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2017 IL App (3d) 150724-U

Order filed February 17, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re VISITATION OF K.M.,	)	Appeal from the Circuit Court
	)	of the 13th Judicial Circuit,
a Minor,	)	La Salle County, Illinois.
	)	
(C.C., J.C., and T.C.,	)	
	)	Appeal No. 3-15-0724
Petitioners-Appellants,	)	Circuit No. 15-F-107
	)	
v.	)	
	)	
J.M. and M.M.,	)	
	)	Honorable Joseph P. Hettel,
Respondents-Appellees).	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices Lytton and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court correctly dismissed petitioners' petition for visitation.

¶ 2 FACTS

¶ 3 Petitioners filed a petition for visitation alleging the following facts (1) T.C. is the biological father of K.M., (2) C.C. and J.C. are the paternal grandparents of K.M., (3) respondents, J.M. and M.M., are the maternal grandparents and adoptive parents of K.M., (4)

respondents adopted K.M. in May 2011, (5) T.C. consented to K.M.'s adoption "in exchange for an agreement with the [r]espondents that all [p]etitioners would continue to have regular visitation, communication and contact with [K.M.]", (6) J.C. and C.C. also agreed not to seek to adopt K.M. in exchange for an agreement with respondents that they would continue to have regular visitation, communication and contact with K.M., (7) after the adoption, petitioners had regular contact, communication and visitation with K.M. until October 2013, (8) petitioners alleged that respondents breached their preadoption contract by denying petitioners visitation, and (9) petitioners asked the court to order a reasonable visitation schedule. The petition implied that the parties' prearranged postadoption visitation was based on an oral agreement. No written agreement was alleged or attached to the petition.

¶ 4 Respondents filed a section 619.1 combined motion to dismiss the petition for visitation. 735 ILCS 5/2-619.1 (West 2014). Counts I and II argued petitioners did not have standing to seek visitation. See 735 ILCS 5/2-619 (West 2014). Count I contended that in case No. 2011-AD-11, T.C., the biological father of K.M., consented in writing to the adoption of K.M. by respondents. T.C.'s parental rights were terminated by the adoption order of May 18, 2010. T.C. did not seek to revoke his consent within the one-year statutory time frame. Count II alleged the rights of C.C. and J.C., the paternal grandparents, were derivative of T.C.'s rights. T.C.'s act of signing the consent to the adoption therefore terminated the visitation rights of C.C. and J.C. Counts III and IV argued any underlying oral contract was unenforceable as it was contrary to public policy, and failed to state a claim upon which relief may be granted. See 735 ILCS 5/2-615 (West 2014). Respondents did not attach to their motion T.C.'s adoption consent form or the adoption order.

¶ 5 In their response to the motion to dismiss, petitioners admitted that T.C. signed the consent to the adoption which terminated his visitation rights and the rights of C.C. and J.C. Petitioners argued that the adoption did not bar the enforcement of the voluntary visitation agreement between the parties. See *In re M.M.D.*, 213 Ill. 2d 105 (2004). Petitioners also denied that the petition for visitation was an attempt to revoke T.C.'s consent to the adoption, and asserted that the petition was brought to enforce the voluntary visitation agreement between the parties.

¶ 6 After a hearing, the court ruled "[c]ount I and [c]ount II of [respondents'] hybrid [s]ection 619.1 [m]otion are granted based on a lack of standing by both the biological father and the paternal grandparents in the case." In regard to count III, the court said it did not "believe there is a cause of action stated because there's no legal basis for the cause of action that was pled." In its written dismissal order, the court said "for the reasons stated on the record, that count I and count II of the combined motion to dismiss are granted." Petitioners appeal.

¶ 7 ANALYSIS

¶ 8 Petitioners contend that they sufficiently alleged a breach of contract claim to survive a dismissal on the pleadings. On appeal, they do not argue that their standing arises under the Illinois Parentage Act of 1984 (Parentage Act) (750 ILCS 45/1 *et seq.* (West 2014)) or any other statute; they claim standing only under contract law. We affirm

¶ 9 A contract is void where it is contrary to public policy. *Vine Street Clinic v. HealthLink, Inc.*, 222 Ill. 2d 277, 299-300 (2006). To determine the public policy of Illinois regarding agreements for postadoption visitation, we look to the constitution, statutes and long-standing case law. *In re Estate of Feinberg*, 235 Ill. 2d 256, 265 (2009).

