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2014 IL App (3d) 130716-U

Order filed February 21, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

<i>In re</i> C.S.,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
a Minor)	McDonough County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-13-0716
)	Circuit No. 11-JA-25
v.)	
)	
KEVIN S.,)	
)	Honorable
Respondent-Appellant).)	Patricia A. Walton,
)	Judge, presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court lacks jurisdiction to consider respondent's appeal because permanency orders are not appealable under Supreme Court Rule 301 as a matter of right from final judgments or Supreme Court Rule 304(a) allowing for appeals from final judgments as to fewer than all the parties.

¶ 2 On August 29, 2013, the trial court entered a dispositional order returning custody of the minor, C.S., to his mother, Amber M. Respondent father, Kevin S., appeals, arguing that (1) the

trial court's finding that it was in the best interests of C.S. to place him in the custody of his mother was against the manifest weight of the evidence, (2) the trial court's placement of C.S. with his mother in Oregon is incompatible with the Interstate Compact on the Placement of Children Act (Interstate Compact Act) (45 ILCS 15/1 (West 2012)), and (3) the trial court exceeded its statutory authority by making a specific placement of C.S. after appointing DCFS as guardian. We conclude that we lack jurisdiction and are compelled to dismiss respondent's appeal.

¶ 3

BACKGROUND

¶ 4 In October 2011, the State filed a petition for adjudication of wardship. The petition alleged that C.S., born on June 11, 2003, was abused pursuant to section 2-3(2)(v) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(2)(v) (West 2012)) in that he had extensive bruising to his buttocks as a result of a beating by his father for failing to water the horses. The petition further alleged that C.S. was neglected because respondent required him to pay for his meals to eat and pay for his clothing to be laundered. On December 8, 2011, the trial court entered an adjudicatory order finding C.S. to be abused or neglected by reason of "excessive corporal punishment" by respondent father.

¶ 5 On January 12, 2012, the trial court conducted a dispositional hearing. At the hearing, the State recommended that C.S. be made a ward of the court and that respondent and the mother be found unfit or unable to care for C.S. Caseworker Jody Meyer suggested that respondent demonstrate appropriate parenting skills, that he maintain his sobriety from illegal mood and mind altering substances, and that he participate in all services necessary to enable him to correct the conditions that caused Department of Children and Family Services (DCFS) involvement.

¶ 6 The integrated assessment report disclosed that the minor's mother, Amber, lived in Oregon and had married a registered sex offender. Amber moved to Oregon with C.S. shortly after he was born. When C.S. reached the age of six, Amber sent him back to Illinois to live with respondent so that she could "straighten out" the issues regarding her husband's registered sex offender status. At the time the report was completed, Amber indicated that she and her husband lived together with their eight-month-old daughter.

¶ 7 The trial court found respondent "unfit" because he had not made progress toward completing his services and found Amber "unable" to care for C.S. because she resided with a registered sex offender and her housing had not been approved. The court entered a dispositional order, adjudicating C.S. a ward of the court and placing his custody and guardianship with DCFS, with a permanency goal of return to home in 12 months.

¶ 8 At a permanency review hearing on December 20, 2012, caseworker Meyer informed the court that she had several conversations with Oregon Department of Human Services (ODHS) caseworker, Lindsey Simmons. Simmons reported that Amber had completed services at a mental health center, had successfully completed a behavioral therapy group, and had also completed a parenting class. According to the terms of a family services safety plan, Amber's husband was not to visit his daughter unless the mother and an approved safety service provider were present to supervise the visits.

¶ 9 Meyer described Amber's telephone contact with C.S. as extremely appropriate. She reported that Amber was cooperating with ODHS and was making significant progress. Meyer further reported that there were ongoing unresolved issues with respondent and that he had not made substantial progress toward the goal of return to home. She did not believe that respondent or his spouse were making substantial progress because they were not admitting that they

required C.S. to pay for his food or laundry and refused to take responsibility for their actions. Meyer suggested that the permanency goal be changed to return to home to the minor's mother, Amber. The trial court found respondent's progress unsatisfactory and Amber's progress satisfactory and entered an order modifying the permanency goal to "return home to mother."

¶ 10 At the permanency review hearing on August 29, 2013, the trial court considered a DCFS status report on visitation dated July 15, 2013. The report indicated that C.S. was in Oregon and was enjoying the time spent with his mother and his sister. The report stated that Amber was doing a "very good job" providing for C.S, that she was following the safety plan and that she had arranged appropriate child care for C.S. while she was working. The report further stated that C.S. had expressed a strong desire to live with Amber permanently and only visit Illinois.

¶ 11 The trial court found that respondent was unfit and had failed to make substantial progress to be restored to fitness. It further found that Amber was fit, willing and able to parent C.S. and that permanency for the child needed to occur as soon as possible. The court entered a written order setting forth a new permanency goal of "Remain Home with Mother" and directing the minor be returned to the custody of the mother, with guardianship remaining in DCFS. The court scheduled a status hearing for October 31, 2013, and ordered a psychological evaluation completed for the father.

