2017 IL App (4th) 170550-U

NO. 4-17-0550

FILED
December 19, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re S.P., a Minor,	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	McLean County
Petitioner-Appellee,	)	No. 13JA14
v.	)	
Maxim Pappas,	)	
Respondent)	)	Honorable
	)	Kevin P. Fitzgerald,
(Vicky M. Pappas, Appellant).	)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: Dismissal of the appeal is warranted where this court's jurisdiction and appellant's standing to appeal are questionable and appellant's arguments are outside the scope of any possible appeal.

¶ 2 Appellant, Vicky Pappas, appeals the McLean County circuit court's July 10, 2017, order terminating the parental rights of her son, Maxim Pappas, to his daughter, S.P. (born in December 2012), as well as several other earlier orders. Vicky was the former foster parent of S.P. On appeal, Vicky only challenges the court's earlier orders that relate to the court's removal of S.P. from Vicky's care. Specifically, she argues the court erred by (1) failing to give her appropriate notice of its intent to remove S.P., (2) ordering S.P.'s immediate removal from Vicky and barring future placement with Vicky, (3) denying Vicky's motion to intervene, and (4) failing to conduct an evidentiary hearing allowing Vicky to testify as to her intent to adopt S.P.

We dismiss Vicky's appeal.

¶ 3 I. BACKGROUND

¶ 4 In March 2013, the State filed a petition for adjudication of wardship as to S.P. The petition listed Jami May as S.P.'s mother and Maxim as S.P.'s putative father. Genetic testing later confirmed Maxim is S.P.'s biological father. Shortly before the wardship petition was filed, May and Maxim gave Vicky short-term guardianship of S.P. The Department of Children and Family Services (DCFS) allowed S.P. to remain in Vicky's care. In April 2013, the circuit court found S.P. was neglected under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)). In May 2013, the court found both May and Maxim unfit, made S.P. a ward of the court, and placed custody and guardianship of S.P. with DCFS.

¶ 5 In September 2014, the State filed a petition to terminate the parental rights of both Maxim and May. After an October 2014 hearing, the circuit court found both Maxim and May unfit. On February 10, 2015, Maxim executed a voluntary surrender of parental rights, consenting to S.P.'s adoption by Vicky. On February 11, 2015, the court terminated the parental rights of May. DCFS then began working on the paperwork for Vicky's adoption of S.P. After all of the paperwork was completed, the adoption hearing was set for March 29, 2016. According to the May 2016 permanency report, Vicky canceled the adoption hearing. The report also noted the caseworker had concerns Vicky was having second thoughts about the adoption. In its May, 12, 2016, permanency order, the court stated the following: "Foster parent is ordered to appear at the July 7th, 2016 hearing. If foster parent fails to appear the court may barr [*sic*] placement of the minor [with] the foster parent."

¶ 6 The June 29, 2016, permanency report noted Vicky had made it clear she did not

want to proceed with the adoption with the current judge and guardian *ad litem*. Vicky's adoption attorney, Julia Davis, looked into getting the adoption set in a different McLean County courtroom but learned that was not possible. Davis contacted Robert Parker, an attorney in Peoria, Illinois, to prepare and file the adoption petition there. On June 28, 2016, Vicky asked the caseworker to remove S.P. from her home before the July 7, 2016, hearing. The July 2016 permanency report addendum stated Vicky changed her mind that day and did not want S.P. removed. Vicky indicated she was fully committed to providing permanency for S.P. through adoption. DCFS and Parker were working on the paperwork to file the adoption in Peoria County. The July 2016 addendum also stated the following:

> "[Vicky] acknowledged that she has a tendency to make statements that often upset the court, which is why she does not intend to attend court on 7/7/16. [Vicky] deeply loves her granddaughter and wishes to proceed with adopting her. However, she wishes to do so in a court setting that is not fraught with negative memories and emotions, which is why she is requesting to proceed with the adoption in another county. She hopes that the court is willing to be patient with this process and will grant her the time needed to adopt [S.P.] in Peoria County."

The caseworker concluded by noting S.P. had lived with Vicky since she was 10 weeks old and was bonded with her. In the caseworker's opinion, a review of the best interest factors demonstrated it was in S.P.'s best interests to remain in Vicky's care. The caseworker asked the court to give Vicky more time to pursue the adoption in Peoria County and to not bar S.P.'s placement with Vicky. We note Vicky had not attend a hearing in this case since the July 15, 2015, hearing.

