

ARKANSAS COURT OF APPEALS

DIVISION III

No. CV-18-710

T.S.B., A MINOR

APPELLANT

V.

ELIZABETH A. ROBINSON,
CHRISTOPHER COOK, TAMMY A.
ROBINSON (NOW WRIGHT), AND
B.R.C., A MINOR

APPELLEES

Opinion Delivered: February 27, 2019

APPEAL FROM THE GARLAND
COUNTY CIRCUIT COURT
[NO. 26JV-14-367]

HONORABLE WADE NARAMORE,
JUDGE

REMANDED TO SUPPLEMENT THE
RECORD; REBRIEFING ORDERED

PHILLIP T. WHITEAKER, Judge

The appellant, T.S.B., by and through her attorney ad litem (AAL), appeals an order of the Garland County Circuit Court that granted a change of custody to appellee, Tammy Robinson-Wright. In this one-brief appeal, the AAL raises several arguments on behalf of T.S.B. Because we do not have an adequate record upon which to evaluate these claims, we order supplementation of the record and rebriefing.

An abbreviated version of the procedural history follows. T.S.B. is a minor. Tammy is her biological mother. Elizabeth Robinson is T.S.B.'s maternal grandmother. In June 2013, Elizabeth filed a family-in-need-of-services (FINS) case. Elizabeth alleged that T.S.B. was in her physical care and that she needed court assistance to enroll T.S.B. in ARKids insurance. She requested that the court award her custody of T.S.B. She further alleged that Tammy was in agreement to her request, as was the biological father. Because

the cause of action initiated by Elizabeth was a FINS case, T.S.B. was named as a party and was appointed an AAL. Ultimately, the trial court adjudicated a FINS and granted custody of T.S.B. to Elizabeth.¹

In August 2017, Tammy filed a petition for change of custody seeking to have custody of T.S.B. placed back with her. Elizabeth filed a response opposing the petition and indicating service of the response upon the AAL for T.S.B. Before the court ruled on Tammy's petition, the FINS case concerning T.S.B. was consolidated with that of her half sibling, B.R.C.

On June 21, 2018, the court held a hearing in the consolidated FINS proceedings. At the hearing, T.S.B. was represented by an AAL. The parties, including T.S.B., read into the record an agreement granting Tammy custody of T.S.B. The next day, the AAL filed a posttrial report objecting to the agreed change of custody. On behalf of T.S.B., the AAL asserted that T.S.B. had not been provided proper notice of Tammy's petition for change of custody. The AAL claimed that he was not the AAL for T.S.B. prior to consolidation and that neither he nor T.S.B. had been served with an actual copy of the petition for change of custody prior to the hearing. The AAL noted that counsel for Tammy affirmatively represented at the hearing that T.S.B. had previously been served with the petition, but that this was a misrepresentation to the court and to the AAL. The AAL

¹It appears the sole purpose of this FINS action was to grant custody of the child to the grandmother so that she could obtain appropriate insurance benefits for the child. We recognize that a court may transfer custody of a juvenile to a relative in a FINS matter (*see* Arkansas Code Annotated section 9-27-332(a)(2)(A) (Repl. 2015)) but question the propriety of using a FINS proceeding in this manner to effectuate what would more properly be obtained in a guardianship proceeding.

additionally noted that the documents relating to T.S.B.'s FINS petition filed prior to the consolidation, including the petition for change of custody, had not electronically merged upon consolidation and that he was denied access to those records because he was not the AAL of record prior to consolidation. Because of his inability to access the records prior to consolidation, he did not discover the misrepresentation until after the agreement had been read into the record. In response to the posttrial report from the AAL, counsel for Tammy denied misleading the court. The court signed and entered an "agreed order" over the AAL's objection.

The AAL appeals on behalf of T.S.B. raising several arguments.² Currently, we are unable to reach the merits of this appeal.

On behalf of T.S.B., the AAL contends that neither he nor the child received actual notice of the petition for change of custody. He further submits that at the hearing on June 21, 2018, Tammy's counsel "misled" him regarding the filing of the petition. We, however, do not have a transcript of this June 21, 2018 hearing before us. As a result, we cannot determine what statements were made at the hearing; what contemporaneous objections, if any, were asserted; whether a continuance was requested; or whether misrepresentations were made that would justify or allow an appeal from an agreed order.

²On behalf of T.S.B. the AAL argues a denial of notice under Arkansas Code Annotated section 9-27-312, an inability to adequately represent T.S.B.'s property and liberty interests due to the insufficiency of notice and due process of law, and a violation of her equal protection rights under Arkansas Code Annotated section 9-27-316(f)(4) and her right to adequate legal representation.

We find the transcript of the June 21, 2018 hearing material to our determination. If anything material to either party is omitted from the record by error or accident, we may direct that the omission be corrected and, if necessary, that a supplemental record be certified and transmitted. Ark. R. App. P.–Civ. 6(e).

We also note there are material documents in our record that are not contained in our addendum. For example, we do not have a copy of the FINS petition originally filed in T.S.B.'s case, nor do we have the order placing T.S.B. in the custody of Elizabeth. Additionally, while the addendum contains the underlying petition for custody filed by Tammy, we do not have the response filed by Elizabeth. These documents are useful for a better understanding of the facts and procedural history of this case, and the absence of them hinders our understanding of the issues and the procedural posture of the case before us.

Because of the deficiency in the record, we remand to the circuit court to settle and supplement the record with a transcript of the June 21, 2018 hearing to be completed within thirty days. Upon filing of the supplemental record, counsel shall have fifteen days in which to file a substituted abstract, addendum, and brief containing an abstract of the missing hearing and any documents necessary for our review. *See* Ark. Sup. Ct. R. 4-2(b)(3). We encourage the AAL to review Rule 4-2 of the Rules of the Arkansas Supreme Court and Court of Appeals before filing the substituted brief to ensure that the substituted abstract, brief, and addendum comply with the rules and that no additional deficiencies are present.

Remanded to supplement the record; rebriefing ordered.

GRUBER, C.J., and VAUGHT, J., agree.

Paul M. Miller, for appellant.

One brief only.