

IN THE UTAH COURT OF APPEALS

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State of Utah, in the interest)	MEMORANDUM DECISION
of T.M., M.M., and M.M.;)	(Not For Official Publication)
persons under eighteen years)	
of age.)	Case No. 20070293-CA
_____)	Case No. 20070294-CA
)	
T.M.,)	F I L E D
)	(June 28, 2007)
Appellant,)	
)	2007 UT App 233
v.)	
)	
State of Utah,)	
)	
Appellee.)	

Seventh District Juvenile, Price Department, 446207, 525433
The Honorable Scott N. Johansen

Attorneys: Michael K. Black, Provo, for Appellant
Mark L. Shurtleff and Carol L.C. Verdoia, Salt Lake
City, for Appellee
Martha Pierce, Salt Lake City, and Connie L. Mower,
Castle Dale, Guardians Ad Litem

Before Judges Bench, Orme, and Thorne.

PER CURIAM:

T.M., who is the children's paternal grandfather (Grandfather), filed these related appeals, which are not consolidated, but are determined in a single decision for the sake of clarity. Case No. 20070293-CA is an appeal of a February 28, 2007 adoption decree that granted the foster parents' adoption petition. Case No. 20070294-CA is an appeal of a March 15, 2007 order dismissing Grandfather's guardianship petition.

On November 27, 2006, Grandfather filed a petition seeking appointment as the children's guardian. The children's father consented to the appointment of Grandfather as guardian. At the termination trial on January 16, 2007, the father relinquished his parental rights, and the children's mother's rights were

terminated following the trial. The juvenile court found that it was in the children's best interests that they be adopted, and the court set a review hearing for February 28, 2007. On February 7, 2007, the court served an order to show cause why Grandfather's guardianship petition should not be dismissed for failure to prosecute. The court scheduled a hearing for February 14, 2007; however, Grandfather's counsel obtained a continuance to March 7, 2007, the next available date for the hearing. On February 28, 2007, the juvenile court held the scheduled review hearing and granted the foster parents' adoption petition.

The juvenile court dismissed Grandfather's petition, finding that "[a]s of March 7, 2007, the paternal grandfather's petition has not been served on any party." The court further found that "[t]he relief sought by the paternal grandfather's petition, custody to the paternal grandfather, is not in the children's best interest, and is moot, due to the adoption being finalized." Finally, the court found that "[d]ue to the father having relinquished his parental rights, the paternal grandfather enjoys no preferred legal status."

Because the children and the adoption proceeding were within juvenile court jurisdiction, the notice of appeal must have been filed within fifteen days after the adoption decree's entry. See Utah Code Ann. § 78-3a-909 (Supp. 2006); Utah R. App. P. 52(a). Grandfather's notice of appeal was not filed within fifteen days after the entry of the adoption decree. Accordingly, we dismiss the appeal from the adoption decree in Case No. 20070293-CA for lack of jurisdiction.

Grandfather's appeal from the dismissal of the guardianship petition in Case No. 20070294-CA was timely filed within fifteen days of entry of the April 10, 1997 order dismissing the guardianship petition, and we have jurisdiction to consider it. Grandfather essentially claims that the court erred by granting the foster parents' adoption petition before hearing his petition. He contends that the court could not make a best interests determination without considering the "competing petitions" and also claims that the court denied him due process and a "protected right" to a hearing.

Grandfather failed to serve his petition in the months prior to its dismissal. Rule 18(b) of the Utah Rules of Juvenile Procedure states that service of process and proof of service shall be in accordance with rule 4 of the Utah Rules of Civil Procedure, except as otherwise provided in the juvenile rules. See Utah R. Juv. P. 18(b). Grandfather cites probate statutes in support of his claim that he was not required to serve the guardianship petition on the State or Guardian Ad Litem. We

conclude that because the children were adjudicated to be within juvenile court jurisdiction, Grandfather was required to file the petition in juvenile court and to satisfy the court's procedural requirements. See Utah Code Ann. § 78-3a-104(1)(c) (Supp. 2006) (stating the juvenile court has exclusive jurisdiction over proceedings concerning an abused, neglected, or dependent child).

Grandfather's remaining arguments presume that the guardianship was a "competing petition" that must have been considered along with the adoption petition. This claim is without merit. Utah Code section 78-3a-411(2) requires all adoptable children to be placed for adoption upon entry of an order terminating parental rights. See id. § 78-3a-411(2) (2002). "[T]he court shall order that a review hearing be held within 90 days following the date of termination if the child has not been permanently placed." Id. § 78-3a-412(1) (2002) (emphasis added). The minutes of the termination trial reflect that Grandfather was present when the court terminated parental rights, found that adoption would be in the children's best interests, and set the matter for review for February 28, 2007. Nevertheless, Grandfather failed to serve his petition at any time prior to February 28, 2007. We conclude that the juvenile court did not deny him due process or a protected right to a hearing on his unserved petition. Furthermore, Grandfather is not within the class of persons who are entitled to receive notice of adoption proceedings. See In re A.B., 1999 UT App 315, ¶19, 991 P.2d 70. Finally, once the adoption was finalized, a new parent-child relationship was established, and the juvenile court lacked subject matter jurisdiction over the adopted children unless new requirements for jurisdiction were satisfied. See In re B.B., 2004 UT App 120, ¶17, 91 P.3d 836. Under the circumstances, the juvenile court did not err in dismissing Grandfather's petition.

We dismiss the appeal from the adoption decree in our Case No. 20070293-CA, and we affirm the dismissal of Grandfather's guardianship petition in our Case No. 20070294-CA.

Russell W. Bench,
Presiding Judge

Gregory K. Orme, Judge

William A. Thorne Jr., Judge