

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

IN THE MATTER OF A.R.W. : Case Nos. 21CA19, 22CA7
:
:
: DECISION AND
: JUDGMENT ENTRY
:
: **RELEASED 8/16/2022**

APPEARANCES:

K. Robert Toy, Toy Law Office, Athens, Ohio, for appellant.

Timothy C. Loughry, Loughry, Buell & Sipe, LLC, Marietta, Ohio, for appellees.

Hess, J.

{¶1} Putative Father appeals the juvenile court's decision denying his motion to intervene and dismissing his complaint for parentage, allocation of parental rights and responsibilities, and parenting time. In a separate appeal, which has been consolidated with the appeal from the juvenile court, Putative Father appeals the probate court's decision denying his motion under Civ.R. 60(B) to vacate or set aside the final decree of adoption.

{¶2} Putative Father raises four assignments of error in his appeal of the juvenile court's decision. He argues that the juvenile court erred: (1) in determining that it did not have jurisdiction over parentage and custody issues due to the previously filed adoption petition in probate court, and (2) in dismissing his motion to intervene and his parentage complaint. His remaining two assignments of error challenge the adoption consent

requirements and the adoption statute. Although raised in his appellate brief filed in the juvenile case appeal, these two remaining assignments of error challenge the probate court proceedings. In his third assignment of error, he argues that no paternity was established therefore the probate court could not determine whether his consent was required without further proceedings in the juvenile court. And in his fourth assignment of error, he argues that the adoption statute, specifically the putative father registry, is unconstitutional on its face and as applied. These are challenges to the adoption proceeding in the probate court, not the juvenile court's decision, and we will address them when we address his probate court challenges.

{¶13} Putative Father raises two assignments of error in his appeal of the probate court's decision denying his Civ.R. 60(B) motion. In his first assignment of error, he contends that he was fraudulently denied standing in the juvenile court. This challenges the juvenile court proceedings, not the probate court adoption proceedings, and we will address it when we address his challenges to the juvenile court proceedings. In his second assignment of error, he argues that the putative father registry is unconstitutional on its face.

{¶14} We address the probate court proceedings first. We find that Putative Father was not a party to the adoption proceeding and therefore has no standing to file a Civ.R. 60(B) motion. We overrule the three assignments of error challenging the probate court proceedings because Putative Father lacked standing to challenge them.

{¶15} As to the three assignments of error that challenge the juvenile court proceedings, we find that the juvenile court had jurisdiction over his motion to intervene and parentage complaint at the time he filed them. However, soon thereafter the probate

court issued a final decree of adoption, terminating both his alleged parental rights and the juvenile court's jurisdiction. Thus, even though the juvenile court erred when it determined it lost jurisdiction when the adoption petition was filed on August 5, 2021, the error was harmless because at the time the juvenile court made its ruling on November 16, 2021, the probate court had issued its final decree of adoption. We further find that the juvenile court correctly denied his motion to intervene and dismissed his parentage complaint. The proceedings in the juvenile court were filed after the adoption petition. Thus, they had no effect on the probate court's ability to rule on the adoption petition. Finally, Putative Father failed to comply with App.R. 16(A)(7) in his challenge to the juvenile court's legal custody proceeding. We overrule the three assignments of error that challenge the juvenile court proceedings.

{¶6} We affirm the judgments of the juvenile and probate courts.

I. PROCEDURAL HISTORY

{¶7} A.R.W. was born on August 21, 2020. On August 24, 2020, Adoptive Parents filed a complaint in the Washington County Juvenile Court to be designated legal custodians of A.R.W. They alleged the father was unknown and not listed on the birth certificate. Biological Mother filed a consent to legal custody for the purposes of custody and eventual adoption. The juvenile court entered a final, appealable agreed entry the following day, August 25, 2020, designating Adoptive Parents the residential and legal custodians of A.R.W.¹

¹ An award of legal custody does not terminate the parent-child relationship, but only vests in the custodian the physical care and control of the child, while the residual parental rights and responsibilities remain intact with the child's parent or parents. This includes the ability to petition the juvenile court for a custody modification in the future. See *generally In re K.G.*, 12th Dist. Clinton No. CA2020-11-017, 2021-Ohio-2154, ¶ 17.

{¶8} Approximately a year later, on August 5, 2021, Adoptive Parents filed an adoption petition in the Washington County Probate Court. They included an Ohio Putative Father Registry certification showing that there were no putative fathers timely registered under R.C. 3107.063. Biological Mother filed a consent to the adoption and the probate court issued a final decree of adoption on November 15, 2021.

{¶9} On November 1, 2021, 14 months after the juvenile court issued its final order granting legal custody to Adoptive Parents, Putative Father moved to intervene in the custody case and filed a complaint for parentage and parental rights. Two weeks later, on November 16, 2021, the juvenile court denied his motion to intervene and dismissed his parentage complaint. The juvenile court found that the probate court had issued a final decree of adoption a day earlier on November 15, 2021, and this terminated any rights Putative Father, or any man claiming to be the father, had prior to the filing of the adoption.

