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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-0001774-ME

DEBORAH GOSS

APPELLANT

v. APPEAL FROM BOONE FAMILY COURT
HONORABLE LINDA R. BRAMLAGE, JUDGE
ACTION NO. 07-CI-01481

FRANK HARRISON; ASHLEY NICOLE
BLAIR; AND M.J.H.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; CLAYTON AND MOORE, JUDGES.

ACREE, CHIEF JUDGE: Deborah Goss appeals from the September 20, 2012 findings of fact, conclusions of law, and order of the Boone Family Court. That judgment determined that Goss did not have standing to intervene in a custody proceeding between Frank Harrison (Father) and Ashley Nicole Blair (Mother),

regarding their minor child, M.J.H. Because we find no error with the family court's judgment, we affirm.

Goss and M.J.H.'s maternal grandmother, Anita Yeakley, lived together and were engaged in an intimate relationship from 2003 until 2010. After M.J.H.'s birth in 2005, Goss and Yeakley assisted Mother in caring for M.J.H. by providing food and clothing, transportation, and childcare. Goss testified that she was highly involved in M.J.H.'s life and acted as a co-parent alongside Mother. She regularly attended M.J.H.'s medical visits and school activities and served as the school's primary contact for M.J.H. There does not appear to be a dispute among the parties as to the level of Goss's involvement.

Goss testified that Father was absent for the first two years of M.J.H.'s life. In 2007, Father filed a petition to establish custody and visitation with M.J.H. Thereafter, Father and Mother entered into an agreed order to share joint custody. The order also established a set time-sharing schedule for Father, which he consistently exercised. Following entry of the agreed order, Goss continued to be highly involved in M.J.H.'s upbringing, with M.J.H. residing solely with Goss and Yeakley for a period of time.

Goss and Yeakley separated in March of 2010. Following the separation, Goss continued to be heavily involved in M.J.H.'s life. In December 2010, Father filed a petition seeking sole custody of M.J.H. and an order prohibiting Goss from having further contact with the child. Attached to the motion was an affidavit indicating that Mother had abandoned M.J.H. to the care

of Goss and Yeakley, and that the two had made numerous decisions regarding M.J.H.'s medical care without first consulting Father. Father specifically alleged that Yeakley and Goss were attempting to alienate M.J.H. from Father and interfering with his ability to exercise time-sharing. A guardian ad litem ("GAL") was appointed to conduct an investigation and prepare recommendations to the family court. In August 2011, the GAL filed a report indicating that Goss and Yeakley had consistently served as a source of stability for M.J.H. and provided him with a safe and positive environment. The GAL noted that M.J.H. spent a large amount of time at Goss's home and recommended that the parenting schedule remain the same, based on Goss's positive role in M.J.H.'s life. Ten days later, Father and Mother entered into an agreed order in which they again agreed to share joint custody of M.J.H. Thereafter, Goss continued to be involved in M.J.H.'s life, including attending school events, providing school transportation, and hosting his birthday party.

At some time in 2012, Mother informed Goss that she was no longer allowed to see or speak to M.J.H. As a result, Goss filed a motion to intervene in the custody proceeding. In addition, Goss filed a motion for *de facto* custody or, in the alternative, visitation with M.J.H. Following a hearing, the family court issued its findings of fact, conclusions of law, and order on September 20, 2012. Therein, the family court concluded that Goss did not qualify as a grandparent for purposes of grandparent visitation under Kentucky Revised Statutes (KRS) 405.021, nor did

she qualify as a *de facto* custodian pursuant to KRS 403.270(1)(a). As a result, the family court denied Goss's motion to intervene. This appeal followed.

We review a family court's factual findings under the clearly erroneous standard. *B.C. v. B.T.*, 182 S.W.3d 213, 219 (Ky. App. 2005). A factual finding is clearly erroneous if it is unsupported by substantial evidence – that is, evidence sufficient to induce conviction in the mind of a reasonable person. *Id.* We will not substitute our opinion for that of the family court with regard to the weight given to certain evidence. *Id.* Whether we would have decided the matter differently has no bearing on our review. Additionally, legal conclusions are reviewed *de novo*. *L.D. v. J.H.*, 350 S.W.3d 828, 830 (Ky. App. 2011). .

Goss's sole argument on appeal is that the family court erred when it concluded that she lacked standing to intervene. However, Goss does not challenge the family court's findings that she neither qualifies as a grandparent nor a *de facto* custodian. Instead, Goss argues that she should have been granted standing based on the doctrine of waiver as discussed in *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010). For the following reasons, we disagree.

The *Mullins* case involved a custody dispute between a biological mother, Picklesimer, and her former same-sex partner, Mullins. *Id.* at 569. The Kentucky Supreme Court determined that Mullins had standing to pursue custody under KRS 403.822 as a "person acting as a parent" as defined by KRS 403.800(13), a part of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). *Id.* at 575. In so holding, the Court compared the facts to those of

a Pennsylvania Superior Court case in which a former partner was granted standing “as a result of the parent-like relationship that was allowed to develop between the former partner and the child through ‘the participation and acquiescence of the natural parent.’” *Id.* at 576 (quoting *J.A.L. v. E.P.H.*, 682 A.2d 1314 (Pa. Super. Ct. 1996)). After examining the relationship between Mullins and Picklesimer, and the couple’s relationship to the minor child, the Court concluded that Mullins met the definition of a person acting as a parent. *Id.*

Only after establishing that Mullins had standing to challenge custody did the Court then engage in an analysis of waiver of superior right of custody to determine whether Mullins had any custody rights. *Id.* The *Mullins* Court held that there was sufficient evidence to support a finding that Picklesimer had waived her superior custody rights for the purpose of co-parenting the minor child as a joint custodian with Mullins. *Id.* at 581. As a result, Mullins was able to establish a custody right independent of a biological parent or *de facto* custodian. *Id.*

In the case before us, Goss has confused the requirements necessary to establish *standing* in a custody dispute with the requirements necessary to establish actual *custody rights*. Only after first establishing standing – whether as a grandparent, *de facto* custodian, or otherwise – can an argument for waiver be considered for purposes of establishing a custody right. Although common elements may weave through the family court’s analysis of these concepts, they are independent of each other and therefore must be proven independently. The *Mullins* Court engaged in an analysis of waiver only after first establishing that

Mullins had standing as a person acting as a parent under the UCCJEA. *Mullins*, 317 S.W.3d at 578; *see also Moore v. Asente*, 110 S.W.3d 336 (Ky. 2003) (adoptive parents granted standing based on their physical custody of child and then granted custody rights based on birth parents' waiver of superior rights to custody). Goss does not challenge her lack of standing as a grandparent or *de facto* custodian, and she has failed to argue that she has standing otherwise than by waiver. Accordingly, we find no error with the family court's order denying her motion to intervene.

For the foregoing reasons, we affirm the September 20, 2012 findings of fact, conclusions of law, and order of the Boone Family Court.

ALL CONCUR.

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