¶ 10 An adoption is a statutorily-created proceeding. See 750 ILCS 50/0.01 *et seq*. (West 2014). The adoption process creates a nonbiological parent-child relationship through the severance of the biological parents' legal and natural rights to a child. 750 ILCS 50/17 (West 2014); *In re M.M.*, 156 Ill. 2d 53, 62 (1993). The Adoption Act (the Act) does not expressly permit the consenting or surrendering parent to enter an agreement with the adopting parent to allow postadoption visitation. See 750 ILCS 50/0.01 *et seq*. (West 2014). Rather, the Act embodies the traditional view that the severed bundle of rights includes the right to visitation, which is a form of custody. *M.M.*, 156 Ill. 2d at 62. This severance allows the adopted child to attain the status of a natural child of the adoptive parents, who are vested with care, custody, and control of that child. *Id.* "Public policy considerations require that adoptions be accorded a certain degree of stability and finality." *In re Tekela*, 202 Ill. 2d 282, 293 (2002).

¶ 11 The pleadings establish that T.C. consented to respondents' adoption of K.M. T.C.'s executed final and irrevocable consent to adoption form likely included the following statutory language: "[t]hat I wish to and understand that by signing this consent I do irrevocably and permanently give up all custody and other parental rights I have to such child." 750 ILCS 50/10(A) (West 2010). This language established that T.C. relinquished all of his parental rights which rendered him a legal stranger to K.M. See *M.M.*, 156 Ill. 2d at 62. T.C.'s consent also relieved C.C. and J.C. of their rights as paternal grandparents as their rights were derivative of T.C.'s rights. See *In re Adoption of Schumacher*, 120 Ill. App. 3d 50, 53 (1983) (noting an adoption terminates the rights of the natural parent and removes the basis for the relationship of the grandparent, thereby ending the grandparent's right to visitation). Petitioners do not seek to revoke T.C.'s consent, which is irrevocable unless obtained by fraud or duress, or otherwise invalidate the adoption. 750 ILCS 50/11(a) (West 2014). Rather, petitioners seek to enforce a

voluntary visitation agreement that the parties allegedly entered prior to the adoption. Therefore, we must determine whether the alleged agreement, which seeks to circumvent the statutory termination of petitioners' rights, is enforceable under Illinois law. As the Act does not expressly permit such agreements, we look next to the long-standing case law.

¶ 12 In *M.M.*, the supreme court consolidated and reviewed three cases which involved trial court-ordered postadoption visitation. *M.M.*, 156 Ill. 2d 53. In each of these cases, the biological parents' rights had been terminated under the Juvenile Court Act of 1987. *Id.* at 57-59. The trial court appointed a Department of Children and Family Services employee to serve as a guardian for M.M., M.E.B. and siblings, and A.B. in their respective cases. *Id.* The appointment order vested the guardian with the power to "consent to adoption, 'provided that the adoptive parents agree to continue to permit contact by the minor with her biological family.' " *Id.* at 57. The adoptive parents of M.M. and M.E.B. *et al.*, opposed the court-ordered visitation. *Id.* at 58. In A.B.'s case, the adoptive parents agreed to the court-ordered visitation. *Id.* at 59. However, the trial court declined, for lack of authority, to condition A.B.'s adoption on an agreement to postadoption visitation. *Id.*

¶ 13 On appeal, the biological parents of M.M. and M.E.B. *et al.*, and A.B.'s guardian, sought to enforce the postadoption visitation provision. *Id.* The appellate court consolidated the three cases. With respect to the cases regarding M.M. and M.E.B., *et al.*, the appellate court reversed the conditional adoption orders and remanded these cases to the trial court for a determination of whether nonprovisional orders were in the best interests of the children. *Id.* Regarding A.B.'s case, the appellate court affirmed the unconditional adoption order. *Id.*

¶ 14 On appeal to the supreme court, the trial courts' conditional adoption order was characterized as an "open adoption." *Id.* at 72. While reviewing the policy implications of

arranged postadoption visitation, the supreme court observed several commentators had "expressed that 'open adoption' coincides with the best interests standard." *Id.* (quoting Clark, *Children & the Constitution*, 1992 U. of Ill. L. Rev. 1, 24). Ultimately, the supreme court declined to apply the "open adoption" concept and focused narrowly on the "interpretation and application of *our* Juvenile Court Act," which expressly empowered the trial court to appoint a guardian following the termination of a biological parent's rights. (Emphasis in original.) *Id.* The supreme court held the Juvenile Court Act of 1987 provided only that the court "shall empower the guardian to consent to adoption." *Id.* at 69. As a result, the trial court had no statutory authority to condition the guardian's power to consent to the adoption. *Id.* The supreme court further found that "the Adoption Act evidences no clear intent that the General Assembly intended to legislate with respect to 'open adoption.' " *Id.* at 73. The supreme court concluded that once the adoption is completed, the adoptive parents possess the right to "decide whether to permit or deny continued contact with the child's biological family." *Id.* The supreme court affirmed the appellate court's reversal of the visitation condition. *Id.*