{¶10} On December 13, 2021, Putative Father filed an appeal of the probate court's final adoption decree and a separate appeal of the juvenile court's denial of his motion to intervene and dismissal of his parentage complaint. We dismissed his appeal of the probate court's adoption decree because he had no standing:

Because [Putative Father] was not a party to the adoption proceeding, he has no standing to contest the merits of the trial court's adoption decision or the procedure it used in making it. *In re Adoption of T.B.S.*, 4th Dist. Scioto No. 07CA3139, 2007-Ohio-3559, ¶ 2. * * * [Putative Father] does not have standing to challenge the trial court's decision in the adoption proceeding.

In the Matter of the Adoption of A.R.W., 4th Dist. Washington No. 21CA21, Judgment Entry (Feb. 18, 2022).

{¶11} While his appeal of the probate court's adoption decree was still pending, Putative Father filed a Civ.R. 60(B) motion to vacate the adoption petition. Putative Father

included an affidavit with his Civ.R. 60(B) motion which stated that he believed he was the biological father of A.R.W. and that the child was conceived while he and Biological Mother were in a drug rehabilitation facility together from October 2019 to January 2020. After he drove Biological Mother to her residence following rehabilitation, he served a 30-day jail term beginning January 6, 2020. Following the jail term, he visited Biological Mother twice between January 6, 2020 and May 2020. In May 2020, he began serving a 16-month term in a minimum-security correctional facility for non-violent felony offenders and has had no further contact with Biological Mother. He states that while serving time in the correctional facility, he wrote several letters to various courts and a children services agency attempting to locate the child and establish paternity. When his phone was returned to him upon release from the correctional facility on August 10, 2021, he texted Biological Mother, “hey what’s up” but heard nothing back. Although he states he knew of the pregnancy since December 20, 2019 and made efforts to establish paternity through letters to courts, he did not register with the Ohio Putative Father Registry.

{¶12} Putative Father argued that: (1) his failure to register as a putative father with the OPFR was due to “excusable neglect” under Civ.R. 60(B)(1); (2) his effort to locate A.R.W. and establish paternity was “newly discovered evidence” “demonstrating paternity” under Civ.R. 60(B)(2); (3) Biological Mother’s failure to place his name on the birth certificate or otherwise disclose his identity was “fraud” under Civ.R. 60(B)(3); and (4) the OPFR statute violated his due process and equal protection rights and constituted an “other reason justifying relief” under Civ.R. 60(B)(5). He contends all of this was a basis to set aside the adoption decree.

{¶13} Adoptive Parents opposed the motion on the grounds that: (1) Putative Father was not a party and thus cannot avail himself to Civ.R. 60(B); (2) he could have filed a motion to intervene in the adoption petition to seek to become a party under Civ.R. 24 but failed to do so; (3) he could have registered with the OPFR anytime following his alleged sexual intercourse with Biological Mother and failed to do so; (4) Biological Mother had no legal obligation under R.C. 3705.09(F)(2) to place Putative Father's name on the birth certificate because they did not sign an acknowledgment of paternity affidavit thus there was no "fraud"; and (5) Civ.R. 60(B) motion is not the proper avenue to raise constitutional claims regarding adoption.

{¶14} The probate court overruled the motion and Putative Father filed an appeal from the probate court's denial of his Civ.R. 60(B) motion. We consolidated his second probate court appeal (having already dismissed his first probate appeal) with his appeal of the juvenile court's order denying his motion to intervene and dismissing his parentage complaint.

II. ASSIGNMENTS OF ERROR

{¶15} Putative Father assigns the following errors by the juvenile court:

1. The trial court erred by applying a mistake of law – juvenile court did not lose jurisdiction when the petition for adoption was filed in probate court – jurisdiction was concurrent.
2. The trial court erred by denying [Putative Father's] Motion to Intervene and by dismissing [his] Complaint for Parentage, Allocation of Parental Rights, and Responsibilities, and Parent Time and then proceeding with the Adoption.
3. The Trial Court Erred because No Paternity was Ever Established Despite [Putative] Father's Attempts, [Biological] Mother's Knowledge and Admissions as to Who [Biological] Father Was, Therefore, the Issue as to Whether Consent was Required Could Not Be Determined by the Probate Court without Further Inquiry of the Juvenile Court into Paternity.

4. The Putative Father Registry Provisions are Unconstitutional.²

{¶16} Putative Father assigns the following errors by the probate court for our review:

1. Putative Father was fraudulently and willfully denied standing in this case by the [Biological] Mother, Adoptive Parents and the Washington County Juvenile Court.
2. The Putative Father Registry Provisions are Unconstitutional and the Adoption Decree should be Vacated.

III. LEGAL ANALYSIS

A. Probate Court's Adoption Decree

{¶17} We address Putative Father's challenges to the probate court's adoption decree first (Juvenile Brief Assignments of Error Three and Four and Probate Brief Assignment of Error Two).

