THIRD DIVISION
February 11, 2015

No. 1-14-2058

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re Parentage of S.H.A., a Minor	)	Appeal from the
	)	Circuit Court of
(Mahammed Abdul B. and Aseema,	)	Cook County
	)	
Petitioners-Appellants,	)	13 D3 79124
	)	
v.	)	Honorable
	)	Martin C. Kelley,
Omrana A. and Rashid Ahmed A.,	)	Judge Presiding.
	)	
Respondents-Appellees).	)	
	)	

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Pucinski and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court properly dismissed petition by individuals claiming to be biological parents of minor based on the court's finding that India was the proper forum in which to litigate petitioners' claims and the claims raised in the petition were time-barred under Illinois law.

¶ 2 Petitioners, Mahammed B. and Aseema[1], appeal from an order of the circuit court of Cook County dismissing their petition seeking custody of the minor child, S.H.A. S.H.A. lives in Illinois with respondents, Rashid A. and Omrana A. Finding no error in the circuit court's ruling, we affirm.

¶ 3 BACKGROUND

¶ 4 S.H.A. was born on March 27, 2008, in Hyderabad, India, and is currently six years old. According to the allegations of the petition, S.H.A's biological parents are petitioners, who reside in India. Shortly after her birth, petitioners voluntarily gave their daughter to Rashid, a United States citizen, and his wife Omrana, Mahammed's sister and a permanent resident of the United States. Respondents presented documents to the United States Consular Service in India in order to obtain U.S. citizenship for S.H.A. Those documents included a birth certificate that lists respondents as S.H.A's parents. S.H.A has resided in Illinois with respondents since shortly after her birth.

¶ 5 There is nothing in the record to indicate whether a formal adoption ever took place in India. It appears that some type of arrangement was entered into between the parties at the time of S.H.A.'s birth involving her ongoing care and custody. As a result of this arrangement, petitioners apparently agreed to list respondents as S.H.A.'s parents on her birth certificate. Respondents returned to Illinois where they resided with S.H.A. while petitioners remained in India.

---

[1] The petition does not include a last name for Aseema, and respondents also point out that it does not contain Aseema's verified signature.

¶ 6 Sometime around December 2011, when S.H.A. was three years old, Omrana visited India with S.H.A. [2] There are several conflicting accounts of what happened during this visit. The petition alleges that Omrana returned S.H.A. to petitioners but called the police when they tried to have genetic testing done. Petitioners now allege that when they tried to visit S.H.A., Omrana called the police.

¶ 7 A document entitled "Memorandum of Understanding" (MOU) was attached to the petition. The MOU consists of two typed pages, is dated December 19, 2011, and bears the signatures of all four individuals. However, it appears that the document provided to the circuit court was not the complete MOU, portions of which are allegedly not written in English. According to the partial MOU, petitioners are the "natural parents" of S.H.A., while respondents are her "adopted parents."

¶ 8 The MOU provides that S.H.A. would live in the United States until the age of 10, at which time she would return to India. Respondents could then choose to also reside in India and the four adults would raise S.H.A. together. In the meantime, S.H.A. would also be brought back to India for a period of six months by April 5, 2012. When S.H.A. reached majority, respondents would transfer "all of their movable and immovable properties" to her. The MOU further provides that respondents would sponsor petitioners to come to the United States for "visit and settlement." If they failed to do so, S.H.A. would be returned to petitioners.

¶ 9 Respondents dispute the authenticity of the MOU, but acknowledge that they signed a handwritten document while they were in India in 2011. Respondents claim they signed the

[2] It is not clear from the record whether Rashid accompanied Omrana and S.H.A. to India or traveled to India separately after they were already there. However, his signature is on a document that was allegedly prepared in India during this timeframe.

document only because they wanted to take S.H.A. and leave. Respondents also offer another version of what transpired during the 2011 visit to India. According to respondents, while S.H.A. was in India petitioners kidnapped her and the police had to be called. The police chased Mahammed to the top of a building, where he allegedly threatened to throw S.H.A. off the building. The police arrested Mahammed and returned S.H.A. to Omrana. Respondents claim not to remember the contents of the MOU and cannot confirm that the document attached to the petition is an accurate copy of the document they signed. Although the MOU refers to respondents as the "adopted parents," no record of any adoption proceedings involving S.H.A. has been produced.

