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2013 IL App (3d) 120106-U

Order filed September 13, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

| | | |
|---------------------------------------|---|-------------------------------|
| <i>In Re</i> M.B., |) | Appeal from the Circuit Court |
| |) | of the 14th Judicial Circuit, |
| a Minor |) | Rock Island County, Illinois, |
| |) | |
| (The People of the State of Illinois, |) | |
| |) | |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | Appeal No. 3-12-0106 |
| |) | Circuit No. 09-JA-94 |
| D.B., |) | |
| |) | |
| Defendant) |) | |
| |) | |
| ILLINOIS DEPARTMENT OF CHILDREN |) | |
| AND FAMILY SERVICES, |) | Honorable |
| |) | Raymond J. Conklin, |
| Petitioner-Appellant. |) | Judge, Presiding. |

JUSTICE O'BRIEN delivered the judgment of the court.
Justice McDade concurred in the judgment.
Presiding Justice Wright concurred in part and dissented in part.

ORDER

¶ 1 *Held:* A circuit court's disqualification of an attorney representing the Department of Children and Family Services in a juvenile proceeding was affirmed because the

finding that the attorney was formerly personally and substantially involved in the same case while representing the State of Illinois was not an abuse of discretion. A similar ruling as to other juvenile cases was vacated, however, for lack of standing.

¶ 2 A minor's father, D.B., filed a motion to disqualify the attorney representing the Department of Children and Family Services (DCFS) in the juvenile proceedings involving the minor, M.B., because the attorney had previously represented the State of Illinois in the same case. The circuit court granted the motion and disqualified the attorney from appearing in the instant case, and all juvenile cases through 11 JA 111. DCFS filed an interlocutory appeal.

¶ 3 FACTS

¶ 4 Maritia Griffith was an Assistant State's Attorney (ASA) for Rock Island County for 16 years. During that time, Ms. Griffith was the only ASA who filed and prosecuted the juvenile cases for Rock Island County. In 2011, Ms. Griffith accepted the position of Department Regional Counsel with DCFS. Her area included Rock Island County. She then appeared on behalf of DCFS in a number of juvenile cases in which she had previously appeared as an ASA, including this case.

¶ 5 D.B. filed a motion to disqualify Ms. Griffith, arguing that there was a *per se* conflict of interest between her previous representation of the People and her current representation of DCFS. Similar motions were made in other juvenile cases. The circuit court granted D.B.'s motion and disqualified Ms. Griffith from appearing in all juvenile cases through 11 JA 111 (the last case that Ms. Griffith prosecuted for Rock Island County). The circuit court found that the interests of DCFS and the State's Attorney were not one and the same, and they were not the same agency. The circuit court discussed the *per se* rule disqualification of Rule 1.9(a) of the

Illinois Rules of Professional Conduct, but found that the attorney's involvement as an ASA was personal and substantial and disqualified her under Rule 1.11 of the Illinois Rules of Professional Conduct. DCFS filed a motion to reconsider, which was denied. We denied leave to appeal pursuant to Supreme Court Rule 306(a)(7), but the Illinois Supreme Court entered a supervisory order directing this court to vacate the order denying leave to appeal and take the appeal and consider the issues presented on the merits.

¶ 6

ANALYSIS

¶ 7 DCFS argues that D.B. lacked standing to raise a conflict of interest because he failed to show a confidential relationship with Ms. Griffith, and he failed to show any harm to himself by Ms. Griffith's representation of DCFS. Standing is a question of law that this court reviews *de novo*. *In re Scarlett Z.-D.*, 2012 Ill. App. (2d) 120266 (2012). The doctrine of standing precludes people with no interest in bringing a lawsuit; it ensures that only those with a real interest in the outcome are parties to the lawsuit. *In re W.R., E.H., and V.R.*, 2012 IL App (3d) 110179 (2012). Parental rights are a basic fundamental interest, and Illinois policy favors a parent's superior right to the custody of his own child. *In re E.B.*, 231 Ill. 2d 459 (2008). We find that D.B., as the father of the minor, could potentially be prejudiced if Griffith's earlier participation as an assistant state's attorney negatively influences her perception, as representative of DCFS, of the best interest of M.B. as it relates to his relationship with his parents. D.B. thus, has standing to raise the issue of Ms. Griffith's conflict of interest.

¶ 8 DCFS argues that the circuit court erred in disqualifying Ms. Griffith because Rule 1.11 (Ill. R. Prof'l Conduct R. 1.11 (eff. Jan. 1, 2010)) required case-by-case factual findings that Ms. Griffith participated personally and substantially in each case on behalf of the People and that the

interests of DCFS and the People were not aligned. D.B. argues that the circuit court made implicit factual findings regarding Griffith's participation in the juvenile cases at issue, and the circuit court did not abuse its discretion in disqualifying Griffith in the cases she had participated in as an ASA.