{¶18} Adoption is governed by R.C. Chapter 3107. To adopt a child, the consent of a putative father might be required if he timely registered on the OPFR, filed a timely objection to the adoption petition, participated in the hearing on the adoption petition, and was found by the court to be the father and that he did not willfully abandon the child or mother. A "putative father" is a man who might be the biological father of a child but has no legal relationship with the child through marriage to the biological mother or by establishing legal paternity. See *In re Adoption of H.N.R.*, 145 Ohio St.3d 144, 2015-Ohio-5476, 47 N.E.3d 803, ¶ 16; R.C. 3107.062. To register with the OPFR, a putative father must complete a short form on a webpage maintained by Ohio Department of Jobs and

² In the argument section of his brief, this assignment of error is identified, "The adoption statute is unconstitutional on its face and as applied." We have used the error he designated in the "Assignments of Error" section of the brief.

Family Services or submit it by mail. There is no charge to register, and it may be done at any time. *In re Adoption of H.N.R.* at ¶ 17. However, to preserve the requirement of his consent to an adoption, the putative father must register “before or not later than fifteen days after the birth of the child.” R.C. 3107.062; *In re Adoption of H.N.R.* at ¶ 17 (“Registering as a putative father is relatively simple”).

{¶19} Putative Father did not register on the OPFR.

{¶20} On August 5, 2021, the Adoptive Parents filed an adoption petition and included an OPFR certification showing that there were no putative fathers timely registered. The Biological Mother consented, and the final decree of adoption was granted November 15, 2021. Putative Father filed a motion under Civ.R. 60(B) to set aside the adoption. The probate court denied his motion on the ground that he lacked standing:

The [Putative Father] was not a party to the Adoption and as such has no standing to file a Civil Rule 60(B) Motion. Rule 60(B) states that a party may file a motion to relieve a party from a final judgment. Since he was never a party to the case, [Putative Father] has no standing to file a rule 60(B) Motion. (Emphasis sic.)

Although the probate court found he lacked standing to file a Civ.R. 60(B) motion, it addressed the substance of the motion and found it to be meritless because he had failed to timely register with the OPFR or otherwise establish legal paternity prior to the filing and granting of the adoption.

{¶21} Putative Father’s consolidated appeal of the probate court’s denial of his Civ.R. 60(B) motion raises purported errors in the underlying adoption proceeding. His third and fourth assignments of error set forth in his juvenile appellate brief and the second assignment of error set forth in his probate appellate brief assert that (1) the probate court

erred in its determination that his consent was not required and (2) the putative father registry used by the probate court to make that determination is unconstitutional because it does not give just cause or reasonable excuse when a putative father fails to avail himself of the registry.

{¶122} We need not address the substance of Putative Father’s assignments of error because he did not have standing to file the Civ.R. 60(B) motion in the probate adoption proceeding. *Nicholas v. State Farm Ins.* 11th Dist. No. 99-T-0030, 2000 WL 757355 (Jun 9, 2000). In *Nicholas*, Nationwide Insurance filed a Civ.R. 60(B) motion to have a declaratory judgment vacated even though Nationwide Insurance was not a party to the declaratory judgment action and had never moved to intervene. On appeal, the appellate court held that Nationwide Insurance did not have standing to file a Civ.R. 60(B) motion:

The opening sentence of Civ.R. 60(B) states that “[o]n motion and upon such terms as are just, the court may relieve a *party or his legal representative* from a final judgment, order or proceeding * * *.” (Emphasis added.) From this language, it has been held that a person or entity who is neither a party nor a legal representative of a party may not properly obtain relief from a judgment by way of Civ.R. 60(B), unless that person or entity first becomes a party through intervention under Civ.R. 24. See *Hardman v. Chiaramonte* (1987), 39 Ohio App.3d 9, 10, 528 N.E.2d 1270 (holding that the administrator of an estate could not file a Civ.R. 60(B) motion in a parentage action when he had never made a motion to intervene as a party in the action); *Pliable Veneers, Inc. v. Omni Store Fixtures Corp.* (May 23, 1997), Lucas App. No. L-96-145, unreported, at 9, fn. 5, 1997 Ohio App. LEXIS 2191 (stating that a corporation could not file a Civ.R. 60(B) motion in an action in which it was not a party). See, also, 2 Klein & Darling, Civil Practice (1997) 645, Section 60-21.

Id. at *4; *In Re M.H.*, 6th Dist. Lucas No. L-18-1012, 2018-Ohio-3817, ¶ 15 (“A non-party lacks standing to file a Civ.R. 60(B) motion to vacate judgment”); 63 Ohio Jur. 3d

Judgments § 476 (non-party lacks standing to file Civ.R. 60(B) motion to vacate judgment).

