SLIP OPINION NO. 2023-OHIO-2344

THE STATE EX REL. HARRIS, APPELLANT, *v.* BRUNS, JUDGE, ET AL., APPELLEES.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *State ex rel. Harris v. Bruns,* Slip Opinion No. 2023-Ohio-2344.]

Prohibition—Evid.R. 201—Court of appeals did not abuse its discretion in declining to take judicial notice of documents attached to complaint and motion to dismiss—Judgment denying writ affirmed.

(No. 2022-1432—Submitted May 2, 2023—Decided July 12, 2023.)

APPEAL from the Court of Appeals for Montgomery County, No. 29278, 2022-Ohio-3661.

Per Curiam.

{¶ 1} Appellant, Andrea M. Harris, appeals the Second District Court of Appeals' judgment denying her complaint for a writ of prohibition. She contends

that appellees, Judge Julie Bruns[1] and Magistrate John Kolberg of the Montgomery County Common Pleas Court, Juvenile Division (collectively, the "juvenile court"), lacked jurisdiction to award custody of her minor child, A.Y.S., to Daniel Harris, the child's maternal grandfather and Andrea's father. Andrea has also filed a motion for oral argument, and the juvenile court has filed a motion for leave to respond to Andrea's reply brief. We deny the motions and affirm the Second District's judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

{¶ 2} As we will discuss below, the parties did not submit evidence in accordance with the court of appeals' rules of practice for original actions. Accordingly, the facts set forth below are taken from the allegations in the complaint and the exhibits attached to the complaint.

{¶ 3} Andrea gave birth to A.Y.S. in January 2012 in Sparks, Nevada. Randall Sneed is A.Y.S.'s biological father. In February 2014, the Washoe County, Nevada family court (the "Nevada court") issued a shared-parenting order, which established Andrea's and Randall's rights regarding custody of and visitation with A.Y.S. The Nevada court determined that Nevada was A.Y.S.'s "home state" under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), codified at Nev.Rev.Stat. 125A.005 et seq. Approximately four months after the Nevada court entered the shared-parenting order, Andrea moved to Ohio with A.Y.S. Randall remained in Nevada.

{¶ 4} In January 2016, Andrea and Randall filed in the Nevada court a stipulation to modify the 2014 shared-parenting order. The stipulation modified the holiday and visitation schedule, specified that Andrea and Randall would share joint legal custody of A.Y.S., and stated that Andrea would have full physical

1. Andrea filed the case against Judge Anthony Capizzi, but Judge Capizzi's term in office has expired, and his successor, Judge Bruns, is automatically substituted as appellee. *See* S.Ct.Prac.R. 4.06(B).

custody of A.Y.S. The parties also stipulated that Andrea would permanently reside in Ohio with A.Y.S. The Nevada court adopted the parties' stipulation in a modified shared-parenting order.

{¶ 5} In December 2017, Daniel filed a motion for an emergency order in the Montgomery County court. After a hearing, Magistrate Kolberg granted temporary emergency custody of A.Y.S. to Daniel and granted parenting time to Andrea; but the magistrate's order did not mention Randall's parental rights.

{¶ 6} In March 2018, Magistrate Kolberg held another hearing, this time on Daniel's complaint for legal custody of A.Y.S. Following the hearing, Magistrate Kolberg granted legal custody of A.Y.S. to Daniel, effective March 8, 2018, and terminated the temporary emergency custody order. The magistrate's order also terminated Randall's child-support obligation, ordered Andrea to pay child support to Daniel, and granted Andrea parenting time with A.Y.S. The juvenile-court judge adopted the magistrate's decision as a final, appealable order. The record does not show that Andrea appealed the order.

{¶ 7} Andrea filed a complaint for a writ of prohibition in the Second District Court of Appeals in October 2021. She alleged that the juvenile court patently and unambiguously lacked jurisdiction to modify the Nevada court's custody order because the Nevada court had never relinquished its exclusive jurisdiction over matters related to A.Y.S.'s custody. Andrea also alleged that the juvenile court failed to give full faith and credit to the Nevada court's custody order, in violation of 28 U.S.C. 1738A(a). Finally, Andrea alleged that the juvenile court failed to make the required finding of her "parental unsuitability" before awarding legal custody to Daniel.

