

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

NO. COA05-1338

NORTH CAROLINA COURT OF APPEALS

Filed: 01 August 2006

Jody Meyes Marlowe,

Plaintiff,

v.

Buncombe County
No. 04 CVD 3773

Paul Brown Marlowe,

Defendant.

Appeal by intervener from order entered 14 June 2005 by Judge Marvin P. Pope in Buncombe County District Court. Heard in the Court of Appeals 11 May 2006.

Wade Hall for intervener-appellant Laura Marlowe.

No brief filed for plaintiff-appellee or defendant-appellee.

ELMORE, Judge.

Laura Marlowe filed a motion to intervene in the custody action between Jody Marlowe (plaintiff) and Paul Marlowe (defendant). Laura Marlowe (intervener) sought full custody of the minor child, J.A.M. The trial court denied the motion, concluding that intervener is a "stranger" to the minor child and not included in the categories of persons entitled to seek custody of the minor child pursuant to N.C. Gen. Stat. § 50-13.1.

In its order entered 14 June 2005, the trial court found the following: plaintiff and defendant are residents of Buncombe

County, North Carolina. Plaintiff and defendant are the adoptive parents of J.A.M., born 18 March 1999. Plaintiff and defendant adopted the child on 6 September 2001. Intervener is the biological mother of J.A.M. The Decree of Adoption entered 6 September 2001 severed the relationship of parent and child between the minor child and his biological parents. Thus, the parental rights of intervener were terminated on 6 September 2001. Plaintiff and defendant separated in 2004, and the instant action was initiated to resolve issues of custody and child support. The court also found that intervener filed her motion to intervene more than 3 years and 8 months after the Decree of Adoption. The court determined that to permit intervention by the biological mother at this time would unduly delay and prejudice the adjudication of the matter and also prejudice the rights of plaintiff, defendant, and the minor child.

Intervener sets forth numerous assignments of error challenging the order of the trial court denying her motion to intervene. By her first assignment of error, intervener contends that the court erred in finding that she was a "stranger" to J.A.M. and does not have the right to intervene in the custody action pursuant to N.C. Gen. Stat. § 50-13.1. Intervener argues that this statute gives her the right to participate in a custody action involving her natural son. Section 50-13.1 provides that "[a]ny parent, relative, or other person, agency, organization or institution claiming the right to custody of a minor child may institute an action or proceeding for the custody of such child, as

hereinafter provided." N.C. Gen. Stat. § 50-13.1(a) (2005). The trial court stated that two cases in particular supported its finding, *Kelly v. Blackwell*, 121 N.C. App. 621, 468 S.E.2d 400, *disc. review denied*, 343 N.C. 123, 468 S.E.2d 782 (1996), and *Krauss v. Wayne County DSS*, 347 N.C. 371, 493 S.E.2d 428 (1997).

In *Kelly*, the plaintiff filed a complaint seeking visitation with his two biological children. The plaintiff had consented to the adoption of the children by the defendant, their stepfather. In his complaint, however, the plaintiff alleged that the children were being sexually abused by the defendant. *Kelly*, 121 N.C. App. at 621-22, 468 S.E.2d at 400. The Court stated that "[t]his case presents the question of whether a natural parent who has consented to the adoption of his or her children can thereafter bring an action against the [other] natural parent and adoptive parent for custody and/or visitation of the children." *Id.* at 622, 468 S.E.2d at 400. The Court determined that a parent who consents to adoption of a child is "divested of all rights" to the child upon the entry of the final adoption decree, and that these rights include standing to seek custody or visitation. *Id.* at 622, 468 S.E.2d at 400-01. Also, the Court rejected the plaintiff's argument that his custody action was authorized by N.C. Gen. Stat. § 50-13.1 because he is an "other person" within the meaning of this statute. *Id.*, 468 S.E.2d at 401 ("[a] person seeking custody under N.C. Gen. Stat. § 50-13.1 must be able to claim a right to such custody. . . . [P]laintiff lost that right when he consented to the adoption of the children.").

In *Krauss*, our Supreme Court emphasized the limitations upon a person seeking custody pursuant to Section 50-13.1. The Court stated, "[T]he broad grant of standing in N.C.G.S. § 50-13.1(a) does not convey an absolute right upon every person who allegedly has an interest in the child to assert custody." *Krauss*, 347 N.C. at 379, 493 S.E.2d at 433. Rather, a person who has had his parental rights terminated lacks standing as an "other person" under N.C. Gen. Stat. § 50-13.1(a). *Id.*

Here, intervener argues that she is an "other person" under the statute and thus has standing to seek custody. But her contention is contrary to our established case law. Petitioner also points out that plaintiff agreed intervener could "re-adopt" J.A.M once her life became more stable. But any such agreement is of no legal effect. A natural mother who has consented to the adoption of her child has no greater standing to seek custody than a stranger to the child. See *Kelly*, 121 N.C. App. at 622, 468 S.E.2d at 400-01 (citing *Rhodes v. Henderson*, 14 N.C. App. 404, 407-08, 188 S.E.2d 565, 567 (1972)).

Notwithstanding the *Kelly* and *Krauss* decisions, intervener asserts that the trial court's determination she lacked the right to seek custody is in conflict with *In re Rooker*, 43 N.C. App. 397, 258 S.E.2d 828 (1979). But *Rooker* is readily distinguishable from the case at bar. In *Rooker*, the original adoptive parents had died and the child was living with another person at the time the biological father sought custody. *Id.* The Court held that the biological father had the right to seek custody as an "other

person" under Section 50-13.1. 43 N.C. App. at 398, 258 S.E.2d at 829. Here, the adoptive parents are living and have legal custody of the minor child. Intervener's argument regarding *Rooker* is misplaced.

Next, intervener contends the trial court abused its discretion in failing to place J.A.M.'s best interest above the concerns for judicial economy. In particular, intervener asserts that Judge Pope was aware of serious questions regarding plaintiff's and defendant's fitness to parent J.A.M. and yet failed to consider whether J.A.M.'s natural mother might be a better parent. The fitness of the adoptive parents is not an issue that may be raised by a person without standing to seek custody, however. As intervener has relinquished all rights to J.A.M., she lacks standing to seek custody. See *Krauss*, 347 N.C. at 379, 493 S.E.2d at 433; *Kelly*, 121 N.C. App. at 622, 468 S.E.2d at 400-01.

Finally, intervener assigns error to the trial court's finding that her intervention would result in prejudice to the rights of plaintiff, defendant, and the minor child. Essentially, she argues that she was seeking not to *establish* a relationship with J.A.M., but merely to *continue* an already existing relationship with J.A.M. This distinction is of no use here, as a natural parent who has relinquished all rights to a child has no right to seek visitation. See *Krauss*, 347 N.C. at 379, 493 S.E.2d at 433.

We determine that intervener's remaining assignments of error are without merit. The trial court did not err in denying intervener's motion to intervene in the action between plaintiff and defendant.

Affirmed.

Judges MCGEE and STEELMAN concur.

Report per Rule 30(e).