{¶23} The probate court correctly determined that Putative Father did not have standing to file a Civ.R. 60(B) motion to vacate a judgment in a case in which he was not a party and properly denied the motion. We dismissed his previous appeal of the final decree of adoption because as a non-party he did not have standing to file an appeal. Similarly, in his current appeal, we affirm the probate court's denial of his Civ.R. 60(B) motion to vacate the final decree of adoption because as a non-party he did not have standing to file the motion. Because Putative Father was not a party to the adoption proceeding, he cannot appeal it, he cannot seek to have it vacated or modified under Civ.R. 60(B), and he cannot have the final decree of adoption or any legal issues arising from it reviewed by an appellate court. We overrule Putative Father's juvenile appellate brief's third and fourth assignments of error (challenging that his consent was not required in the probate court adoption petition and his constitutional challenge to the OPFR) and his probate brief's second assignment of error (constitutional challenge to the OPFR). We affirm the probate court's judgment.

B. Juvenile Court's Denial of Motion to Intervene and Dismissal of Complaint

{¶24} Putative Father raises three challenges to the juvenile court's order denying his motion to intervene and dismissing his parentage complaint. He contends: (1) that the juvenile court erred as a matter of law when it determined that the probate court had exclusive jurisdiction over A.R.W. when Putative Father sought to intervene and filed a parentage complaint (Juvenile Brief Assignment of Error One); (2) the juvenile court erred in denying his motion to intervene and dismissing his parentage complaint (Juvenile Brief

Assignment of Error Two); and (3) that he was fraudulently and willfully denied standing in the juvenile court by the Biological Mother and Adoptive Parents (Probate Brief Assignment of Error One).

{¶25} The juvenile court granted legal custody of A.R.W. to Adoptive Parents on August 25, 2020. No appeal from the custody order was taken. More than a year later, on November 1, 2021, Putative Father filed a motion to intervene and a complaint for parentage, allocation of parental rights and responsibilities and parenting time. Putative Father alleged that he believed he was the biological father of A.R.W. In the complaint, he requested a court order for genetic testing and a determination of the biological father. Though there had been no genetic testing, Putative Father alleged in his motion to intervene that Biological Mother knew he was the biological father. In an affidavit attached to the filings, Putative Father stated that he and Biological Mother were in a “rehab program” together from October 2019 through January 2020 and had unprotected sex with each other. He also attached several documents, which he described were copies of messages he and another relative sent to Biological Mother.

{¶26} On November 16, 2021, the juvenile court ruled on Putative Father’s motion to intervene. It found that the probate court had granted Adoptive Parents’ adoption petition on November 15, 2021. The juvenile court found:

At the time of the filing of the Petition for Adoption no matters were pending in this Court and as such the Probate Court had exclusive jurisdiction of this child at the time the movant filed his Motion to Intervene on November 1, 2021. On November 15, 2021 the Petition for Adoption was granted by the Probate Court based on the Consent of the mother and the fact that no man, claiming to be the father timely registered pursuant to R.C. 3107.062 as a putative father.

[Putative Father] cannot pursue his claim in the Juvenile Court since the Probate Court had exclusive jurisdiction over the child in question at the

time he filed his Motion to Intervene and the Complaint for Custody. The granting of the Adoption has now terminated any rights [Putative Father] or any man claiming to be the father had prior to the filing of the Adoption.

The juvenile court denied the motion to intervene and dismissed the parentage complaint.

1. The Jurisdictional-Priority Rule and Probate and Juvenile Courts

{¶27} In his first assignment of error, Putative Father contends that the trial court erred when it determined that the juvenile court lost jurisdiction when the petition for adoption was filed on August 5, 2021 in the probate court.

{¶28} The juvenile court found that for it to have jurisdiction over the parentage complaint (i.e., “over the issue of genetic testing and custody”), the motion to intervene needed to be filed before the adoption petition. The juvenile court also determined that because the probate court had granted the adoption petition at the time the juvenile court considered and ruled on the motion to intervene, Putative Father’s rights had been terminated by the final decree of adoption and his motion to intervene should be denied and his paternity complaint dismissed.

{¶29} The probate court has exclusive jurisdiction over adoptions. *In re Adoption of M.G.B.-E.*, 154 Ohio St.3d 17, 2018-Ohio-1787, 110 N.E.3d 1236, ¶ 22. The jurisdiction to determine parentage is exclusively vested in the juvenile and domestic relations courts. *State ex rel. Jorgensen v. Fuller*, 5th Dist. Delaware No. 19CAD030023, 2019-Ohio-1208, ¶ 8. Therefore, the probate court and the juvenile court are not courts of concurrent jurisdiction. The jurisdictional-priority rule states that “ ‘As between courts of concurrent jurisdiction, the tribunal whose power is first invoked by the institution of proper proceedings acquires jurisdiction, to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties.’ ” *In re Adoption of M.G.B.-E.*, at ¶

25, quoting *State ex rel. Phillips v. Polcar*, 50 Ohio St.2d 279, 364 N.E.2d 33 (1977). Because the probate court and the juvenile court are not courts of concurrent jurisdiction, the jurisdictional-priority rule does not apply here. *Id.* at ¶ 26-27 (jurisdictional-priority rule did not apply to preclude the probate court from proceeding on stepfather's adoption petitions even though father first invoked the domestic relations court's jurisdiction with motion to reestablish parenting time). Therefore, the pending adoption petition in probate court did not preclude the juvenile court from exercising jurisdiction over Putative Father's parentage complaint that was subsequently filed in juvenile court.

