[Cite as *In re K.A.G.*, 2010-Ohio-1559.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
PICKAWAY COUNTY

IN THE MATTER	:	
OF K.A.G.	:	Case No. 09CA13
	:	DECISION AND JUDGMENT ENTRY
	:	

APPEARANCES:

APPELLANT PRO SE: Michael McBride, 2655 Ulmerton Road, #214, Clearwater, FL 33762, Pro Se[1]

CIVIL APPEAL FROM COMMON PLEAS COURT, PROBATE DIVISION
DATE JOURNALIZED: 4-1-10

PER CURIAM.

{¶ 1} This is an appeal from a Pickaway County Common Pleas Court, Probate Division, entry that denied what the court characterized as a Civ.R. 60(B) motion by Michael McBride, respondent below and appellant herein, regarding the adoption and name change of his son, K.A.G. Appellant assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED WHEN IT ALLOWED PETITION FOR ADOPTION TO BE FILED IN PICKAWAY, OHIO[.]"

SECOND ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED WHEN IT ALLOWED A HEARING TO PROCEDE [sic]WITHOUT PROPER

[1] Jeremy Gabriel, petitioner below and appellee herein, did not enter an appearance in this appeal.

NOTICE[.]"

THIRD ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED WHEN IT FAILED TO CALL MICHAEL MCBRIDE AND FAILED TO TAKE HIS INCOMING CALL WITH FAX[.]"

FOURTH ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED WHEN IT FAILED TO RULE ON APPELLEE'S [sic] MULTIPLE MOTIONS TO DISMISS[.]"

FIFTH ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED IN SUA SPONTE CHANGING THE TIME OF THE PETITION FOR ADOPTION[.]"

SIXTH ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED WHEN IT SPOKE DIRECTLY TO APPELLANTS [sic] WITNESSES[.]"

SEVENTH ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED WHEN IT FAILED JOINDER [sic] APPELLANTS [sic] TO THE CASE[.]"

EIGHTH ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED WHEN IT FOUND THE 'RESPONDENT FAILED TO SUPPORT HIS SON FOR 12 MONTHS PRIOR TO FILING OF THE PETITION' FOR ADOPTION BY JEREMY GABRIEL[.]"

NINTH ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED WHEN IT USED OHIO REVISED CODE 3107.07 [and], 3107.11 TO JUSTIFY THE PETITION FOR ADOPTION AND NAME CHANGE[.]"

TENTH ASSIGNMENT OF ERROR:

"THE PROBATE COURT/APPELLEE ERRED IN FAILING TO NOTIFY THE APPELLANT OF THE OUTCOME OF THE HEARING[.]"

ELEVENTH ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED WHEN IT IGNORED APPELLEE'S OBJECTIONS TO THE ADOPTION[.]"

TWELFTH ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED WHEN IT CRUELY AND UNUSUALY [sic] PUNISHED MICHAEL MCBRIDE BY TERMINATING N [sic] HIS PARENTAL RIGHTS[.]"

THIRTEENTH ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED WHEN IT THREATENED A [sic] APPELLANT/WITNESS[.]"

FOURTEENTH ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED WHEN IT CONDUCTED ITSELF NON-COURTEOUSLY [SIC] AND IN AN UNDIGNIFIED MANNER THAT CONVEYED THE APPEARANCE OF PREJUDICE TOWARDS LITIGANTS[.]"

FIFTEENTH ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED IN NOT PROVIDING AN ATTORNEY FOR THE APPELLANT IN A TERMINATION OF PARENTAL RIGHTS HEARING[.]"

SIXTEENTH ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED WHEN IT FAILED TO PROPERLY SUPERVISE COURT CLERKS[.]"

SEVENTEENTH ASSIGNMENT OF ERROR:

"THE PROBATE COURT ERRED WHEN IT USED AN UNCONSTITUTIONAL LAW TO ALLOW JEREMY JASON GABRIEL TO ADOPT MICHAEL MCBRIDE'S SON OVER

HIS WRITTEN OBJECTION[.]" (Emphasis in original.)

{¶ 2} Appellant and Tara Gabriel (formerly Tara McBride) were married and have one child, K.A.G. (DOB 1/26/2003). In 2005, the Fifth Judicial Court of Utah granted the parents a divorce and awarded joint custody of K.A.G. The Court, nevertheless, designated Tara McBride as the parent with "primary physical custody" of K.A.G. and ordered appellant to pay child support. Tara McBride left Utah and relocated to Ohio where, on July 4, 2006, she married Jeremy Gabriel, petitioner below (Gabriel). Appellant also left Utah and resettled in Florida.

{¶ 3} On June 30, 2008, Gabriel filed a petition to adopt K.A.G. and further alleged appellant's consent was not necessary because he failed to provide maintenance or support for more than one year. Tara Gabriel filed a simultaneous consent to the adoption.

{¶ 4} On July 22, 2008, appellant entered an appearance pro se and filed a motion requesting the dismissal of the petition. He also filed a supporting affidavit that argued, in essence, he had not been provided proper notice of the proceedings and, in any event, that he provided insurance for K.A.G., as well as bestowed gifts on him. Appellant also represented that he was employed, in graduate school, came from a "large successful family" and that remaining a McBride family member offered K.A.G. "more future economic opportunity within the U.S. and outside the U.S." Nevertheless, appellant warned the Probate Court, "financial and geographical constraints" would prohibit him from attending any hearings.

