IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA16-56

Filed: 2 August 2016

Gaston County, No. 10CVD658

JOHN ISRAEL NESBIT, Plaintiff,

v.

AMY LYNN PADGET NESBIT, Defendant.

Appeal by intervenor from order entered 31 July 2015 by Judge Pennie M. Thrower in Gaston County District Court. Heard in the Court of Appeals 8 June 2016.

Horn, Pack & Brown, P.A., by Carol J. Walsburger, for intervenor-appellant.

No brief filed for plaintiff-appellee.

No brief filed for defendant-appellee.

DIETZ, Judge.

Intervenor-Appellant Gordon Avery appeals the trial court's refusal to permit him to intervene in a custody proceeding concerning his biological son. In 2005, Avery consented to his son's adoption by a man then in a relationship with his son's biological mother.

As explained below, our precedent compels us to affirm the trial court's order. This Court repeatedly has held that biological parents relinquish their parental

rights when they consent to adoption of their children by another. As a result, under settled precedent from this Court, once an adoption takes place, the biological parents no longer have standing to seek custody of the child. Applying that precedent here, we affirm the trial court's determination that Avery lacked standing to intervene in his biological son's custody proceeding because Avery consented to adoption of his son by another, and thereby relinquished his parental rights, many years ago.

Facts and Procedural History

Gordon Avery is the biological father of Joseph.[1] Amy Lynn Padgett is Joseph's mother. In 2005, John Nesbit, who was then in a relationship with Padgett and later married her, adopted Joseph with Avery's consent.

Padgett and Nesbit married in 2005, separated in 2008, and divorced in 2010. As part of the divorce proceedings, the trial court entered a consent judgment awarding Padgett primary custody of Joseph and granting Nesbit visitation every other weekend.

On 18 February 2014, Nesbit filed a motion to hold Padgett in contempt and to modify custody. In that motion, Nesbit alleged that Padgett had interfered with the exercise of his visitation rights with Joseph, prevented Joseph from contacting him, physically abused Joseph, and subjected Joseph to "discipline" at the hands of "persons unrelated to" Joseph.

[1] We use a pseudonym to protect the child's identity.

On 2 April 2014, the trial court entered a consent order finding that Nesbit and Joseph "had a strained relationship for several years" and that Joseph no longer desired to have a relationship with Nesbit. The consent order terminated Nesbit's visitation rights with Joseph and barred Nesbit from seeking future visitation with the child. Nesbit and Padgett also consented to the termination of Nesbit's child support obligations.

On 2 June 2015, Avery filed a motion to intervene in Joseph's custody proceeding so that he could move to modify Joseph's custody arrangement. In his motion, Avery alleged that Joseph had been subjected to serious physical abuse at the hands of both Padgett and her current and past boyfriends; that Padgett had illegal drug abuse issues; and that Nesbit had relinquished any parental role in Joseph's life following entry of the court's 2 April 2014 consent order. On 11 June 2015, Padgett moved to dismiss Avery's motion for lack of standing.

The trial court heard the parties' motions on 18 June 2015. On 31 July 2015, the court entered an order holding that, because Avery relinquished his parental rights and consented to Joseph's adoption by Nesbit, Avery had "no standing to seek custody or visitation of the minor child." The court thus rejected Avery's efforts to intervene for lack of standing. Avery timely appealed.

Analysis

Avery argues that the trial court erred by rejecting his request to intervene based on lack of standing. As explained below, Avery's argument is barred by controlling precedent from this Court.

Section 50–13.1 of the General Statutes sets out the categories of persons who may seek custody of a minor child: "Any 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. Avery contends that he is permitted to intervene and seek custody of Joseph because he is an "other person" under N.C. Gen. Stat. § 50–13.1(a).

This Court previously considered and rejected this precise argument. In *Kelly v. Blackwell*, 121 N.C. App. 621, 468 S.E.2d 400 (1996), a biological father consented to the adoption of his two minor children by their stepfather but later sought custody of the children after hearing reports that they were being abused. 121 N.C. App. at 621–22, 468 S.E.2d at 400. We rejected the biological father's argument that he was an "other person" under N.C. Gen. Stat. § 50–13.1(a) because "[a] person seeking custody under N.C. Gen. Stat. § 50–13.1 must be able to claim a right to such custody. As we have already stated, plaintiff lost that right when he consented to the adoption of the children. Thus, he now has no standing to maintain the instant action." *Id.* at

622, 468 S.E.2d at 401. Other cases since *Kelly* have reaffirmed this holding. *See, e.g.*, *Quets v. Needham*, 198 N.C. App. 241, 256, 682 S.E.2d 214, 223 (2009).

Kelly remains good law in this State and we must follow it. *See In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989). Accordingly, we affirm the trial court's determination that Avery lacked standing to intervene and seek custody of Joseph. Because the trial court properly determined that Avery lacked standing to appear in the custody proceeding below, we need not address Avery's remaining arguments on appeal.

Conclusion

We affirm the trial court's order.

AFFIRMED.

Judges ELMORE and DAVIS concur.

Report per Rule 30(e).