{¶30} However, even though the juvenile court could have considered the motion to intervene and exercised jurisdiction over the parentage complaint while the adoption proceeding was pending in probate court, it was not required to move forward with juvenile court proceedings after learning of the adoption case in probate court. *See In re B.N.S.*, 2020-Ohio-4413, 158 N.E.3d 712 (12th Dist.).

{¶31} In *In re B.N.S.*, grandfather filed for and was granted legal custody of children in juvenile court in 2014. In June 2019, grandfather filed adoption petitions for the children in probate court. He alleged parental consent was not required due to their lack of contact over the preceding year. In September 2019, three months after the grandfather initiated the adoption case, parents filed a motion in the juvenile court to modify their visitation and parenting time. The grandfather asked the juvenile court to stay further hearings on parenting issues and "to relinquish its jurisdiction to the Probate Court." *Id.* at ¶ 6. He argued that it was likely that his adoption petitions would be granted and it would not be in the children's best interest to proceed with a visitation motion while the adoption matter was pending. The juvenile court agreed with the grandfather and stayed the juvenile

court proceedings and relinquished jurisdiction pending the outcome of the adoption petitions. The juvenile court stated that “if the matter was not resolved with finality in the Probate Court, counsel may at that time file to reset the pending matters for further proceedings” in the juvenile court. *Id.* at ¶ 7.

{¶32} The parents argued that based on *In re M.G.B.-E.*, *supra*, the jurisdictional-priority rule does not apply and the juvenile court was not precluded from proceeding with the visitation motion. The appellate court agreed:

It is well settled that the probate court has exclusive jurisdiction over adoption petitions. *In re Adoption of Pushcar*, 110 Ohio St.3d 332, 2006-Ohio-4572, 853 N.E.2d 647, ¶ 9. By contrast, the juvenile court has jurisdiction of issues related to custody and parenting time. R.C. 2151.23(A)(2). Consequently, because the Probate Court has jurisdiction over Grandfather's adoption petitions, and the Juvenile Court has jurisdiction over Parents' motion, the two courts are not courts of concurrent jurisdiction and the jurisdictional-priority rule does not apply in this case. As a result, we find the Juvenile Court was not precluded from proceeding in the Visitation Case or from considering Parents' motion. *In re Adoption of M.G.B.-E.*, 2018-Ohio-1787, 154 Ohio St.3d 17, 110 N.E.3d 1236 at ¶ 27.

In re B.N.S., 2020-Ohio-4413, 158 N.E.3d 712, ¶ 18. However, the appellate court found that even though the juvenile court was *permitted* to consider the parents' motion, it was not *required* to do so after learning of the adoption case. The juvenile court had discretion to stay the case pending the outcome of the probate court's adoption proceedings. A final decree of adoption would permanently terminate parental rights and render moot the juvenile court proceedings:

[W]e find that it was within the court's discretion to defer consideration of Parents' motion, and to stay the Visitation Case entirely, until the resolution of the Adoption Case. First, although Parents claim the Juvenile Court's reasoning is “not explained,” it is clear the court elected to stay the Visitation Case pending the outcome of the Adoption Case because Grandfather filed his petitions for adoption first, and the Probate Court's decision on those petitions could be dispositive of the issues raised in Parents' motion. That is, if the Probate Court grants Grandfather's adoption petitions, the final

adoption decree will terminate the Juvenile Court's jurisdiction and will permanently terminate Parents' parental rights. Because such an outcome is possible, it would be unnecessary to continue proceedings in the Juvenile Court which could be rendered moot by the outcome of the Adoption Case in Probate Court. As stated by the Juvenile Court in its decision and entry, such simultaneous proceedings in the Juvenile Court would simply delay an otherwise proper determination of the rights of the parties and could subject the children to more litigation than necessary. Consequently, because Grandfather's petitions for adoption were filed first, and a determination regarding those petitions could dispose of the parenting issues pending before the Juvenile Court, we find it was within the Juvenile Court's discretion to stay the proceedings in the Juvenile Court pending the outcome of the Adoption Case. (Citations omitted.)

Id. at ¶ 19.

{¶33} Here we find that the juvenile court erred when it stated that it “lost jurisdiction on August 5, 2021 * * * when the Petition for Adoption was filed.” It did not lose jurisdiction, it continued to have jurisdiction over parentage issues while the adoption proceeding was pending. However, we find that this error is harmless for two reasons. First, the final decree of adoption had already been issued from the probate court when the juvenile court denied the motion to intervene and dismissed the parentage complaint. As a result, as of November 16, 2021 when the juvenile’s decision was rendered, the final adoption decree had permanently terminated Putative Father’s rights and the juvenile court’s jurisdiction. The adoption decree rendered moot the parentage proceedings in the juvenile court. It was no longer relevant who the biological father might be. The juvenile court’s judgment denying the motion to intervene and dismissing the complaint was proper for the other reason given by the juvenile court: the final decree of adoption terminated Putative Father’s rights and the juvenile court’s jurisdiction.