{¶ 5} At the July 29, 2008 hearing, appellant did not appear and present evidence to contest the adoption. Thus, his motion to dismiss was overruled and a "Final Decree of Adoption" that granted Gabriel's petition was entered the same day. No appeal was taken from that final decree.

{¶ 6} On the same day that the final decree was journalized, however, appellant faxed to the court a second motion to dismiss the petition. This second motion was substantially the same as the first and was, likewise, overruled.

{¶ 7} Nearly a year later, on July 20, 2009, appellant filed his "objections" to the adoption. Gabriel filed a memorandum contra and argued that at this late date, appellant's objections should be treated as a Civ.R. 60(B) motion for relief from judgment, and when so treated, do not satisfy any of the grounds for relief. The Probate Court concluded that (1) the objections were not timely filed; and (2) the arguments were, in essence, the same arguments appellant raised in previous motions and he did not demonstrate grounds for relief pursuant to Civ.R. 60(B). This appeal followed.

{¶ 8} Before we turn to the merits of the errors assigned for our review, a few comments are in order. First, this Court has long afforded considerable leniency to pro se litigants. See Besser v. Griffey (1993), 88 Ohio App.3d 379, 382, 623 N.E.2d 1326; State ex rel. Karmasu v. Tate (1992), 83 Ohio App.3d 199, 206, 614 N.E.2d 827. Second, we are mindful that natural parents have a fundamental liberty interest in the care and custody of their children. See Troxell v. Granville (2000), 520 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49; In re Murray (1990), 52 Ohio St.3d 155, 157, 556 N.E.2d

1169. To ensure that appellant's rights are protected, these principles compel us to disregard pleading irregularities and the misstatement of arguments in the brief.

{¶ 9} In the case sub judice, we believe that the dispositive issues are not the merits of appellant's arguments, but rather the authority or jurisdiction of the Probate Court, and this Court, to consider those arguments. Every argument that appellant advances in his brief challenges the merits of the adoption decree. That decree, entered July 29, 2008, is a final appealable order. However, no appeal was taken within App.R. 4(A) thirty day time limit.

{¶ 10} First, as to the Probate Court, the adoption became settled after the thirty day time limit expired. Any attempt to undo the adoption is now barred by the doctrine of res judicata. See State v. Strickland, Lake App. No. 2008-L-034, 2009-Ohio-5424, at ¶89. In other words, the Probate Court could not have sustained appellant's objections to the final decree even if it found the objections meritorious.

{¶ 11} Second, as far as this Court is concerned, we lost jurisdiction to review the adoption decree once the deadline for appeal had run and no appeal was taken. See Wise v. Gallipolis (Nov. 19, 1990), Gallia App. No. 89CA25. In short, Gabriel's adoption of K.A.G. is complete and cannot be undone, unless appellant can establish some jurisdictional defect in the proceedings.

{¶ 12} Appellant's second assignment of error does assert that the Probate Court failed to provide him with notice of the adoption hearing. Our review of the record, however, reveals that no merit exists to that allegation. R.C. 3107.11(A) provides that notice of the time and place of a hearing must be given at least twenty days before the

hearing is held. Here, the requisite notice was sent by certified mail on June 30, 2008, and the return receipt in the original papers shows that it was signed for on July 7, 2008, by someone named "Erin McNiff." That notice was received twenty-two days before the hearing, thus, well within the statutory time frame.

{¶ 13} Appellant asserted in paragraph three of the affidavit in support of his July 22, 2008 motion to dismiss that the notice was not sent to his proper address. However, the address set forth in his affidavit is the same address the court used. Appellant also points out a typographical error on the notice that set the hearing 2 AM on July 29, 2008. We, however, fail to see how this changes anything, as appellant could not possibly have believed that the hearing would be conducted in the wee hours. In any event, appellant's motion to dismiss further states that he had no intention of appearing at the hearing. For these reasons, we readily conclude that the Probate Court properly complied with R.C. 3107.11 and properly obtained *in personam* jurisdiction over appellant. At this juncture, we observe that because the remainder of the assignments of error all involve the adoption, we have no jurisdiction to consider them at this late date.

{¶ 14} Appellant's brief also criticizes the "failings of the Ohio legal system" generally, and the trial court in particular. We point out, however, that the trial court could have summarily dismissed his objections to the adoption without giving them any consideration whatsoever. Instead, the Probate Court considered his objections as a

Civ.R. 60(B)[2] motion for relief. However, as was aptly noted, nothing in appellant's objections warrant relief from judgment.

{¶ 15} For these reasons, we hereby overrule appellant's assignments of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is hereby ordered that the judgment be affirmed and that appellee recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Pickaway County Court of Common Pleas, Probate Division, to carry this judgment into execution.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

McFarland, P.J., Abele, J. & Kline, J.: Concur in Judgment & Opinion
For the Court

BY:_____
Matthew W. McFarland
Presiding Judge

[2] A Civ.R. 60(B) motion cannot be used as a substitute for an appeal. See Rakosky v. Physician Providers, Inc., Pike App. No. 07CA758, 2007-Ohio-6574, at ¶12; Morley v. Morley, Lucas App. No. L-04-1051, 2004-Ohio-5247, at ¶ 10; In re Guardianship of Bradfield (Dec. 21, 1998), Ross App. No. 98CA2405.

BY:_____
Peter B. Abele, Judge

BY:_____
Roger L. Kline, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.