

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE THE GUARDIANSHIP OF)
AND CONSERVATORSHIP FOR)
WILLIE JOE KNIGHT, an Adult.)

2 CA-CV 2010-0091
DEPARTMENT A

_____)

MEMORANDUM DECISION
Not for Publication
Rule 28, Rules of Civil
Appellate Procedure

KWANNA SIMS and EBONY)
KNIGHT,)
Appellants,)

v.)

FLOZELLA HENDERSON, as)
Guardian and Conservator of Willie Joe)
Knight,)
Appellee.)

_____)

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. GC200800220

Honorable Stephen F. McCarville, Judge

AFFIRMED

Michael J. Brune

Coolidge
Attorney for Appellants

Fitzgibbons Law Offices, P.L.C.
By Richard L. Scholz and Ann F. Schrooten

Casa Grande
Attorneys for Appellee

E S P I N O S A, Judge.

¶1 Appellants Kwanna Sims and Ebony Knight appeal from the trial court's denial of their motion to intervene in Willie Joe Knight's guardianship and conservatorship proceeding. Finding no error, we affirm.

Factual Background and Procedural History

¶2 Willie Joe Knight is in his late 70s and suffers from Alzheimer's disease. Before February 2009, he lived in Casa Grande with Sims, his long-time girlfriend, and their daughter, Ebony, who was then still in high school. In August 2008, Knight's son James commenced this proceeding, seeking appointment as Knight's guardian and conservator. The matter soon became contested when Knight's sister, Flozella Henderson, who lived in Tennessee, also sought appointment as Knight's conservator and guardian.

¶3 The trial court held an evidentiary hearing at which Knight, James, Henderson, Sims, and Ebony testified. Part of the testimony concerned Henderson's intent to move Knight to Tennessee if she were appointed his guardian. Following the hearing, both Sims and Ebony submitted written closing arguments requesting that Knight be allowed to continue to reside in Casa Grande. The court then appointed Henderson as Knight's guardian and conservator. As part of its ruling, the court ordered Knight (through Henderson) to pay child support until Ebony turned eighteen in May 2009, and that his residence, where Ebony and Sims resided, not be sold or transferred to any party except Sims without further court order.

¶4 Shortly after the trial court's ruling, Knight's former girlfriend, Diann Reaves, filed a Petition for Protective Order and Restriction of Guardianship, seeking to intervene in the litigation and to restrict Henderson from permanently moving Knight to Tennessee without prior court order. In support of her petition, Reaves alleged that Knight should "stay close to the members of his family in Arizona, especially his young daughter [Ebony] and his consensual partner [Sims]." After a hearing was held to determine whether Knight would be in danger were he allowed to travel to Tennessee, the court entered an order permitting him to travel. The court further instructed counsel to schedule oral argument on Reaves's motion to intervene. Because oral argument was never scheduled and Reaves's counsel subsequently filed a motion to withdraw in July 2009, the court entered an order affirming Henderson as Knight's guardian and denying Reaves's motion to intervene.

¶5 In September 2009, Sims and Ebony filed a motion to intervene, stating they were "interested in [Knight's] welfare," were "persons whose own rights and interests are affected by his guardianship and conservatorship," and had "an interest in financial support from him or his conservatorship estate." The trial court denied their motion and they filed a motion to reconsider, which the court also denied. The court explained that "the issues had been fully briefed and argued and had been ruled upon . . . or had been fully litigated and contained in the Court's earlier ruling of November 24, 2008" in which the court had "entered appropriate orders while [Ebony] was still a dependent of the ward," and concluded "there [wa]s no legal basis presented to allow the Petitioners to intervene." Sims and Ebony appeal from the court's denial of

their motion. We have jurisdiction pursuant to A.R.S. § 12-120.21(A)(1). *See Bechtel v. Rose ex rel. Maricopa County*, 150 Ariz. 68, 71, 722 P.2d 236, 239 (1986) (denial of motion to intervene is appealable final order).