{¶ 8} The juvenile court filed a motion to dismiss Andrea's prohibition complaint for failure to state a claim upon which relief could be granted, which Andrea opposed. The court of appeals denied the motion. Construing Andrea's complaint in the light most favorable to her, the court of appeals determined that

she had raised a colorable claim that the juvenile court patently and unambiguously lacked authority to exercise judicial power in a matter relating to A.Y.S. In a separate order, the court of appeals set a schedule for the parties to submit evidence and merit briefs. Quoting its local rule applicable to original actions, Loc.App.R. 8(E), the court of appeals ordered all evidence to be presented " 'by means of an agreed statement of facts, stipulations, depositions, interrogatories, requests for production of documents, and requests for admissions.' "

{¶ 9} Neither party filed evidence by the deadline imposed in the court of appeals' scheduling order. Rather, in their merit briefs, the parties relied on documents attached to Andrea's complaint and to the juvenile court's motion to dismiss.

{¶ 10} The court of appeals denied the writ. The court first observed that none of the parties filed evidence in the case and that they instead relied on the exhibits attached to the complaint and to the motion to dismiss. The court of appeals declined to take judicial notice of the exhibits. Though it accepted the "well established" rule that a court "may take judicial notice of judicial opinions and public records accessible through the Internet," the court of appeals observed that filings in juvenile-court cases "are not publicly available." 2022-Ohio-3661, 199 N.E.3d 31, ¶ 18-19. And because it could not take judicial notice of the exhibits attached to Andrea's complaint or those attached to the juvenile court's motion to dismiss, the court of appeals pronounced that there was no evidence before it by which to evaluate Andrea's prohibition claim. Accordingly, the court held that Andrea had failed to meet her burden of showing entitlement to the writ.

{¶ 11} The court of appeals recognized that neither party had objected to the other party's reliance on the exhibits attached to Andrea's complaint and to the juvenile court's motion to dismiss. But it determined that even if it did consider those documents, Andrea would not be entitled to a writ of prohibition. To warrant a writ of prohibition, a relator must show (1) the exercise of judicial power, (2) that

the respondent judge lacks authority to exercise that power, and (3) that denying the writ would result in injury for which no adequate remedy exists in the ordinary course of the law. *State ex rel. Sponaugle v. Hein*, 153 Ohio St.3d 560, 2018-Ohio-3155, 108 N.E.3d 1089, ¶ 23. If the trial judge's lack of jurisdiction is patent and unambiguous, the relator does not need to establish that there is a lack of an adequate remedy in the ordinary course of the law. *Id.* In this case, the court of appeals could not conclude that the juvenile court had patently and unambiguously lacked jurisdiction to grant legal custody of A.Y.S. to Daniel under R.C. 3127.18 (temporary emergency jurisdiction) and Andrea had had an adequate remedy in the ordinary course of the law—she could have appealed the March 2018 order awarding legal custody of A.Y.S. to Daniel.

{¶ 12} Andrea appealed to this court as of right. She has also filed a motion for oral argument.

II. ANALYSIS

A. Juvenile Court's Motion for Leave to Respond

{¶ 13} In her reply brief, Andrea contends that the juvenile court's brief was untimely filed under S.Ct.Prac.R. 16.03. The juvenile court filed a motion for leave to file a response to Andrea's reply brief on the issue of the timeliness of its merit brief.

