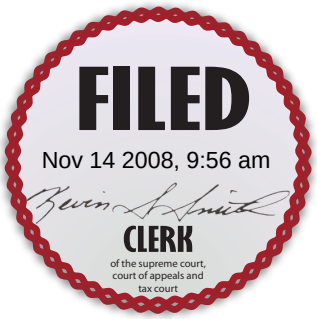

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IN THE
COURT OF APPEALS OF INDIANA

IN RE: GUARDIANSHIP OF A.G.O. and T.B.E.O.,	)	
TERESA BROWN and RONNIE BROWN,	)	
Appellants/Cross Appellees-Petitioners,	)	
vs.	)	No. 30A01-0803-CV-117
DOUGLAS OLSON,	)	
Appellee/Cross Appellant-Respondent.	)	

APPEAL FROM THE HANCOCK CIRCUIT COURT
The Honorable Larry H. Amick , Judge Pro Tempore
Cause Nos. 30C01-0708-GU-33, 30C01-0708-GU-29

November 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Teresa and Ronnie Brown challenge the denial of their petition for guardianship of two children born to their late daughter, Jessica Olson. The Browns assert the court should have ordered DNA testing to prove Jessica's husband, Douglas Olson, was not the father of the children and should have given more weight to a document from Karl Sweazey, who claims to be the biological father. Olson cross-appeals, questioning our jurisdiction over this appeal in light of the language in the court's order and challenging the trial court's failure to enter a final order denying the Browns' petition for guardianship in light of the evidence presented.[1] We dismiss for lack of jurisdiction.

FACTS AND PROCEDURAL HISTORY

Douglas Olson had known Jessica for nearly ten years when they married in December of 2004. Jessica gave birth to twins, T.O. and A.O.,[2] on April 23, 2005. Douglas is listed as the father on both birth certificates. In 2006, Douglas and Jessica separated, and Jessica kept custody of the children.[3]

Also during 2006, Jessica was found unresponsive after overdosing on illegal drugs. Hancock County Child Services took custody of the twins pursuant to a Child in

[1] Olson also notes the Browns' Brief violates a number of Appellate Rules. After reviewing his allegations and their brief, we agree they cited not-for-publication memorandum decisions as precedent in violation of Ind. Appellate Rule 65(D); failed to provide pinpoint case citations, which violates case law regarding App. R. 22 and App. R. 46(A)(8)(a); failed to provide record citations for factual assertions, which violates App. R. 22(C) and App. R. 46(A)(6)(a); failed to provide a standard of review for each argument, which violates App. R. 46(A)(8)(b); and failed to state the facts in accordance with the standard of review, which violates App. R. 46(A)(6)(b). Therefore, we encourage the Browns' counsel to review carefully App. R. 46.

[2] A.O. was born with cerebral palsy and other medical conditions that require "extensive round the clock care." (Appellee's Br. at 5.) At the time of the guardianship proceedings, A.O. lived at a children's healthcare facility in Shelbyville. The record is not clear regarding when A.O. was first placed in a facility. The parties discuss transfers of "custody" without distinguishing between physical and legal custody. As we have no additional evidence, we continue their practice.

[3] Douglas filed a petition for divorce on November 27, 2006. However, that divorce was never finalized. The record does not indicate whether any proceedings occurred following the filing of the petition.

Need of Services ("CHINS") proceeding. After regaining consciousness, Jessica told service providers she did not know Douglas' location, so the twins were placed in the Browns' custody. One month later, the Browns returned T.O. to Child Services because they were unable to care for her. By that time, Child Services had located Douglas, and the children were placed in his custody.

In December of 2006, when the CHINS case was closed, the children returned to Jessica's custody. She maintained custody for one and a half months before a second CHINS proceeding began. When the new proceeding was initiated in January or February of 2007, the children returned to Douglas' custody. On March 30, 2007, Jessica died of a drug overdose. The children remained in Douglas' custody.

On August 14, 2007, the Browns filed a petition for guardianship over the children. Attached to the petition was a document from Karl Sweazey, who claimed to be the biological father of the twins and who consented to the Browns' guardianship over the twins. The Browns moved the court to order DNA testing. The court initially granted that order, but rescinded it after receiving legal briefs regarding the Browns' standing to request DNA testing to determine the twins' biological father. Two days before the hearing, the Browns moved to transport Sweazey from the Westville Correctional Facility for the hearing. The court denied that request.