¶ 15 One year after *M.M.*, the first district appellate court held, in a case similar to *M.M.*, that the trial court did not have authority to limit the power of an appointed guardian to consent to adoption only if the adopting family agreed to reasonable postadoption sibling visitation. *In re Donte A.*, 259 Ill. App. 3d 246, 256 (1994). In its ruling, the court noted:

> "Once an adoptive placement is determined to be in the best interests of the child, the responsibilities concerning the care, custody, and control of the child vest, 'solely, in the adoptive parents.' (*M.M.*, 156 Ill. 2d at 73.) It is up to them to decide whether to permit or deny

continued contact with the child's biological family." *Donte A.*, 259 Ill. App. 3d at 255.

The court found no authority for the proposition that biological family ties continue to receive protected status in the face of an adoption. *Id.* In its holding, the court found that *M.M.* "made it clear that the Juvenile Court Act and [the Act] do not permit the [trial] court to make any decision concerning the preservation of family ties." *Id.* at 256.

¶ 16 Petitioners rely on *M.M.D.*, 213 Ill. 2d 105, for the proposition that an agreement for postadoption visitation is enforceable. Petitioners' reliance is misplaced. *M.M.D.* is inapposite to the issue in this case. The scope of *M.M.D.* is "narrow" and limited to whether the underlying consent decree, which provided the grandparents with visitation following a change of guardianship, is void. *Id.* at 117. Unlike *M.M.D.*, the instant petitioners are legal strangers to K.M., due to T.C.'s consent to the adoption. *Supra* ¶ 13. Respondents, as adoptive parents, have the right to decide whether to permit or deny continued contact with the child's biological family. *M.M.*, 156 Ill. 2d at 73; *Donte A.*, 259 Ill. App. 3d at 255.

¶ 17 The above-discussed statutes and case law establish an Illinois public policy that does not recognize agreements for postadoption visitation. Petitioners alleged that they entered into a preadoption contract for postadoption visitation. This oral agreement is plainly contrary to the established public policy as it erodes the stability and certainty provided by the adoption proceedings and undermines the adoption judgment which completely severed petitioners' bundle of rights. See 750 ILCS 50/10(A) (West 2010). Thus, the alleged agreement is void as contrary to public policy; the court properly dismissed the visitation petition.

¶ 18 Petitioners' contract argument fails on yet another level namely, petitioners' desired remedy, specific performance of the contract, is not available for what looks very much like a personal service contract.

¶ 19 An agreement that calls for services over a period of time, especially where special skill knowledge, judgment, or discretion is involved, is characterized as a contract for personal service. *Zannis v. Lake Shore Radiologists, Ltd.*, 73 Ill. App. 3d 901, 904 (1979). Such contracts "require a relationship of cooperation and trust between the parties to the contract." *Id.* at 905. If a contract requiring X to paint one's house requires a relationship of cooperation and trust between the parties to the contract, certainly a contract that requires X to allow his child to visit with someone on a regular basis likewise does. Now try to imagine a contract between X and Y requiring X's minor child to mow Y's grass. Such a contract is not that far removed from a contract between X and Y requiring X's minor child (a legal stranger to Y) to spend time, and implicitly entertain or be entertained by Y.

¶ 20 So, for all the reasons that a court cannot grant specific performance of a personal service contract, specific performance of the alleged postadoption visitation contract is unavailable. See, *e.g.*, *Eddings v. Board of Education*, 305 Ill. App. 3d 584, 591 (1999); *Ambassador Foods Corp. v. Montgomery Ward & Co.*, 43 Ill. App. 2d 100, 105 (1963); *Bloch v. Hillel Torah North Suburban Day School*, 100 Ill. App. 3d 204, 205 (1981).

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, we affirm the judgment of the circuit court of La Salle County.

¶ 23 Affirmed.