¶ 10 On October 25, 2013, petitioners filed their petition in the circuit court of Cook County to confirm parentage of S.H.A. and declare the non-parentage of respondents. The petition asserts that petitioners are S.H.A.'s biological parents and respondents "fraudulently had their names listed" as S.H.A.'s parents on her birth certificate. The petition further alleges that Omrana presented falsified documents to the United States Embassy in India in order to obtain a visa for S.H.A.

¶ 11 As noted above, according to the petition, Omrana returned S.H.A. to petitioners for three months in 2011, but when they sought a genetic test to prove their parentage, Omrana called the police. Petitioners contend they entered into the MOU as a last resort to be able to visit their daughter because they did not have any legal proof of their parentage. The relief sought was for the court to enter findings that petitioners are S.H.A.'s biological parents and respondents are neither her "legal" nor biological parents. The petition also sought the immediate return of S.H.A. to petitioners.

¶ 12 A copy of S.H.A.'s birth certificate was attached to the petition. Rashid is listed under "Name of Father" and Omrana is listed under "Name of Mother." There is no

characterization of the parents as "biological" and nothing on the birth certificate indicates whether S.H.A. was adopted.[3] The record also contains a "Consular Report of Birth Abroad" issued by the State Department's Consular Service in Chennai, India on May 9, 2008. The report certifies that S.H.A. "acquired United States citizenship at birth as established by documentary evidence."

¶ 13 Respondents filed a motion to dismiss the petition pursuant to section 2-619.1 of the Illinois Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2012)), which allows a party to combine a section 2-615 motion to dismiss with a section 2-619 motion to dismiss. Respondents claimed that dismissal was appropriate under section 2-615 (735 ILCS 5/2-615 (West 2012)) because the petition contained merely legal conclusions unsupported by specific facts, which were required to plead a claim based on fraud. Respondents also argued under section 2-619 of the Code (735 ILCS 5/2-619 (West 2012)) that the petition was barred by (1) a prior judgment, (2) the doctrine of comity, (3) the statute of limitations, and (4) lack of subject matter jurisdiction. Finally, the motion also raised lack of legal capacity or standing to file suit as bases for dismissal.

¶ 14 On May 16, 2014, at a hearing on the motion to dismiss, counsel appeared on behalf of petitioners (who were in India) and acknowledged that they had not initiated legal proceedings in India to challenge the validity of the birth certificate. He further explained that if his clients were to challenge the birth certificate in India, they would have to admit they entered into "an illegal adoption" and would be arrested. Counsel insisted that his

---

[3] Respondents point out that in Illinois, once an adoption takes place, the adoptive parents may apply to the Illinois Department of Public Health for an amended birth certificate which will list the child's new name and the adoptive parents as the child's parents (see 750 ILCS 50/19 (West 2012)).

clients had not committed fraud but had been "fraudulently induced" by respondents, who failed to comply with the terms of their agreement. Counsel for petitioners also informed the trial court that the parties are Muslim and that adoption of a child, particularly by a relative of the first degree, is not allowed under Islamic law.

¶ 15 Respondents argued that the petition was barred because the birth certificate is presumed to be valid and petitioners failed to allege facts to support their allegation of fraud. Respondents further contended that no amendment could cure this defect given that petitioners admitted they were aware of the facts giving rise to their fraud claim – that respondents were listed as S.H.A.'s father and mother on her birth certificate in 2008 – more than two years before their petition was filed. Moreover, respondents argued that India is the proper forum to determine whether the birth certificate issued in India is invalid and whether the MOU would be given any legal effect at all.

¶ 16 The trial court noted that the MOU would be unenforceable in Illinois as against public policy. The trial court granted the motion to dismiss "for all of the reasons" raised by respondents, specifically finding that India is the proper jurisdiction for a determination of the validity of the birth certificate that lists respondents as S.H.A.'s parents. The trial court also observed that such a challenge may well be outside the statute of limitations in India, but is definitely time-barred here. Petitioners timely filed this appeal.

