re: Goff*, 11th Dist. Portage No. 2001-P-0144, 2003-Ohio-6768, ¶ 11. A court abuses its discretion when it acts in an unreasonable, arbitrary, or unconscionable manner. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶14} Under both Juv.R. 2(Y) and Civ.R. 24(B), the trial court has discretion to permit intervention in appropriate circumstances. Under Civ.R. 24(B), the trial court may allow permissive intervention when (1) a statute gives a conditional right to intervene; or (2) an applicant's claim or defense and the main action have a question of law or fact in common.

{¶15} Under Juv.R. 2(Y), one is a party to juvenile proceedings if he or she is 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.* (Emphasis added.)

{¶16} Under this definition, Fuller is not a party to the proceedings. But, as this court has recognized, although a foster parent is not automatically entitled to party status, Juv.R. 2(Y) gives the trial court "wide discretion to name parties to a juvenile court action, and this discretion includes naming foster parents as parties." *In the Matter of: Rhonda Zhang*, 153 Ohio App.3d

350, 357, 734 N.E.2d 379 (8th Dist.1999). *See also In re: McDaniel*, 11th Dist. Lake Nos. 2002-L-158 and 2002-L-159, 2004-Ohio-2595, ¶ 16. The rule “affords a procedural device permitting a trial court to include individuals not specifically otherwise designated a party but whose presence is necessary to fully litigate an issue presented in the action.” *In re Franklin*, 88 Ohio App.3d 277, 280, 623 N.E.2d 720 (3d Dist.1993). Thus, “the court may protect and adjudicate all legitimate claims, protect all interests appearing, avoid multiple litigation and conserve judicial time in the orderly administration of justice.” *Id.* In deciding a motion to intervene in a juvenile case, the court must look to whether intervention is in the best interest of the children. *In re: B.O.*, 11th Dist. Lake No. 2011-L-055, 2011-Ohio-6210, ¶ 40-41.

{¶17} In this case, we find that the trial court abused its discretion in denying Fuller’s motion to intervene. We recognize, as argued by CCDCFS, that foster parents have limited rights with respect to the children in their care. “Such 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 re: J.B.*, 8th Dist. Cuyahoga No. 96652, 2011-Ohio-4830, ¶ 10. Consequently, foster parents have no automatic right to participate as parties in the adjudication of rights of natural parents and their children. *Id.* Nevertheless, as is apparent from both Juv.R. 2(Y) and Civ.R. 24(B), the trial court may order a child’s foster parents to be joined as a party in appropriate cases.

{¶18} Here, the issue of permanent custody relating to R.W. and T.W. had already been determined when Fuller filed her motion to intervene — the issue was their permanent placement. The record reflects that CCDCFS placed the children with Fuller with the intention by both parties that she would adopt the children and, therefore, Fuller and CCDCFS shared a common interest in the children’s placement. The record also reflects that Fuller cared for the

children for nearly ten months prior to filing her motion to intervene. Despite CCDCFS's argument otherwise, she stood in loco parentis to the children, exercising significant parental control over the girls and assuming parental duties for their benefit. That CCDCFS had permanent custody of the children does not change the fact that Fuller was the caregiver who made the day-to-day decisions regarding the children; in short, she acted as their parent. *See In re Schmidt*, 25 Ohio St.3d 331, 333, 496 N.E.2d 952 (1986) (Celebrezze, C.J., concurring) (absent a legal right or protected interest, intervention by grandparents in a permanent custody proceeding is appropriate where the grandparents have stood in loco parentis to their grandchild, or where the grandparents have exercised significant parental control over, or assumed parental duties for the benefit of their grandchild).

{¶19} Unlike cases where Ohio foster parents have not been allowed to intervene in custody proceedings, Fuller's in loco parentis status is especially significant in this case because the children lived with her in Arizona, outside the juvenile court's jurisdiction and miles away from any immediate supervision or interaction with CCDCFS. In light of the distance from Ohio, it is apparent that Fuller stood in loco parentis to the children. Accordingly, due to her in loco parentis status, she had an interest in the care and custody of the children, and should have been allowed to intervene.

{¶20} Moreover, the record demonstrates that Fuller's intervention would have allowed the trial court to accurately determine the facts regarding R.W. and T.W.'s placement with Fuller, facts the trial court apparently got wrong in her absence. The magistrate found that Fuller did not have a valid foster care license as of June 3, 2014, when, in fact, Fuller's license never expired and was renewed that very day effective through May 2016. The magistrate also found

that the home study relating to Fuller's adoption of the children could not proceed because of a pending investigation relating to N.P.'s behavior in Fuller's home when, in fact, the investigation was closed prior to the June 3, 2014 hearing. And despite the GAL's argument at the hearing that R.W. and T.W. should be moved to Ohio because they were not safe in Fuller's home because of N.P.'s placement there, the record demonstrates that there were no safety or other issues because N.P. had been removed from the home in March 2014, prior to the hearing. The trial court then ordered the children removed from Fuller's home based on its erroneous factual findings.

{¶21} We also find nothing in the record demonstrating that the trial court considered whether Fuller's intervention would be in the best interest of the children. The trial court denied the motion without a hearing, even though neither the GAL nor CCDCFS filed briefs opposing her motion. Likewise, the trial court's judgment entry denying the motion to intervene gives no reason for the denial of the motion, nor does it state that the court considered the best interest of the children in arriving at its decision.

{¶22} Accordingly, we find that the trial court abused its discretion in denying Fuller's motion to intervene. The trial court's judgment is reversed and the matter is remanded for further proceedings consistent with this opinion.

{¶23} Judgment reversed and remanded.

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

The court finds there were reasonable grounds for this appeal.

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.

KATHLEEN ANN KEOUGH, JUDGE

LARRY A. JONES, SR., P.J., and
EILEEN T. GALLAGHER, J., CONCUR