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2012 IL App (3d) 110783-U

Order filed October 12, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

In re ESTATE OF J.E.J. and M.L.J., Minors	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
(Linda Kwaite and Patrick Kwaite,	)	Will County, Illinois
	)	
Petitioners-Appellants,	)	Appeal No. 3-11-0783
	)	Circuit No. 10-P-131
v.	)	
	)	
Terry Jesk and Tanna Jesk,	)	Honorable
	)	J. Jeffrey Allen,
Intervenors-Appellees).	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Schmidt and Justice McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court lacked jurisdiction over this interlocutory appeal from an order of the circuit court holding that intervenors had standing to bring a petition for grandparent visitation in a guardianship proceeding. The appeal is dismissed.

¶ 2 Linda Kwaite and Patrick Kwaite, the maternal grandparents of J.E.J. and M.L.J., filed a petition in the circuit court of Will County, seeking to be appointed as guardians of the persons and the estates of the two minors pursuant to section 11-5 of the Probate Act of 1975 (Probate

Act). 755 ILCS 5/11-5 (2010). The court appointed the Kwaites as coguardians of the children on April 27, 2010. Approximately 14 months later, on June 1, 2011, Terry Jesk and Tanna Jesk, the children's paternal grandparents, filed a petition for visitation. On July 15, 2011, the Kwaites filed a motion to dismiss the Jesks' petition. The Kwaites maintained that the Jesks lacked standing to file a petition seeking visitation. The Jesks filed a response on August 22, 2011. The Kwaites filed a reply on September 13, 2011. On September 21, 2011, following a hearing on the Kwaites' motion, the trial court denied the motion to dismiss, ruling that the Jesks did have standing to petition for grandparent visitation in a guardianship proceeding. The written order entered that same day contained no language indicating that the order was appealable pursuant to Supreme Court Rule 304(a). Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). A transcript of the hearing on the motion, included in the record, established that the Kwaites' counsel initially sought such a finding. However, it appears from the record that counsel indicated that the Kwaites would be filing a motion to certify the question pursuant to Supreme Court Rule 308. Ill. S. Ct. R. 308 (eff. Feb. 26, 2010).

¶ 3 On October 17, 2011, the Kwaites filed a motion to certify a question of law to this court. On October 19, 2011, the Kwaites filed a notice of appeal. On November 4, 2011, the trial court granted the Rule 308 motion, certified a question to this court, and stayed further proceedings in the trial court pending this court's ruling on the certified question. This court denied the Rule 308 petition on December 6, 2011. The court determined that the question did not involve a question of law with a substantial difference of opinion. *In re Estate of J.E.J. and M.L.J.*, 3-11-0832 (Rule 23 Order filed December 6, 2011). This appeal followed the denial of the Rule 308 petition.

¶ 4 Before addressing the merits of this appeal, we have an obligation to determine whether we have jurisdiction, even if the issue is not raised by the appellee. *Ruff v. Splice, Inc.*, 398 Ill. App. 3d 431, 435 (2010). The jurisdiction of the appellate court is limited to the review of appeals from final judgments, subject to certain statutory or supreme court exceptions. *In re Marriage of Verdung*, 126 Ill. 2d 542, 553 (1989). The Kwaites, recognizing that this appeal is not from a final judgment and that there might be a possible jurisdictional problem, argue that this court has jurisdiction to hear this interlocutory appeal pursuant to Supreme Court Rule 304(b)(1). Ill. S. Ct. R. 304(b)(1) (eff. Jan. 1, 2006). Supreme Court Rule 304(b)(1) provides, in relevant part, that "[a] judgment or order entered in the administration of an estate, guardianship, or similar proceeding which finally determines a right or status of a party" is appealable without necessity of a special finding by the trial court to permit an interlocutory appeal.

¶ 5 The Kwaites assert that the trial court's denial of their motion to dismiss Jesks' petition finally determined the Jesks' rights and status as a party to the guardianship proceedings. Thus, they maintain, we have jurisdiction under Rule 304(b)(1). They maintain that Rule 304(b)(1) is to be liberally construed in favor of jurisdiction. *In re Estate of Mueller*, 275 Ill. App. 3d 128, 139 (1995). Our review of the relevant case law leads us to the opposite conclusion.

¶ 6 The factual situation in *Mueller* is distinguishable from the facts in the instant matter. In *Mueller*, the appellant sought leave to intervene in a will contest. The trial court denied the motion, and the movant filed an interlocutory appeal under Rule 304(b)(1). *Id.* at 138. The *Mueller* court held that it had jurisdiction under Rule 304(b)(1) since the order denying the appellant's motion to intervene terminated the appellant's rights and status as a party in the proceedings. *Id*. at 139. In the instant matter, in contrast, when the trial court denied the

Kwaites' motion to dismiss the Jesks' petition, it did not finally determine their rights or status as a party in the proceedings.

¶ 7 The instant matter is analogous to a case where a trial court granted a motion to intervene in a probate proceeding. *In re Estate of Oster*, 122 Ill. App. 3d 799 (1984). In *Oster*, the trial court granted a petition to intervene filed by several unnamed heirs in a will. The executor appealed, and the appellate court dismissed the appeal. *Id*. at 802. The court succinctly held that, under Rule 304(b)(1), "orders denying leave to intervene are appealable, but where intervention has been granted no final determination has occurred." *Id.*; see also *In re D.J.E.*, 319 Ill. App. 3d 489, 492 (2001) (an order denying a motion to strike or dismiss a pleading is not a final and appealable order in that it does not conclusively determine the parties' rights or terminate the proceedings). Indeed, we are aware of no authority holding that a determination that a party *has* standing is immediately appealable under Rule 304(b)(1). *Id*. at 494 (noting a lack of authority for jurisdiction for appeals from a finding that a party had standing and listing several cases where a ruling that a party had standing was challenged only after a hearing on the merits).

¶ 8 Here, by denying the Kwaites' motion to dismiss, the trial court allowed the Jesks to intervene in the guardianship proceeding, albeit for the limited purpose of asserting an alleged right to visitation with the children. Based upon the authority discussed above, we must hold that the trial court's ruling that the Jesks had standing to pursue their petition was an interlocutory order not appealable under Rule 304(b). We must therefore dismiss the appeal and return the matter to the circuit court.

¶ 9 For the foregoing reasons, the appeal is dismissed.

¶ 10 Appeal dismissed.