

IN THE SUPREME COURT OF THE STATE OF DELAWARE

| | | |
|--|---|-----------------------------------|
| CALVIN LANE ¹ and SARA LANE, ² | § | |
| | § | No. 527 & 528, 2013 |
| Respondents Below, | § | |
| Appellants, | § | CONSOLIDATED |
| | § | |
| v. | § | Court Below: Family Court of |
| | § | the State of Delaware, in and for |
| DIVISION OF FAMILY SERVICES | § | Sussex County |
| and OFFICE OF THE CHILD | § | |
| ADVOCATE, | § | File No. CS13-01966 |
| | § | Petition No. 13-17089 |
| Respondents Below, | § | |
| Appellees. | § | |

Submitted: February 5, 2014

Decided: March 27, 2014

Before **HOLLAND, BERGER, and JACOBS**, Justices.

ORDER

This 27th day of March 2014, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Respondents-below/appellants, Calvin Lane and Sara Lane (“the Lanes”), appeal from a Family Court judgment denying the petition of Sara Lane’s aunt (the “Maternal Aunt”) for guardianship of the Lanes’ daughter (the “child”).

Appellees, the Division of Family Services (“DFS”) and the Office of the Child

¹ The Court *sua sponte* assigned a pseudonym to the appellant by Order dated October 3, 2013. SUPR. CT. R. 7(d).

² The Court *sua sponte* assigned a pseudonym to the appellant by Order dated October 3, 2013. SUPR. CT. R. 7(d).

Advocate (“OCA”) contest the Lanes’ claims on the merits. Appellees also contend that the Lanes lack standing to prosecute this appeal. We agree with the latter claim and dismiss the appeal.

2. On July 11, 2012, DFS was granted *ex parte* custody of the child. On July 23, 2012, the Lanes waived their rights to a preliminary protective hearing.³ After an adjudicatory hearing on August 20, 2013, during which the Lanes stipulated to findings of abuse and neglect, the Family Court determined that the child should remain in DFS custody.

3. On May 31, 2013 the Maternal Aunt filed a petition for guardianship of the child. In August 2013 (after the Lanes both had pled guilty to several charges), the Family Court changed the child’s permanency goal from reunification to guardianship or termination of parental rights and adoption. After a hearing on September 3, 2013, the Family Court denied the guardianship petition.

4. The Lanes appealed from that judgment. The Maternal Aunt did not appeal. The OCA filed a motion to affirm, which this Court denied on December 23, 2013.

5. DFS and the OCA argue that because the Maternal Aunt did not appeal from the Family Court’s denial of the guardianship petition, the Lanes lack

³ The grounds for the child’s dependency were Calvin’s incarceration on several charges related to his sexual abuse of the child and Sara’s pending criminal charges of tampering with evidence of that abuse as well as a criminal no contact order between Sara and the child.

standing to prosecute this appeal, and therefore, this Court does not have jurisdiction to hear this appeal. We agree. In *Morris v. Div. of Family Servs.*,⁴ and *Hughes v. Div. of Family Servs.*,⁵ this Court held that where the petitioner has “not appealed from the Family Court's adverse order, the parents lack standing to prosecute an appeal from the Family Court's order denying [petitioner's] guardianship petition.”⁶

6. The Lanes argue that 13 *Del. C.* § 2328 confers standing upon them, and that we should not follow *Hughes* and *Morris*, because those decisions did not address 13 *Del. C.* § 2328. Section 2328 provides that “[t]he petitioner, if the petition is not granted, or any person or organization who does not prevail in a petition for guardianship . . . may . . . within 30 days after the entry of an order by the Court, take an appeal therefrom to the Supreme Court.”⁷ The Lanes contend that because they supported the Maternal Aunt's petition, they are “person[s] . . . who [did] not prevail in a petition for guardianship.”

7. Although the *Morris* and *Hughes* decisions did not specifically address 13 *Del. C.* § 2328, we assume that this Court considered any relevant statutory

⁴ 2012 WL 1883081 (Del. May 23, 2012).

⁵ 836 A.2d 498 (Del. 2003).

⁶ *Morris*, 2012 WL 1883081, at *1; *see also Hughes*, 836 A.2d at 506 (“Because the Maternal Aunt is not a party to this present appeal, and because she did not file an appeal in her own right, this Court lacks subject matter jurisdiction to consider that claim.”).

⁷ 13 *Del. C.* 2328 (2009).

provisions before rendering those decisions. Moreover, the Lanes’ proffered construction of that statute would lead to an absurd result. Were the Lanes to succeed in this appeal, this Court would reverse the Family Court judgment and grant the Maternal Aunt’s petition for guardianship. In essence, the Lanes seek a remedy that would benefit not themselves, but the Maternal Aunt. But the Maternal Aunt, by not appealing from the Family Court judgment, has abandoned her pursuit of that remedy. Indeed, the Maternal Aunt testified during the Family Court hearing that if the child’s counselor felt it was not in the child’s best interests to live with the Maternal Aunt, she (the aunt) would “let [the child] go with whatever’s best for [the child].” Accordingly, a reversal by this Court would force a guardianship on a person who no longer seeks that guardianship—an absurd result.⁸ In our view, 13 *Del. C.* § 2328 cannot be read to confer standing on a person, other than the petitioner, who seeks to appeal the denial of a petition for guardianship where the petitioner herself has not appealed that denial.

NOW, THEREFORE, IT IS ORDERED that the appeal is **DISMISSED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

⁸ See *Reddy v. PMA Ins. Co.*, 20 A.3d 1281, 1287-88 (Del. 2011).