¶ 12 ANALYSIS

¶ 13 Respondent appeals the permanency review order of August 29, 2013, and contends, among other things, that the trial court's decision to return C.S. to Amber's custody was against the manifest weight of the evidence. However, before addressing respondent's arguments, we must examine our jurisdiction over this case. *In re Application of the County Treasurer & ex officio County Collector of Cook County*, 308 Ill.App.3d 33, 39 (1999). Except for appeals from

delinquency judgments, “[i]n all other proceedings under the Juvenile Court Act, appeals from final judgments shall be governed by the rules applicable to civil cases.” Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001). Respondent’s jurisdictional statement asserts that our jurisdiction over this appeal lies under Illinois Supreme Court Rule 301 (Ill. S. Ct. R. 301 (eff. Feb. 1, 1994))) (appeals from final judgments of a circuit court in a civil case as a matter of right) and Illinois Supreme Court Rule 304(a) (Ill. S. Ct. R. (eff. Feb. 26, 2010)) (appeals from final judgments as to fewer than all parties where trial court makes express finding that there is no just reason for delaying an appeal).

¶ 14 Under the Juvenile Court Act of 1987 (750 ILCS 405/2-23 (West 2012)), a trial court maintains jurisdiction and may modify a dispositional order, consistent with section 2-28 of the Act, at any time until the case is finally closed or the child reaches majority. 705 ILCS 405/2-23(2) (West 2012). Section 2–28(3) of the Juvenile Court Act states that the trial court shall issue a permanency order following a permanency hearing and set forth its determination as to the future status of the child. 705 ILCS 405/2-28(3) (West 2012). The order is to contain a permanency goal for the child based on the child’s best interests that is chosen from a list of goals that includes alternatives such as return home, adoption, and guardianship on a permanent basis. At subsequent permanency hearings, held at least every six months until the permanency goal is achieved, the court reviews the previous permanency goal and enters a new permanency order. 705 ILCS 405/2–28(3) (West 2012).

¶ 15 In this case, the trial court’s January 12, 2012, dispositional order made C.S. a ward of the court, appointed DCFS as his guardian and allowed supervised visitation with respondent. Respondent did not appeal from that order. Eighteen months later, citing his satisfactory progress under the DCFS service plan, respondent filed his appeal from a permanency order

entered under section 2-28(3) that changed the permanency goal to remain home with mother and returned C.S. to Amber's custody.

¶ 16 Illinois Supreme Court Rule 301 provides for appeal as a matter of right from "final judgment." Ill. S. Ct. R. 301 (eff. Feb. 1, 1994). A final judgment is one that fixes absolutely the rights of the parties; it disposes of or terminates the litigation or some definite part thereof. *In re Adoption of Ginnell*, 316 Ill. App. 3d 789, 793 (2000); *In re M.M.*, 337 Ill. App. 3d 764, 771 (2003). An order is not final where jurisdiction is retained for the future determination of matters of substantial controversy. *Ginnell*, 316 Ill. App. 3d at 793.

¶ 17 In *In re Curtis B.*, 203 Ill. 2d 53 (2002), our supreme court held that a permanency order entered under section 2-28 of Juvenile Court Act is not appealable under Supreme Court Rule 304(b)(1) (Ill. S. Ct. R. 304(b)(1) (eff. Feb. 26, 2010)) because it does not finally determine a right or status of a party. See *Curtis B.*, 203 Ill. 2d at 59. The court found it significant that, according to the statute, a permanency order must be reviewed and reevaluated every six months until the permanency goal is achieved. Thus, "[n]one of the determinations contained in a permanency order can be considered set or fixed as a matter of law." *Id.* It therefore concluded that permanency orders are interlocutory and that a party wishing to appeal a permanency order must petition the appellate court for leave to appeal under Illinois Supreme Court Rule 306(a)(5) (Ill. S. Ct. R. 306(a)(5) (eff. Feb. 26, 2010)). In *In re M.M.*, the appellate court determined that the reasoning in *Curtis B.* also applies to appeals brought under Supreme Court Rule 301. *M.M.*, 337 Ill. App. 3d at 772-73. We agree; the clear import of *Curtis B.* is that permanency orders are not appealable under Supreme Court Rule 304(b)(1) or Supreme Court Rule 301. We therefore lack jurisdiction under Rule 301 to review respondent's appeal from the court's section 2-28(3) permanency order.

¶ 18 We also lack jurisdiction under Illinois Supreme Court Rule 304(a). Rule 304 governs cases in which a final order has been entered on a separate part of the controversy. Ill. S. Ct. R. 304 (eff. Feb. 26, 2010). Rule 304(a) states: "If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010). In this case, the trial court's order included an express written finding of finality. However, the court's Rule 304(a) finding does not render a nonfinal permanency order appealable. See *Kellerman v. Crowe*, 119 Ill. 2d 111 (1987) (trial court's special finding makes a final order appealable but has no effect on a nonfinal order); see also *In re Alicia Z.*, 336 Ill. App. 3d 476 (2002) (permanency order denying motion to modify custody was not final order even though trial court made express finding of finality).

¶ 19 We note that our holding does not leave respondents entirely without redress. The right to appeal an improperly entered permanency order is discretionary under Illinois Supreme Court Rule 306 (a)(5) (Ill. S. Ct. R. 306(a)(5) (eff. Feb. 26, 2010)). See *Curtis B.*, 203 Ill. 2d at 63-64. Rule 306(a)(5) allows the permissive appeal of an order affecting the care and custody of a minor where appeal is not specifically provided for elsewhere. Ill. S. Ct. R. 306(a)(5) (eff. Feb. 26, 2010)). In *Curtis B.*, the supreme court explicitly stated that because an order setting a permanency goal is not appealable like a dispositional order, appeal is not provided for elsewhere in the rules; therefore such an appeal falls within the plain language of Supreme Court Rule 306(a)(5). *Curtis B.*, 203 Ill. 2d at 63. Following the next permanency review hearing, respondent may seek review of the court's order under this rule.

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, we dismiss this appeal for lack of jurisdiction.

¶ 22 Appeal dismissed.