¶ 7 Vicky did not appear at the July 2016 hearing. In addition to the permanency

report and addendum, Elizabeth McCormack, the caseworker in this case, testified. At the conclusion of the hearing, the circuit court found it was in S.P.'s best interests to bar her placement with Vicky. On August 3, 2016, the circuit court held a status hearing, after which Vicky filed a petition to intervene under sections 1-5(2)(c) and (2)(d) of the Juvenile Court Act (705 ILCS 405/1-5(2)(c), (2)(d) (West 2016)). After an August 17, 2016, hearing, the court denied Vicky's petition. In doing so, the court explained the barring of placement with Vicky was based on Vicky's conduct and refusal to come into court when ordered to do so. Vicky requested a finding under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), which the court declined to do. On September 8, 2016, Vicky filed a motion to reconsider the denial of her motion to intervene, which the court denied on September 22, 2016.

¶ 8 On October 6, 2016, Vicky filed a petition for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. Mar. 8, 2016). On March 20, 2017, this court dismissed the appeal for a lack of jurisdiction. *In re S.P.*, 2017 IL App (4th) 160714-U. We explained that, although Rule 306(a)(5) pertains to issues of child care and custody, the plain language of Rule 306(a) specifically states it applies to parties who wish to pursue an interlocutory appeal and does not provide the same privilege for nonparties like Vicky. *S.P.*, 2017 IL App (4th) 160714-U, ¶ 21. This court also found that, even if Vicky could appeal pursuant to Rule 306(a)(5), her motion for leave to appeal was untimely because a motion to reconsider does not extend the 30-day period for filing a motion for leave to appeal under Rule 306. *S.P.*, 2017 IL App (4th) 160714-U, ¶ 23. Our supreme court denied Vicky's petition for leave to appeal. *In re S.P.*, No. 122291 (July 11, 2017) (supervisory order).

¶ 9 On July 10, 2017, the McLean County circuit court entered a written order terminating the parental rights of Maxim. On July 19, 2017, Maxim filed a notice of appeal from

the July 10, 2017, order terminating his parental rights. His appeal is docketed in this court as No. 4-17-0534. On July 21, 2017, Vicky filed her notice of appeal, listing orders with the following dates: July 7, 2016; August 3, 2016; August 17, 2016; September 22, 2016; and July 10, 2017.

¶ 10 II. ANALYSIS

¶ 11 We begin by addressing our jurisdiction of Vicky's appeal from the order terminating Maxim's parental rights. See *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 251-52, 930 N.E.2d 895, 915 (2010) (noting a reviewing court has the duty to consider its jurisdiction and dismiss the appeal if it finds jurisdiction does not exist). In her brief, Vicky asserts this court has jurisdiction under Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994). However, the record indicates this case is ongoing, as S.P. is still a ward of the court. The termination of Maxim's parental rights did not dispose of the entire proceeding in this case. Thus, we asked the parties to be prepared at oral arguments to address jurisdiction, standing, and scope of review.

¶ 12 We begin by noting petitions for wardship that eventually include the termination of parental rights are complex, unique proceedings that involve both the Juvenile Court Act (705 ILCS 405/1-1 *et seq.* (West 2016)), and the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2016)). Such proceedings involve many orders by the circuit court during the pendency of the proceedings and can involve many entities, *i.e.*, the State, the guardian *ad litem*, the minor or minors, biological parents, foster parents, and former foster parents. Thus, matters related to appeals from orders in such cases are also complex, as they are not like other civil appeals. Accordingly, the applicable supreme court rule for attaining appellate jurisdiction of a circuit court's order in cases like this one is not always clear.

¶ 13 In *In re Haley D.*, 2011 IL 110886, ¶ 54, 959 N.E.2d 1108, the issue was whether the circuit court erred by denying the respondent father's motion to set aside a finding he had defaulted on the State's petition to terminate his parental rights. In deciding that issue, our supreme court specifically addressed the applicable rule for an appeal from an order terminating parental rights in wardship cases. *Haley D.*, 2011 IL 110886, ¶¶ 62-63, 959 N.E.2d 1108. The court held that, under Illinois law, it is well established that, once a court has found a minor child neglected and made the child a ward of the court pursuant to the Juvenile Court Act, the Adoption Act governs the proceedings in which parental rights are terminated. *Haley D.*, 2011 IL 110886, ¶ 62, 959 N.E.2d 1108. "Under the Adoption Act, orders terminating parental rights are nonfinal and interlocutory." *Haley D.*, 2011 IL 110886, ¶ 62, 959 N.E.2d 1108. Illinois Supreme Court Rule 307(a)(6) (eff. July 1, 2017) permits an appeal from an interlocutory order terminating parental rights. See *Haley D.*, 2011 IL 110886, ¶ 63, 959 N.E.2d 1108. "A *party* who wishes to challenge such an order is not, however, required to bring an immediate interlocutory appeal under Rule 307. Rather, he or she may wait until final judgment has been entered in the case and challenge the termination order at that time." (Emphasis added.) *Haley D.*, 2011 IL 110886, ¶ 63, 959 N.E.2d 1108.

