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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1188

Filed: 16 July 2019

Catawba County, No. 17 CVD 2363

ERIC SCOTT HUX, Plaintiff,

v.

BETHANY TERESA WILSON, Defendant,

v.

TRACY HUX AND WIFE, BELLA HUX, Intervenors.

Appeal by intervenors from order entered 8 June 2018 by Judge Amy R. Sigmon Walker in Catawba County District Court. Heard in the Court of Appeals 4 June 2019.

*No brief filed on behalf of Plaintiff-Appellee.*

*The Law Office of Dustin S. McCrary, PLLC, by Dustin S. McCrary, for the Defendant-Appellee.*

*Ferguson, Hayes, Hawkins & DeMay, PLLC, by James R. DeMay, for the Intervenors-Appellants.*

DILLON, Judge.

## HUX V. WILSON

### *Opinion of the Court*

Tracy and Bella Hux appeal from an order dismissing their complaint seeking custody of their grandchild.

#### I. Background

In January 2014, Plaintiff Eric Scott Hux (“Father”) and Defendant Bethany Teresa Wilson (“Mother”) had a child together. After the child’s birth, Mother sought and received a domestic violence protective order (“DVPO”) against Father. The DVPO awarded temporary custody of the child to Mother. Father has not sought custody of the child.

In September 2017, Father’s parents, Tracy and Bella Hux (“Grandparents”), filed a third-party complaint seeking custody of the minor child. Shortly thereafter, the trial court entered an order granting *temporary* custody to Grandparents, pending a hearing on the matter.

In June 2018, after the hearing, the trial court entered an order, concluding that Grandparents “failed to show that [Mother] is unfit or that she has acted contrary to her constitutionally protected status as a parent” and “lack[ed] standing to bring a [c]omplaint for [c]ustody.” In so concluding, the trial court dismissed Grandparents’ complaint and returned the child to Mother’s custody.

Grandparents timely appealed.

#### II. Analysis

On appeal, Grandparents contend that the trial court erred in two respects: (1) by overruling prior orders finding that they had standing to intervene and (2) in imposing the “intact family” rule.

We review Grandparents’ appeal from the order of dismissal *de novo*. *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 644, 669 S.E.2d 279, 283 (2008).

Section 50-13.1(a) of our General Statutes governs standing for child custody proceedings. N.C. Gen. Stat. § 50-13.1(a) (2017) (“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[.]”).<sup>1</sup> Under this Section, grandparents have “standing to seek custody at any time.” *Wellons v. White*, 229 N.C. App. 164, 174, 748 S.E.2d 709, 717 (2013); N.C. Gen. Stat. § 50-13.1(a). Grandparents seeking custody under Section 50-13.1(a) “are *not* required to prove the grandchild is not living in an intact family<sup>2</sup> in order to gain custody.” *Eakett v. Eakett*, 157 N.C. App. 550, 553, 579 S.E.2d 486, 489 (2003) (emphasis added). But they are required to “show that the parent is unfit or has taken action inconsistent

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<sup>1</sup> Our State’s case law provides additional guidelines on who may seek custody of a child. *See, e.g., Petersen v. Rogers*, 337 N.C. 397, 406, 445 S.E.2d 901, 906 (1994) (“N.C.G.S. § 50-13.1 was not intended to confer upon strangers the right to bring custody or visitation actions against parents of children unrelated to such strangers.”).

<sup>2</sup> “Under the ‘intact family’ rule, a grandparent cannot initiate a lawsuit for visitation rights unless the child’s family is already undergoing some strain on the family relationship, such as an adoption or an ongoing custody battle. The ‘intact family’ rule is intended to protect parents’ constitutional right to determine with whom their child shall associate.” *Wellons*, 229 N.C. App. at 175, 748 S.E.2d at 718 (internal citations omitted). In this case, there was an ongoing custody dispute between Father and Mother.

with her parental status in order to gain custody of the child.” *Id.* (citing *Petersen v. Rogers*, 337 N.C. 397, 445 S.E.2d 901 (1994)).

In the present case, Mother concedes that the trial court erred in its conclusion that Grandparents lack standing as she recognizes that the “intact family” rule does not apply in the underlying action. However, we agree with Mother that the trial court’s dismissal of Grandparents’ complaint for custody was otherwise supported by the trial court’s order. Specifically, the trial court determined that “[t]here are no findings or evidence that the Mother has acted contrary to her protected status as a parent . . . [or] showing that Mother is not a fit and proper person to have the care, custody and control of her minor child.” *See Eakett*, 157 N.C. App. at 553, 579 S.E.2d at 489. Thus, we conclude that the trial court did not err in dismissing Grandparents’ complaint. But we remand with instructions that the order be modified to reflect that dismissal was appropriate based on Grandparents’ failure to allege or show that Mother was unfit or acted contrary to her protected status as a parent.<sup>3</sup>

### III. Conclusion

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<sup>3</sup> We take notice of Grandparents’ second argument that the trial court impermissibly found and concluded that they did not have standing after previous trial courts and trial judges had upheld their standing in the underlying matter. *See In re Royster*, 361 N.C. 560, 563, 648 S.E.2d 837, 840 (2007) (stating “that one superior court judge may not ordinarily modify, overrule, or change the judgment or order of another superior court judge previously entered in the same case”). However, as we have acknowledged the trial court’s error in basing its ruling on N.C. Gen. Stat. § 50-13.1(a) and are remanding with instructions for a correct basis to dismiss, this argument is moot.

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*Opinion of the Court*

The trial court did not err in dismissing Grandparents' custody action. We affirm the dismissal but remand the order to reflect that the dismissal was appropriate based on Grandparents' failure to show that Mother was unfit or had acted contrary to her constitutional parental protections.

AFFIRMED AND REMANDED.

Chief Judge MCGEE and Judge ZACHARY concur.

Report per Rule 30(e).