¶ 9 The construction of the Illinois Rules of Professional Conduct is a question of law, which we review *de novo*. *Macknin v. Macknin*, 404 Ill. App. 3d 520 (2010). However, a trial court's decision to grant a motion to disqualify an attorney will not be disturbed absent an abuse of discretion. *In re Stephenson*, 2011 IL App (2d) 101214 (2011). There is a *per se* conflict of interest when the same attorney appears during the same proceedings on behalf of different clients. *In re Darius G.*, 406 Ill. App. 3d 727 (2010). In such a situation, prejudice is presumed. *Darius G.*, 406 Ill. App. 3d at 201. In this case, however, D.B. argues that the circuit court did not rely on the *per se* rule of Rule 1.9 (Ill. R. Prof'l Conduct R. 1.9 (eff. Jan. 1, 2010)) but rather evaluated Griffith's participation in the juvenile cases and disqualified her under Rule 1.11(a)(2) (Ill. R. Prof'l Conduct R. 1.11(a)(2) (eff. Jan. 1, 2010)). Rule 11 provides that a former government attorney “shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee.” Ill. Sup. Ct. R. Prof'l Conduct, R 1.11(a)(2) (eff. Jan. 1, 2010).

¶ 10 The circuit court found that Ms. Griffith was the only attorney to handle the juvenile cases for Rock Island County. She filed each case, and conducted temporary custody hearings, and conducted the six-month reviews. The circuit court concluded that Ms. Griffith's involvement was substantial in this case, and in the other still-pending cases that she had filed while an ASA. Based on the factual findings of Ms. Griffith's personal and substantial

involvement, her disqualification in this case was not an abuse of discretion.

¶ 11 Our ruling, however, does not address the other cases in which the circuit court disqualified Ms. Griffith because D.B.'s standing does not extend to those cases. We affirm the order disqualifying Ms. Griffith in 09-JA-94, and vacate the remainder of the order.

¶ 12 CONCLUSION

¶ 13 The judgment of the circuit court of Rock Island County is affirmed in part and vacated in part.

¶ 14 Affirmed in part and vacated in part.

¶ 15 PRESIDING JUSTICE WRIGHT, concurring in part, dissenting in part.

¶ 16 Since father's motion was filed in case No. 09-JA-94, I agree with the majority that the trial court could not disqualify Ms. Griffith from representing DCFS in any other proceeding. Unlike the majority, however, I would also reverse the trial court's order disqualifying Ms. Griffith in case No. 09-JA-94 for several reasons.

¶ 17 Originally, in the order dated January 10, 2012, the trial court noted, "DCFS is but one of the scheduled agencies represented by the State's Attorney." In addition, the court observed: "The interest of the State (People) and DCFS are usually fairly aligned. They are seldom in a direct, conflict type of situation." I agree with the judge's insightful observation.

¶ 18 As implied by the trial court's candid commentary, in a handful of cases, the interests of the State and DCFS will not, and sometimes should not, align. For the reasons set forth below, I conclude case No. 09- JA-94 does not fall into the small percentage of abuse cases where the State's and DCFS's interests are not aligned. The record in this case does not support the view that the State's interests currently conflict with the interests of DCFS

¶ 19 In fact, the judge described the typical pattern for adjudicatory and dispositional hearings by stating, “[a]ny recommendations [to the court] by the State or DCFS will be put forth by Ms. Griffith.” (Emphasis in original.) I submit the court would not have allowed Ms. Griffith to routinely express the positions of both DCFS and the State’s Attorney unless their interests were aligned. Moreover, pursuant to statute, the same information is available to both the State and DCFS concerning abuse and neglect cases. 705 ILCS 405/1-7 and 405/1-8 (West 2010)

¶ 20 Thus, I conclude the record does not support the trial court’s finding that a conflict of interest exists in this matter due to Ms. Griffith’s previous role as prosecutor and current role as an advocate for DCFS alone in case No. 09-JA-94.

¶ 21 I note the trial court has not made a specific finding regarding the source of father’s standing in this case or the nature of the diverging interests of the State and DCFS in this case. The court’s expressed concerns about parental mistrust of prosecutors and DCFS employees involved in other abuse and neglect cases, is an insufficient theoretical basis to disqualify Ms. Griffith in the case at bar. Therefore, I view the case law cited by the majority to be distinguishable with respect to whether a conflict of interest exists in case No. 09-JA-94.

¶ 22 Significantly, father has not alleged, in his motion to disqualify ,the nature of Ms. Griffith’s conflict of interest created by serving as counsel for DCFS. Moreover, father has not alleged he has suffered any prejudice or complained the information available to Ms. Griffith as an Assistant State’s Attorney would not also be available to any attorney representing DCFS now or before Ms. Griffith left the State’s Attorney’s office.

¶ 23 Even assuming DCFS’s interests have become adverse to the interests of her former employer, Ms. Griffith can fulfill her ethical duties by receiving the consent of the State’s

Attorney to allow her to participate in this case as the attorney for her current employer, DCFS. It is significant to me that the motion to disqualify was neither filed, nor joined, by the State's Attorney. Therefore, based on this record, I conclude the State's Attorney is not only well-informed, but also freely consents to Ms. Griffith's ongoing appearance in this juvenile matter on behalf of another government agency with similar interests, DCFS,

¶ 24 For the reasons set forth above, I would reverse the court's order with respect to all cases, including case No. 09-JA-94, due to the absence of specific findings with respect to the purported conflict of interest in each individual juvenile proceeding.