¶ 14 Vicky urges us to follow the special concurrence in *Hailey D.*, where Justice Theis contended the majority blurred the line between the Juvenile Court Act and the Adoption Act. *Haley D.*, 2011 IL 110886, ¶ 98, 959 N.E.2d 1108 (Theis, J., specially concurring, joined by Garman, J.). She noted that, "[c]ontrary to the majority opinion, orders terminating parental rights in Juvenile Court proceedings are typically final orders." *Haley D.*, 2011 IL 110886, ¶ 103, 959 N.E.2d 1108 (Theis, J., specially concurring, joined by Garman, J). We believe that position has some merit, as the supreme court has found dispositional orders in wardship cases

are "final and appealable as of right." *In re Leona W.*, 228 Ill. 2d 439, 456, 888 N.E.2d 72, 81 (2008). However, s*tare decisis* requires this court to follow a decision of the supreme court (see *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 440, 892 N.E.2d 994, 1006 (2008)), which is the majority's decision. Thus, this court can only have jurisdiction of Vicky's appeal under Rule 307(a)(6).

¶ 15 Unlike Rule 306, under which Vicky first attempted to appeal the denial of her motion to intervene, Rule 307 does not refer to an appeal by a "party." Ill. S. Ct. R. 307 (eff. July 1, 2017). However, in *Hailey D.*, the supreme court in discussing when a person can appeal from an order terminating parental rights referred to the person appealing as a "party." *Haley D.*, 2011 IL 110886, ¶ 63, 959 N.E.2d 1108. Thus, our jurisdiction of this appeal is unclear.

¶ 16 Regardless of jurisdiction, the appealing individual must have standing to appeal. In support of her argument she has standing to appeal, Vicky points to section 1-5 of the Juvenile Court Act (705 ILCS 405/1-5 (West 2016)), under which she asserts she must be made a party to the wardship case. Regardless of her party status, the appealed judgment must be adverse to her interest. "Any party to the case may seek appellate review from a final judgment which is adverse to his interests, and whether the party was actually aggrieved does not determine his right to appeal." *St. Mary of Nazareth Hospital v. Kuczaj*, 174 Ill. App. 3d 268, 270-71, 528 N.E.2d 290, 292 (1988). A nonparty can have standing to appeal provided he or she has "a direct, immediate and substantial interest in the subject matter of the litigation which would be prejudiced by the judgment or benefit by its reversal." *St. Mary of Nazareth Hospital*, 174 Ill. App. 3d at 271, 528 N.E.2d at 292. Here, the order to which Vicky's notice of appeal is timely filed and jurisdiction may lie is the circuit court's July 10, 2017, order terminating Maxim's parental rights. The termination of his parental rights was beneficial to her and consistent with

her desire to adopt S.P. Thus, Vicky does not have standing to appeal that order.

¶ 17 Even if Vicky has standing to appeal the termination of her son's parental rights under Rule 307(a)(6), our scope of review is limited. In an interlocutory appeal, the scope of review is normally limited to an examination of whether the circuit court erred in granting or refusing the requested interlocutory relief. *In re Lawrence M.*, 172 Ill. 2d 523, 526, 670 N.E.2d 710, 712 (1996). Here, Vicky appeals from the court's order terminating Maxim's parental rights but does not raise any issues as to that order. Her arguments relate to the removal of S.P. from her care and the denial of her petition to intervene and are in no way related to the termination of Maxim's parental rights. Thus, even if we have jurisdiction of Vicky's appeal and Vicky has standing to appeal the termination of Maxim's parental rights, Vicky's arguments are outside the scope of our review.

¶ 18 This appeal is Vicky's second attempt to appeal the circuit court's denial of her petition to intervene in S.P.'s wardship case after the court barred S.P.'s placement with her. We agree with her it is unreasonable for her to wait until this case is final as to all matters to appeal the denial of her motion to intervene and the circuit court's order barring placement of S.P. with her. It may also not be in S.P.'s best interests. Given the time that has already elapsed since S.P. was removed from Vicky's care, we believe this is a case where the supreme court should exercise its supervisory authority and allow this court to address all of the issues raised by Vicky in her appeal.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we dismiss Vicky's appeal.

¶ 21 Appeal dismissed.