At the final hearing, the court heard testimony from Douglas, the Browns, the CHINS case manager from Child Services, and T.O.'s social worker from Riley Hospital. The court determined the Browns could not request the DNA test to disestablish Douglas' paternity and Sweazey had not filed a paternity action to disestablish Douglas' paternity;

therefore, Douglas remains the legal father of the children. However, the court did not explicitly deny the Browns' petition. Rather, the court "order[ed] the status of this guardianship to remain status quo with maximum possible parenting time for grandparents. Parties are ordered to refrain from making any negative comments regarding the other party in the presence of the child." (App. at 6.) At the hearing the court explained it was leaving the guardianship

> open because there does appear to be the possibility that at some point perhaps in the relatively near future, there may be something before the Court upon which I may have to act with regard to an allegation from some other party that they are in fact the father as opposed to Mr. Olson. If that ever gets to the Court in proper form and I'm required to do so I will obviously take the appropriate actions to do the DNA testings [sic] to determine uh, paternity. Uh, it's not before me at this time. If another person obviously at some point is determined to be the father, then that person will have a say as to what occurs uh, from here on. At this point I need to be looking to and at all points really, to the best interest of the children, that is to [T.O.] and [A.O.]. There is no evidence before me which shows me that the current situation is detrimental to these children and given the fact that at least as of this time uh, Mr. Olson is deemed to be the father of these children and the mother is deceased uh, and there's nothing to indicate that his uh, his parenting is deficient, I have no basis to uh, grant a guardianship uh, in this case at this time. Uh, so I think that being the situation I'm going to reaffirm the status quo, maximum possible grandparenting time, no negative comments and we'll go from there. I'll deal with other issues if and when they become relevant.

(Tr. at 119-20.)

DISCUSSION AND DECISION

We do not have jurisdiction over the Browns' appeal.[4]

[4] We note the Browns did not file a reply brief or cross-appellee brief, and as such failed to respond to this argument by Douglas. Where an appellee fails to respond to an argument by an appellant, we may reverse if we find *prima facie* error. *In re Paternity of J.C.*, 819 N.E.2d 525, 527 (Ind. Ct. App. 2004). *Prima facie* errors are those that appear "at first sight, on first appearance, or on the face of it." *Id.* Application of this standard relieves us of the burden of developing arguments for the appellee. *Id.* "This

Pursuant to Appellate Rule 5, our court has jurisdiction over appeals from final judgments of trial courts and only those interlocutory orders from trial courts that are brought in accordance with Appellate Rule 14. A judgment is final if:

> (1) it disposes of all claims as to all parties;
> (2) the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims or parties;
> (3) it is deemed final under Trial Rule 60(C);
> (4) it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59 or Criminal Rule 16; or
> (5) it is otherwise deemed final by law.

App. R. 2(H). The trial court's order, which left the petition for guardianship "open," does not fit into any of those categories.

Parties are permitted to appeal "as a matter of right" the following interlocutory orders:

> (1) For the payment of money;
> (2) To compel the execution of any document;
> (3) To compel the delivery or assignment of any securities, evidence of debt, documents or things in action;
> (4) For the sale or delivery of the possession of real property;
> (5) Granting or refusing to grant, dissolving, or refusing to dissolve a preliminary injunction;
> (6) Appointing or refusing to appoint a receiver, or revoking or refusing to revoke the appointment of a receiver;
> (7) For a writ of habeas corpus not otherwise authorized to be taken directly to the Supreme Court;
> (8) Transferring or refusing to transfer a case under Trial Rule 75; and
> (9) Issued by an Administrative Agency that by statute is expressly required to be appealed as a mandatory interlocutory appeal.

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circumstance does not, however, relieve us of our obligation to decide the law as applied to the facts in the record in order to determine whether reversal is required." *Vukovich v. Coleman*, 789 N.E.2d 520, 524 n.4 (Ind. Ct. App. 2003).

App. R. 14(A). The trial court's order does not fall into any of those categories. Thus, the Browns were not entitled to appeal the court's order as a matter of right.

Other interlocutory orders may be appealed "if the trial court certifies its order and the Court of Appeals accepts jurisdiction over the appeal," App. R. 14(B), or if an interlocutory appeal is provided by statute. App. R. 14(D). The Browns assert in their Notice of Appeal they appeal from a final judgment. There is no indication they sought certification from the trial court or permission from us to file this discretionary interlocutory appeal. Nor have they demonstrated a statutory right to appeal. Accordingly, we do not have jurisdiction over this appeal, and we must dismiss. *See Moser v. Moser*, 838 N.E.2d 532, 535-36 (Ind. Ct. App. 2005) (Where "trial court's order effectively continued the status quo," order was interlocutory. Because appeal was not authorized under App. R. 14, we lacked jurisdiction and dismissed.), *trans. denied* 855 N.E.2d 1008 (Ind. 2006).

Dismissed.

NAJAM, J., and ROBB, J., concur.