

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

In re: :
S.G.D.F., : No. 16AP-57
(R.L.F., : (C.P.C. No. 12JU-16615)
Appellant). : (REGULAR CALENDAR)

In re: :
S.G.D.F., : No. 16AP-123
(A.F., : (C.P.C. No. 12JU-16615)
Appellant). : (REGULAR CALENDAR)

DECISION

Rendered on September 30, 2016

On brief: *William T. Cramer*, for appellant R.L.F.
Argued: *William T. Cramer*.

On brief: *John T. Ryerson, Jr.*, for appellant A.F.
Argued: *John T. Ryerson, Jr.*

On brief: *Frederick L. Berkemer*, for appellee K.B.
Argued: *Frederick L. Berkemer*.

APPEALS from the Franklin County Court of Common Pleas,
Division of Domestic Relations, Juvenile Branch

HORTON, J.

{¶ 1} In these consolidated appeals, notices of appeal were filed by appellants, J.G.P ("Father"), A.F. ("Mother"), and maternal great aunt R.L.F. ("Aunt"), from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, awarding legal custody of minor child S.G.D.F. ("the Child") to K.B. ("Foster Mother"). Father's appeal was dismissed by this court upon his own

motion. Because we determine that Mother and Aunt lack standing to pursue their appeals, we overrule their assignments of error and affirm the judgment of the trial court.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} The Child was born on October 3, 2012. Emergency custody was immediately taken by Franklin County Children's Services ("FCCS") due to Mother's mental health issues, homelessness, and inability to care for the child. (Dec. 31, 2012 FCCS Compl. at 1.) Three days after birth, the Child was placed by FCCS with Foster Mother "with whom [the Child] has lived and resided to this date." (Jan. 22, 2016 Decision and Entry at 2.)

{¶ 3} A complaint was filed by FCCS on December 31, 2012, alleging that the Child was a dependent child. Both parents were named and served with this complaint. On January 2, 2013, temporary custody was awarded to FCCS. (Jan. 2, 2013 Mag.'s Order at 1.) At the adjudicatory hearing held on February 27, 2013, the Child was found to be a dependent child, without any further amendment of the language of the complaint. (Mar. 13, 2013 Mag.'s Order at 2.) Both Mother and Father were present at the hearing. A temporary court commitment to FCCS was issued and a case plan was then adopted. *Id.* No objections or appeals were taken.

{¶ 4} The initial case plan noted that Mother admitted she was unable to take care of the Child. (Mar. 13, 2013 Ohio Department of Jobs and Family Services Case Plan at 1.) The case plan noted that Father acknowledged that he was the legal father of the Child, but not the biological father. (Case Plan at 6.) Father never requested genetic testing to determine if he was the biological father. On August 13, 2013, FCCS filed a motion for permanent custody wherein they stated that Father was no longer interested in reunification with the Child and had not visited her since June 8, 2013. (FCCS Mot. for Permanent Custody at 1, 5.) On April 3, 2014, the court ordered DNA testing for Father. (Apr. 3, 2014 Jgmt. Entry.)

{¶ 5} On April 10, 2014, FCCS filed an amended motion for permanent custody, stating that Father "is no longer interested in custody or placement of [the Child] and maintains that he is not the biological father." (FCCS Amended Mot. for Permanent Custody at 5.) However, on July 2, 2014, the paternity test results confirmed that Father was the biological father of the Child. (FCCS Ex. B.) It was noted by FCCS that Father

"was found to be the biological father of [the Child]" and "was interested in having custody." (Oct. 17, 2014 FCCS Mot. for Permanent Custody at 5.)

{¶ 6} However, even after his paternity was established, on October 17, 2014, FCCS filed a second permanent custody action because Father remained inconsistent with his visitation. (Dec. 2, 2015 Tr. at 83-84.) On February 19, 2015, Aunt filed a motion for custody of the Child. On June 3, 2015, Foster Mother filed a motion for custody of the Child. On December 14, 2015, the second day of the trial, Father filed a motion for custody of the Child.

{¶ 7} This matter went to trial on December 2 and 14, 2015. FCCS dismissed their motion for permanent custody to terminate the parental rights of Mother and Father in favor of allowing Father and Foster Mother's pending and competing motions for custody to proceed. (Dec. 2, 2015 Tr. at 8.) Aunt also indicated on the record that she was no longer seeking custody since Father had indicated his desire to have custody. (Tr. at 21, 29, 31.) Mother supported Father's motion for custody. (Dec. 14, 2015 Tr. at 312.) After two days of testimony, the trial court ordered legal custody to Foster Mother. The court granted Father visitation of one weekend a month and ordered that he pay child support. (Jan. 22, 2016 Decision and Entry at 4.)