{¶34} Second, even if the juvenile court had considered the motion earlier when it had jurisdiction over the motion and the parentage complaint (i.e., from November 1,

2021 to November 15, 2021), the juvenile court could have at its discretion – like the juvenile court in *In re B.N.S.* – stayed the juvenile court proceedings pending the outcome in the adoption case. The juvenile court proceeding could have been stayed while the probate court adoption proceeding moved forward because, as we discuss below, the juvenile proceeding, which was filed after the adoption petition, was not necessary for the probate court to decide the adoption petition. *In re Adoption M.G.B.-E.* at ¶ 35.

2. Juvenile Court Properly Dismissed Parentage Action Filed After Adoption Petition

{¶35} In his second assignment of error, Putative Father argues that the juvenile court erred in denying his motion to intervene and dismissing his parentage complaint. Putative Father’s legal argument is that he should have been granted a right to intervene in the juvenile case in November 2021 so that he could have genetic testing performed to determine whether he was the biological father. And, while this paternity action was proceeding in juvenile court, the probate court should have stayed the pending adoption proceeding, which had commenced back on August 5, 2021. Even though Putative Father did not request a stay in the probate court when he filed his paternity complaint in the juvenile court, he contends, “The August 5, 2021 Petition for Adoption should have been stayed until paternity was established.” In other words, he argues that – even though his parentage proceeding was filed in juvenile court *after* the commencement of the adoption petition – the existence of his parentage proceeding prevented the probate court from exercising jurisdiction over the adoption petition.

{¶36} The notion that an adoption proceeding must be halted when a parenting or parentage issue is pending in juvenile or domestic court comes from the broad language in the syllabus of *In re Adoption of Pushcar*, 110 Ohio St.3d 332, 2006-Ohio-4572, 853

N.E.2d 647: “When an issue concerning parenting of a minor is pending in the juvenile court, a probate court must refrain from proceeding with the adoption petition.” Later, the Supreme Court of Ohio clarified that it intended to use the term “parentage” not “parenting” in the *Pushcar* syllabus. *In re G.T.B.*, 128 Ohio St.3d 502, 2011-Ohio-1789, 933 N.E.2d 236, ¶ 8. *Pushcar* involved a father who had timely registered as a putative father, was listed on the birth certificate, and commenced a parentage action prior to the stepfather’s filing of the adoption petition. The biological mother claimed the father’s consent was not necessary because he failed without justifiable cause to communicate or support the child for at least one year prior to the filing of the adoption under R.C. 3107.07(A).

{¶37} The Court determined that this provision (R.C. 3107.07(A)) applied to a “father” and that a parentage action was needed to establish the man’s status as a “father.” The timing of the filing of the parentage action, which was prior to the filing of the adoption petition, was crucial to the analysis in *Pushcar*. The Court noted that while it is well established that the probate court has original, exclusive jurisdiction to hear and determine adoption proceedings, the Court “also recognized ‘the bedrock proposition that once a court of competent jurisdiction has begun the task of deciding the long-term fate of a child, all other courts are to refrain from exercising jurisdiction over that matter.’” *Pushcar* at ¶ 9-10. Therefore, the Court held that the probate court should wait until after the juvenile court determined paternity before proceeding with adoption proceedings. *Id.* at ¶ 14. More recently, the Supreme Court of Ohio has explained that it “has retreated from this broad reading of *Pushcar*.” *In re Adoption of M.G.B.-E.*, 154 Ohio St.3d 17, 2018-Ohio-1787, 110 N.E.3d 1236, ¶ 34.

{¶38} Although it involves a different fact pattern, we find the Court’s decision in *In re Adoption of M.G.B.-E.*, *supra*, instructive. There, a father (not a “putative” father) had lost contact with his children for at least six years after he and mother divorced. Father eventually learned of children’s whereabouts and filed a motion in domestic relations court to reestablish parenting time. Four days after father filed that motion, stepfather filed an adoption petition in probate court. The probate court determined that father’s consent to stepfather’s adoption was not required because father failed without justifiable cause to provide more than de minimis contact for at least one year prior to the filing of the adoption petition. The Twelfth District Court of Appeals affirmed the probate court’s decision and held that the probate court had jurisdiction to proceed with the adoption petition even though there were pending parenting matters in domestic court.

{¶39} On appeal to Supreme Court of Ohio, the father urged the Court “to hold that *any* parenting proceeding pending in a court with continuing jurisdiction over a child precludes a probate court from exercising jurisdiction over an adoption petition concerning that child.” (Emphasis added.) *Id.* at ¶ 23. The difference between the father’s argument in *M.G.B.-E.* and Putative Father’s argument here is that in *M.G.B.-E.* the father wanted to expand *Pushcar*, *supra*, to require a probate court’s adoption proceedings to be stayed by an *earlier-filed visitation/parenting time matter* in a domestic court; whereas here, Putative Father wants to expand *Pushcar* to require a probate court’s adoption proceeding be stayed by a *later-filed parentage action* in juvenile court. Both are arguing for an expansion of *Pushcar*. The Supreme Court of Ohio rejected *M.G.B.-E.* father’s argument, and, for similar reasons, we reject Putative Father’s argument.