Discussion

¶6 Appellants contend the trial court erred when it denied their motion to intervene. However, because, as appellee Henderson points out, their motion was untimely, we affirm the trial court’s ruling. “We review rulings on timeliness of motions to intervene for a clear abuse of the trial court’s discretion.” *William Z. v. Ariz. Dep’t of Econ. Sec.*, 192 Ariz. 385, ¶ 9, 965 P.2d 1224, 1226 (App. 1998).¹

¶7 “Rule 24 of the Arizona Rules of Civil Procedure permits intervention in an action only ‘[u]pon timely application.’” *State ex rel. Napolitano v. Brown & Williamson Tobacco Corp.*, 196 Ariz. 382, ¶ 5, 998 P.2d 1055, 1057 (2000), *quoting* Ariz. R. Civ. P. 24(a), (b). “In determining whether a motion is timely, the trial court must consider several factors, including the stage to which the lawsuit has progressed when intervention is sought,” “whether the applicant could have attempted to intervene earlier,” and “whether the delay in moving for intervention will prejudice the existing parties in the case.” *Id.*

¹Appellants maintain the trial court’s decision was not based on timeliness and argue on appeal that they were entitled to intervene both as a matter of right and permissively. *See* Ariz. R. Civ. P. 24(a), (b). The court’s denial, however, can be characterized fairly as having been based, at least in part, on untimeliness: the court explained it was denying the motion because the issues it raised already had been litigated and ruled upon almost a year before. In any event, we may affirm the court’s decision for any reason supported by the record. *See Forszt v. Rodriguez*, 212 Ariz. 263, ¶ 9, 130 P.3d 538, 540 (App. 2006).

¶8 We cannot say the trial court abused its discretion. Appellants’ motion was filed over a year after the commencement of the guardianship and conservatorship action. And, despite appellants’ knowledge of and participation in proceedings concerning the appointment of Knight’s guardian and conservator, they did not move to intervene until over nine months after the appointment of a permanent guardian and conservator and over six months after Knight had been relocated to Tennessee. *See Brown & Williamson*, 196 Ariz. 382, ¶ 6, 998 P.2d at 1057 (explaining intervenors’ delay until after litigation had concluded factor demonstrating motion to intervene untimely).

¶9 Moreover, in its prior ruling the trial court had made specific provisions for both appellants, including ordering child support for Ebony until she reached the age of majority and prohibiting the transfer of their residence; appellants neither objected nor did they attempt at that time to insert themselves into the litigation. Allowing intervention at this late point would have prejudiced Knight substantially because he would have been forced to expend additional resources in litigation even though he already had been appointed a permanent guardian and conservator after a contested hearing and subsequently had moved across the country. *See id.* ¶ 5 (prejudice to parties most important factor in considering timeliness of motion to intervene); *cf. Weaver v. Synthes, Ltd. (U.S.A.)*, 162 Ariz. 442, 446, 784 P.2d 268, 272 (App. 1989) (post-judgment motions to intervene disfavored and considered timely only in “extraordinary and unusual circumstances”).

¶10 Finally, appellants argue that as a matter of “[c]ommon sense” their “fundamental rights override any procedural irregularities, such as alleged untimeliness.”

Appellants cite no authority for this proposition, nor are we aware of any, and we therefore reject this argument. As noted above, both Sims and Ebony were substantially involved in the proceedings concerning Knight's guardianship and conservatorship, which presumably is why the trial court entered orders that pertained specifically to them.² Accordingly, we conclude the court did not abuse its discretion in denying appellants' motion to intervene.

Disposition

¶11 For the reasons set forth above, the trial court's ruling is affirmed. Henderson has requested an award of her attorney fees on appeal. In view of the lack of merit of this appeal, the delays between the appointment and motion to intervene and between the denial of intervention and entry of the appealable order, and the lack of transcripts, we are inclined to grant Henderson's request. But due to appellants' undisputed indigence and their counsel's pro bono representation, we decline to award attorney fees. As the prevailing party on appeal, however, she is entitled to recover her costs upon compliance with Rule 21(a), Ariz. R. Civ. App. P.

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

²A transcript of the guardianship and conservatorship hearing was not made a part of the record on appeal.