¶ 17 ANALYSIS

¶ 18 On appeal, petitioners contend the trial court erred in dismissing their petition by affording "comity to the false birth certificate and [MOU]" without holding an evidentiary hearing to "evaluate the laws of India." They further argue that the MOU proves respondents

lied to the United States Consulate and that their complaint alleges sufficient facts that, when taken as true, entitle them to the relief sought.

¶ 19 A section 2-615 motion to dismiss tests the legal sufficiency of the complaint while a section 2-619 motion to dismiss admits the sufficiency of the complaint to state a claim, but asserts affirmative matter defeating the claim. *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21. We review *de novo* an order dismissing a complaint under either section 2-615 or section 2-619. *Id*. Moreover, a reviewing court may affirm on any ground disclosed in the record, regardless of whether the trial court relied on that particular ground. *Messenger v. Edgar*, 157 Ill. 2d 162, 177 (1993); *North Shore Community Bank & Trust Co. v. Sheffield Wellington, LLC*, 2014 IL App (1st) 123784, ¶ 62.

¶ 20 At the outset, we note that although the trial court granted the motion to dismiss "for all of the reasons" raised by respondents, specifically noting that the court lacked subject matter jurisdiction and the complaint was time-barred, petitioners contend on appeal only that the trial court erred in applying the doctrine of comity to the birth certificate. They also incorrectly state that the trial court applied comity to the MOU, despite the fact that the court expressly stated it was giving no weight to the MOU, a document that is clearly unenforceable as against public policy in Illinois. Petitioners raise no issue regarding any of the other grounds on which the trial court's ruling was based.

¶ 21 Petitioners' argument section is comprised of less than four pages and the only argument that seems to address comity is that "[t]he trial court failed to conduct an evaluation of the laws of India to determine whether or not they in some ways offended the policies of this state, before applying comity to the false birth certificate." Petitioners go on to argue that "[e]ven a cursory review of the [MOU] would reveal that it was not an adoption, and also that it clearly offended the policies of this state as regards children." The bulk of the

argument is almost entirely focused on the actions and "admissions" of respondents that purportedly establish they lied to the United States Consular Service in India. The argument contains one citation, to irrelevant authority, consisting of a block quote that is claimed to be "exactly on point," immediately followed by the unsupported conclusion that Cook County is the only appropriate forum for these proceedings.

¶ 22 Because petitioners have only challenged the trial court's ruling on the issue of comity, they have waived any challenge to the various other grounds on which the trial court based its ruling. See Ill. S. Ct. R. 314(h)(7) (eff. Feb, 6, 2013) ("Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."). Further, this court is entitled to have cohesive arguments presented with citations to pertinent authority and is not a repository into which an appellant may foist the burden of argument and research. See *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010); Ill. S. Ct. R. 314(h)(7) (eff. Feb, 6, 2013).

¶ 23 Given that petitioners' comity argument is not developed on appeal we could properly refuse to consider it. But because we may affirm on any ground supported by the record and because we review the propriety of dismissal *de novo*, we will reach the merits of this appeal.

¶ 24 Although petitioners contend only that the trial court erred in granting "comity" to the birth certificate and argue facts that seem to be intended to support the allegation of fraud in their complaint, they provide no black letter law on the doctrine of comity or, for that matter, on fraud. Instead, they merely cite *Ransom v. A.B. Dick Co.*, 289 Ill. App. 3d 663, 671-72 (1997), in which this court held that a party seeking the extension of comity to the proceedings of a foreign bankruptcy court must make a minimal or *prima facie* showing of the existence of such proceedings, along with a showing that those proceedings, if recognized, would have an effect on the claim before the court. Once such a showing has

been made, an evidentiary hearing should be held, if necessary, to determine whether extending comity to such proceedings will offend the public policy of Illinois or the general interests of its citizens. *Id*. at 671. As we understand petitioners' argument, they contend that the trial court granted "comity" to S.H.A.'s birth certificate issued in India, but this is not a fair characterization of the proceedings in the trial court.