{¶40} The Supreme Court of Ohio discussed the broad language in the syllabus of *Pushcar*, “When an issue concerning parenting of a minor is pending in the juvenile court, a probate court must refrain from proceeding with the adoption of that child.” The Court acknowledged that several other cases seemed to support an expansive reading of *Pushcar* when they stated, “we intended the holding [in *Pushcar*] to apply to all parenting issues pending in a juvenile court.” *In re Adoption M.G.B.-E.* at ¶ 33, citing *In re Adoption of P.A.C.*, 126 Ohio St.3d 236, 2010-Ohio-3351, 933 N.E.2d 236, ¶ 8 and *In re Adoption of G.V.*, 126 Ohio St.3d 249, 2010-Ohio-3349, 933 N.E.2d 245, ¶ 8. The Court explained that *Pushcar*, *P.A.C.* and *G.V.* all involved parentage cases that had been filed and pending in juvenile court prior to the filing of the adoption petition in probate court:

Like *Pushcar*, both of those cases involved questions of paternity pending in juvenile court.

Since *P.A.C.* and *G.V.*, however, this court has retreated from this broad reading of *Pushcar*. We have stated that the context of *Pushcar* “manifestly indicates that the court intended ‘parentage,’ ” not “parenting,” in its syllabus. “Parentage,” which refers to “[t]he quality, state or condition of being a parent,” is a more limited term than “parenting.” (Citations omitted.)

In re Adoption of M.G.B.-E. at ¶ 34.

{¶41} The Court explained that the probate court must refrain from proceeding on an adoption petition where a pending paternity case affects the probate court’s ability to rule on the adoption petition:

The cases in which we have held that a probate court must refrain from proceeding on an adoption petition have involved the issue of paternity, which affected the probate court’s *ability* to rule on the concurrent adoption petitions. See *Pushcar*; *P.A.C.*; *G.V.* But when a parenting issue pending in a juvenile or domestic-relations court does not affect a probate court’s ability to determine the statutory prerequisites for adoption, we have not required the probate court to refrain from exercising its exclusive jurisdiction over adoption proceedings. That was the case in *Allen Cty.*, which involved a jurisdictional conflict between a juvenile court that retained continuing

jurisdiction over a dependent and abused child and a probate court that was considering a petition by the child's foster parents to adopt that child, with the mother's consent. This court held that the probate court had jurisdiction to consider the adoption petition despite the ongoing juvenile-court proceedings regarding permanent custody. *Id.* at ¶ 41. We noted that the statute governing the juvenile court's jurisdiction implicitly recognized the probate court's jurisdiction to conduct adoption proceedings while custody proceedings were pending in the juvenile court. *Id.* at ¶ 34.

We also stated in *Allen Cty.* that our holding in that case was consistent with our decision in *Pushcar*. *Allen Cty.* at ¶ 37. The factor that distinguished *Pushcar* from *Allen Cty.* was the *Pushcar* probate court's inability to rule on the adoption petition without a decision on the factual question of paternity that was pending in the juvenile court. We explained that “the point in *Pushcar* was that pursuant to the adoption statutes, the probate court could not proceed with the adoption without the consent of the putative father, and only the juvenile court could decide the question of the child's paternity.” *Allen Cty.* at ¶ 37. We read *Pushcar* as requiring the probate court to refrain from acting until the juvenile court had determined the child's paternity, because until that had occurred, the probate court could not determine whether the father's consent was required. *Allen Cty.* at ¶ 37. There is no similar impediment to the probate court's exercise of jurisdiction here; the probate court is able to determine, without any finding by the domestic-relations court, whether Father failed without justifiable cause to have more than de minimis contact with the children for at least a year prior to the filing of the adoption petitions, so as to render Father's consent to the adoptions unnecessary. For these reasons, we reject Father's proposition of law.

In re Adoption of M.G.B.-E. at ¶ 35-36.

{¶42} Here, at the time the adoption petition was filed in the probate court, there was no “father” whose consent was required under any of the provisions in R.C. 3107.06(B)(1)-(4), no pending paternity action “which affected the probate court’s *ability* to rule on” the adoption petition under R.C. 3107.06(B)(3) and R.C. 3107.07(A), and no putative fathers registered on the OPFR. The probate court had the ability to rule on the adoption petition without a decision on the factual question of paternity because no such question was pending in the juvenile court. The Court in *In re Adoption of M.G.B.-E.* set clear boundaries for the *Pushcar* line of cases – they apply only to situations where a prior

pending parentage action affects a probate court's ability to rule on the adoption petition (i.e., "affect a probate court's ability to determine the statutory prerequisites for adoption"). *Id.* at ¶ 35. *Pushcar's* holding applies where the probate court has to determine whether a man's consent to the adoption is not needed under R.C. 3107.07(A) (failure without justifiable cause to communicate or provide support within a year of the adoption petition). Because the one year look back period does not commence until the man is determined to be the "father" in a previously filed parentage action in juvenile or domestic relations court, then under *M.G.B.-E*, the probate court must refrain from exercising jurisdiction over the adoption until after the previously filed parentage proceedings conclude. The probate court needs the paternity decision from the juvenile or domestic relations court to determine whether the man's consent to the adoption is needed under R.C. 3107.07(A).