{¶ 8} Timely appeals were filed by Father in case No. 16AP-118, Mother in case No. 16AP-123, and Aunt in case No. 16AP-57. This court subsequently consolidated all three appeals for purposes of argument. However, after filing a notice of appeal, Father failed to file an appellant's brief or prosecute the appeal. On September 2, 2016, Father filed a "Motion For Voluntary Dismissal Of Appeal" stating that counsel "has explained the legal consequences of dismissing the appeal in this case during the course of a detailed discussion with his client. The [Father] does not seek to appeal the trial court's ruling in this matter." (Father's Mot. for Voluntary Dismissal at 1.) On September 6, 2016, this court granted Father's motion to dismiss his appeal in case No. 16AP-118, and de-consolidated it from case Nos. 16AP-57 and 16AP-123.

II. ASSIGNMENTS OF ERROR

{¶ 9} Mother assigns the following error for our review:

The Court below erred in granting legal custody of [the Child] to foster parent [K.B.].

{¶ 10} Aunt assigns the following error for our review:

The trial court abused its discretion by awarding legal custody to the foster mother and limiting visitation to one weekend a month.

III. APPELLANTS LACK STANDING

{¶ 11} Prior to addressing Mother and Aunt's assignment of errors, we will address the issue of standing. Only litigants with standing are entitled to have a court determine the merits of the claims they have presented. *Moore v. Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, ¶ 20. A party has standing when they have a " 'right to make a legal claim or seek judicial enforcement of a duty or right.' " *Ohio Pyro Inc. v. Ohio Dept. of Commerce*, 115 Ohio St.3d 375, 2007-Ohio-5024, ¶ 27, quoting Black's Law Dictionary 1442 (8th Ed.2004). Similarly, a party who attempts to appeal a judgment must meet standing requirements to invoke the jurisdiction of the appellate court. *See Ohio Contract Carriers Assn. v. Public Util. Comm. of Ohio*, 140 Ohio St. 160, 161 (1942). One of these requirements is that a party who seeks to appeal must assert his own rights. *In re N.G.*, 1st Dist. No. C-130684, 2014-Ohio-720, ¶ 7.

{¶ 12} Mother is not seeking legal custody; instead, she supports the now dismissed claim for custody of Father. Mother argues that "since there was no finding of parental fault or parental unsuitability as it relates to Father * * *, he should have been awarded custody of the minor child, and the trial Court clearly erred in not doing so." (Appellant A.F.'s Brief at 15.)

{¶ 13} Aunt, who also does not seek custody, submitted a brief on behalf of Father, supporting his now dismissed claim for custody. (Appellant R.L.F.'s Brief at 5.) Aunt argues "the court abused its discretion by granting legal custody to the foster mother" as Father was capable of caring for the Child. (Appellant R.L.F.'s Brief at 20-21.) Aunt further claims that "the court's legal custody order fatally undermines any attempt at transitioning [the Child's] home by drastically reducing visitation from every weekend to just one weekend a month." (Appellant R.L.F.'s Brief at 22-23.)

{¶ 14} Mother and Aunt's assignments of error do not assert any claims on their own behalf, instead they assert issues solely on behalf of Father. This court has repeatedly held that "[a]n appellant cannot raise issues on another's behalf, especially when that party could have appealed the issues appellant posits." *In re D.T.*, 10th Dist. No. 07AP-

853, 2008-Ohio-2287, ¶ 8; *In re J.B.*, 10th Dist. No. 08AP-1108, 2009-Ohio-3083, ¶ 18; *In re J.C.*, 10th Dist. No. 09AP-1112, 2010-Ohio-2422, ¶ 15. In *In re Conn*, 10th Dist. No. 03AP-348, 2003-Ohio-5344, we held that a father lacked standing to assert the claims of a relative who did not pursue their own appeal. In *In re J.C.*, we held that a mother lacked standing to assert rights of a grandparent who did not pursue an appeal. In *In re N.H.*, 10th Dist. No. 10AP-620, 2011-Ohio-1491, we held that a mother does not have legal standing to pursue an appeal on her father's behalf. We find these cases to be applicable to the present situation, wherein Father filed a notice of appeal, but then did nothing further to pursue the appeal and eventually had the appeal dismissed on his own motion.

{¶ 15} Father has not prosecuted an appeal from the denial of his legal custody. Consequently, an appellant cannot raise issues on behalf of an aggrieved third-party, particularly when that party could have prosecuted an appeal to protect his or her own interests. See *In re T.W.*, 1st Dist. No. C-130080, 2013-Ohio-1754, ¶ 9; *In re D.M.*, 1st Dist. No. C-140648, 2015-Ohio-3853, ¶ 8. In conclusion, we hold that Mother and Aunt lack standing to raise these assignments of error.

IV. DISPOSITION

{¶ 16} Since Mother and Aunt do not have standing to raise the issues set forth in their briefs, we overrule their assignments of error. As a result, the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is affirmed.

Judgment affirmed.

TYACK and KLATT, JJ., concur.