¶ 25 *Ransom* has no relevance to whether a court in Illinois should recognize a birth certificate issued in a foreign country, the issuance of which does not involve judicial proceedings of any kind. Indeed, an authentic birth certificate (and petitioners do not argue that S.H.A.'s birth certificate is not authentic) is itself *prima facie* evidence of parentage. Petitioners' invocation of the doctrine of comity would make sense if, for example, they had commenced an action in India to declare S.H.A.'s birth certificate invalid and sought to enforce that determination here. Moreover, an evidentiary hearing on the laws of India would not be necessary to determine whether the recognition of a birth certificate issued by a foreign country would offend the public policy of Illinois. Therefore, not only do we fail to see how *Ransom* is "exactly on point," but we also fail to see how it has any relevance at all. Our research has disclosed no case in which the doctrine of comity was applied to a birth certificate. Thus, the only issue raised by petitioners on appeal is beside the point.

¶ 26 Petitioner's brief also does not address the timeliness of their claims under Illinois law. Petitioners filed this action to confirm their status as S.H.A.'s biological parents and to determine the non-parentage of respondents pursuant to the Illinois Parentage Act of 1984 (Parentage Act) (750 ILCS 45/1 *et seq.* (West 2012)). Section 8 of the Parentage Act provides that an action to declare the nonexistence of a parent-child relationship is barred if brought later than 2 years after the petitioner obtains knowledge of the relevant facts. 750 ILCS 45/8(a)(3) (West 2012). Petitioners had knowledge of the relevant facts in 2008, when

they had respondents' names listed as S.H.A.'s parents on her birth certificate and permitted S.H.A to leave India to live with respondents in Illinois. Thus, a petition to declare the non-existence of a parent-child relationship between S.H.A. and respondents filed on October 25, 2013, is time-barred and the trial court did not err in dismissing the petition on this basis.

¶ 27 Moreover, unless and until they pursue whatever course of action is available to them in India to change the information on S.H.A.'s birth certificate, petitioners lack standing to file a petition under the Parentage Act. An action to declare the nonexistence of a parent-child relationship may only be brought by the child, the natural mother, or a man presumed to be the father. 750 ILCS 45/7(b) (West 2012). Petitioners acknowledge in their petition that they have no legal proof of parentage. S.H.A.'s birth certificate lists respondents as her parents. Thus, the trial court correctly determined that petitioners lacked standing to file a petition under the Parentage Act.

¶ 28 Although the petition does not mention the Adoption Act (750 ILCS 50 *et seq.* (West 2012)), it could be construed to assert a claim under that statute and so we will consider whether the Adoption Act gives rise to a viable cause of action. Petitioners admittedly surrendered S.H.A. to respondents shortly after her birth, regardless of whether a formal adoption took place in India. Under the Adoption Act, consent to an adoption or the surrender of a child by the parent may not be revoked, even in situations involving fraud or duress, unless an action to void or revoke consent or surrender is commenced within 12 months from the date the consent or surrender was executed. 750 ILCS 50/11(a) (West 2012).

¶ 29 Counsel for petitioners insisted at the hearing that no adoption had taken place, but when explaining why his clients had not challenged the validity of the birth certificate in India, he stated that they could not do so because they would be arrested for participating in an "illegal

adoption." The surrender of S.H.A. shortly after her birth would implicate the Adoption Act, even if no formal adoption proceedings occurred. But because petitioners failed to file an action alleging fraud within 12 months from the date of surrender, any action to revoke consent or surrender under the Adoption Act is also barred by the statute of limitations.

¶ 30 The trial court also found that it lacked subject matter jurisdiction. Subject matter jurisdiction refers to the court's power "to hear and determine cases of the general class to which the proceeding in question belongs." *Belleville Toyota, Inc. v. Toyota Motor Sales U.S.A., Inc.*, 199 Ill. 2d 325, 334 (2002). With one exception (not relevant here), a circuit court's subject matter jurisdiction is conferred by our state constitution, under which jurisdiction extends to all "justiciable matters." *Id.*; Ill. Const. 1970, art. VI, § 9. A "justiciable matter" is a controversy appropriate for review by the court touching upon the legal relations of parties having adverse legal interests. *Belleville Toyota*, 199 Ill. 2d at 335.