{¶43} Here, unlike the *Pushcar-P.A.C.-G.V.* situation where the paternity action was filed before the adoption and affected the probate court's ability to determine the statutory prerequisites for adoption, Putative Father's paternity case was filed after the adoption petition was filed. When the adoption petition was filed, the probate court was able to review the statutory requirements and determine that Putative Father's consent was not required. The probate court could examine R.C. 3107.06 governing the consents required for adoption; R.C. 3107.07 governing the consents not required for adoption; R.C. 3107.01(H) defining the term "putative father;" and R.C. 3107.06(B) defining "father" for purposes of adoption, and determine the statutory prerequisites for adoption. There was no previously-filed parentage action that might change someone's status midstream in the adoption proceeding. *In re Adoption of P.A.C.*, 126 Ohio St.3d 236, 2010-Ohio-3351, 933 N.E.2d 236, ¶ 9 (even though man failed to register with the OPFR and he had not been

determined to be the father prior to the filing of the adoption petition, his previously filed parentage action had to be determined before the probate court could determine if his consent as “father” was required); *but see In re Adoption of G.V.*, 126 Ohio St.3d 249, 2010-Ohio-3349, 933 N.E.2d 245, ¶ 36 (Cupp, J., dissenting, “The majority’s application * * * takes the *Pushcar* holding too far by permitting a party’s consent-to-adoption status to change even *after the adoption petition has been filed, in clear contradiction of the language of the statute.*” (Emphasis sic.)); *see also Id.* at ¶ 11 – 28 (Brown, C.J., dissenting). Thus, the probate court was not required to refrain from exercising its exclusive jurisdiction over A.R.W.’s adoption proceedings.

{¶44} Other Ohio appellate courts have distinguished the holding in *Pushcar* where the putative father did not file a paternity action until *after* the adoption petition. *See In the Matter of the Adoption of H.N.R.*, 2d Dist. Greene No. 2014-CA-35, 2014-Ohio-4959, ¶ 20-21, affirmed on a different proposition of law by *In re Adoption of H.N.R.*, 145 Ohio St.3d 144, 2015-Ohio-5476, 47 N.E.23d 803; *In re the Adoption P.L.W.*, 9th Dist. Medina No. 20CA0032-M, 2020-Ohio-5559, ¶ 13 (putative father did not timely file with the putative father registry and did not file a parentage complaint until *after* the adoption petition was filed thus distinguishing *Pushcar* and finding that putative father’s consent was not required); *see also In re Adoption of G.A.R.*, 2017-Ohio-5612, 94 N.E.3d 99 (1st Dist.) (applying the holding of *In re Adoption G.V.*, *supra*, and finding that “when a juvenile court proceeding is first in time, a probate court must refrain from exercising its jurisdiction over an adoption proceeding regarding the same child until the juvenile court custody proceeding is terminated”).

{¶45} The juvenile court did not err in denying Putative Father’s motion to intervene and in dismissing his parentage action. A decision on parentage was irrelevant to the adoption proceeding. We overrule Putative Father’s second assignment of error.

3. Putative Father’s Standing in the Legal Custody Proceeding

{¶46} In his final assignment of error (Probate Brief Assignment of Error One), Putative Father contends that he was entitled to notice of the legal custody complaint filed by Adoptive Parents on August 24, 2020 “for the reasons set forth in 21 CA 19.” We interpret this as Putative Father’s attempt to incorporate by reference arguments from his juvenile appellate brief. However, he does not delineate the page numbers this argument appears and we cannot discern a legal argument other than that he received no notice of the proceeding, “despite [Biological] Mother telling him he was the father of A.R.W.” And his contention that there was no mention of “any father” on the entry granting legal custody, “despite knowing who father was.” Additionally, Putative Father fails to identify the statutory provision that he believes entitled him to receive notice of the legal custody proceeding.

{¶47} We find that Putative Father has failed to comply with App.R. 16(A)(7) which requires that his brief include:

(7) An argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies. The argument may be preceded by a summary.

When appellant cites no cases, statutes, or other authorities in support of an assignment of error in violation of App.R. 16(A)(7), we may disregard it. *Capital One Bank v. Rose*, 4th Dist. No. 18CA3628, 2018-Ohio-2209, ¶ 30.

{¶48} We overrule Putative Father’s final assignment of error (Probate Brief Assignment of Error One).

IV. CONCLUSION

{¶49} We overrule Putative Father’s assignments of error and affirm the judgments of the juvenile and probate courts.

JUDGMENTS AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENTS ARE AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Probate/Juvenile Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. & Wilkin, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.