¶ 31 We do not believe the circuit court lacked subject matter jurisdiction. After all, it did have jurisdiction over the parties and the type of dispute raised in the petition—a declaration of parentage—is of a type that circuit courts regularly adjudicate. Rather, the trial court properly declined to entertain the petition because petitioners presented no valid basis for the court to question a facially valid government document issued by another country and strong public policy concerns counseled against consideration of petitioner's request for relief.

¶ 32 Petitioners do not challenge the authenticity of S.H.A.'s birth certificate. Rather, they allege that respondents "fraudulently had their names listed as [S.H.A.'s] parents" on her birth certificate. As we have noted above, the assertion of fraud in connection with the issuance of S.H.A.'s birth certificate is conclusory and factually unsupported. The birth certificate was issued by the Greater Hyderabad Municipal Corporation in the Andhra Pradesh State of India, and states that S.H.A.'s place of birth was the Crescent Hospital, Humayun Nagar,

Hyderabad. Moreover, the consular report of birth abroad was issued by the Consular Service of the United States in Chennai, India.

¶ 33 Given that petitioners are citizens and residents of India, the laws of India determine the validity of birth certificates issued in India and how parentage is established for the purpose of demonstrating parentage on a birth certificate. India has jurisdiction over the agencies and persons involved in the issuance of these documents. This controversy is therefore not appropriate for review by a court in Illinois and India is the proper jurisdiction to challenge the validity of the birth certificate.

¶ 34 Further, we note that although petitioners filed this action ostensibly to have S.H.A.'s birth certificate declared invalid through a declaration that they are S.H.A.'s parents and respondents are not, the reality is they are seeking to enforce the MOU, something this court could not do even if Illinois was an appropriate forum and the action was not time-barred. Regardless of whether the adoption was legal, petitioners were willing participants in whatever process resulted in respondents' names being listed as S.H.A.'s parents on her birth certificate. They were certainly aware of it at the time and acknowledge that they permitted S.H.A. to leave India to live with respondents in Illinois shortly after her birth.

¶ 35 By their own admission, petitioners never challenged the validity of the birth certificate in India and did not consider taking legal action until late 2011, when they claim to have realized they had been "fraudulently induced" to list respondents' names on S.H.A.'s birth certificate. Moreover, they acknowledge that the only reason they are filing suit at this point in time is because respondents are not fulfilling their end of the agreement between them, which is purportedly set out in the MOU. In other words, they are seeking to have this court enforce the MOU (a document even they acknowledge is contrary to the public policy of the state of Illinois). Wholly apart from public policy considerations, the MOU – whatever it

provides – was not entered into until 2011, three years after petitioners arranged to have respondents listed as S.H.A.'s parents on her birth certificate. Therefore, as a matter of law, nothing in the MOU could have induced petitioners, fraudulently or otherwise, to list respondents as their daughter's parents in 2008.

¶ 36 Whatever motivated petitioners to give up their daughter to respondents, they cannot seek to invoke the jurisdiction of Illinois courts to undo that decision. No court would countenance a result that treats a child like chattel, to be transferred back and forth, not according to her best interests, but based on an agreement having nothing to do with a concern that our courts deem paramount to all others. See, *e.g.*, *In re A.W.J.*, 197 Ill. 2d 492, 497-98 (2001) ("custody proceedings *** are guided by the overriding lodestar of the best interests of the child"); *In re Marriage of Petraitis*, 263 Ill. App. 3d 1022, 1030 (1993) (best interests of the child are of paramount concern in custody proceedings). The trial court properly refused to entertain petitioners' claims.

¶ 37 CONCLUSION

¶ 38 The circuit court correctly determined that the action was barred by the statute of limitations under either the Parentage Act or the Adoption Act and the petitioners lack standing under the Parentage Act. Moreover, because India is the proper jurisdiction to challenge the validity of S.H.A.'s birth certificate, the circuit court correctly dismissed the petition.

¶ 39 Affirmed.