{¶ 14} Andrea's notice of appeal did not designate this case as an appeal involving termination of parental rights. However, Andrea filed her merit brief within 20 days of the date the record was filed in this court. *See* S.Ct.Prac.R. 16.02(A) ("In every appeal involving termination of parental rights or adoption of a minor child, or both, the appellant shall file a merit brief with the Supreme Court within twenty days from the date the Clerk of the Supreme Court files the record from the court of appeals"). The juvenile court filed its merit brief 29 days after Andrea filed her brief—timely under the court's general rule for appeals but

untimely for appeals involving termination of parental rights, *see* S.Ct.Prac.R. 16.03(A)(1) and (2). Andrea argues that the juvenile court's brief was untimely filed and asks this court to therefore accept her statement of facts and issues as true, reverse the court of appeals' judgment under S.Ct.Prac.R. 16.07(B), grant her a writ of prohibition, and remand the cause to the court of appeals with instructions that it vacate the juvenile court's orders regarding Andrea and A.Y.S.

{¶ 15} We deny the juvenile court's motion for leave to respond to Andrea's reply brief, because a response is not necessary to resolve the timeliness issue. This case does not involve termination of parental rights. Rather, Andrea's prohibition complaint attacked the orders granting temporary custody and legal custody to Daniel. Legal-custody transfers do not terminate parental rights; parents retain residual rights and may request the return of their children. *In re Kayla H.*, 175 Ohio App.3d 192, 2007-Ohio-6128, 886 N.E.2d 235, ¶ 43 (6th Dist.); *see also In re A.W.-G.*, 12th Dist. Butler No. CA2003-04-099, 2004-Ohio-2298, ¶ 7. Though Andrea no longer has sole custody of A.Y.S., there is nothing in the record indicating that her parental rights were *terminated*. Indeed, Andrea was granted parenting time with A.Y.S. and ordered to pay child support to Daniel, indicating that the juvenile court did not terminate her parental rights but instead changed her status to that of a noncustodial parent.

{¶ 16} Because this appeal does not involve *termination* of parental rights, the expedited briefing schedule in S.Ct.Prac.R. 16.02(A) and 16.03(A) did not apply. The juvenile court's brief was timely filed.

B. Andrea's Motion for Oral Argument

{¶ 17} Andrea has moved for oral argument. In exercising our discretion to grant oral argument under S.Ct.Prac.R. 17.02(A), we consider whether the case involves a matter of great public importance, complex issues of law or fact, a

substantial constitutional issue, or a conflict among courts of appeals. *Sponaugle*, 153 Ohio St.3d 560, 2018-Ohio-3155, 108 N.E.3d 1089, at ¶ 31.

{¶ 18} We deny the motion for oral argument. Andrea's one-sentence motion does not explain why this case is worthy of oral argument under this court's standard. And for the reasons discussed below, the parties' failure to develop the record more fully in the court of appeals is a barrier to this court's consideration of the jurisdictional issues.

C. Court of Appeals Did Not Abuse Its Discretion in Declining to Take Judicial Notice

{¶ 19} The court of appeals began its analysis of Andrea's prohibition claim by examining the record before it. Though exhibits were attached to Andrea's complaint and the juvenile court's motion to dismiss, none of the parties had submitted evidence in accordance with Loc.App.R. 8(E) of the Second District Court of Appeals. And the court of appeals determined that it could not take judicial notice of the documents attached to the complaint or to the motion to dismiss. The court held that because no evidence was properly before it, Andrea could not show that she was entitled to a writ of prohibition. *See LG Chem, Ltd. v. Goulding*, 167 Ohio St.3d 488, 2022-Ohio-2065, 194 N.E.3d 355, ¶ 7 (relator must show entitlement to writ of prohibition by clear and convincing evidence).

{¶ 20} Evid.R. 201 governs judicial notice of adjudicative facts (i.e., the facts of the case). Evid.R. 201(A). "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Evid.R. 201(B). "A court *may* take judicial notice, whether requested or not," (emphasis added) Evid.R. 201(C), and it "shall take judicial notice if requested by a party and supplied with the necessary information," Evid.R. 201 (D).

{¶ 21} In this case, no party asked the court of appeals to take judicial notice of the exhibits attached to Andrea's complaint or to the juvenile court's motion to dismiss. Accordingly, the court of appeals had discretion whether to take judicial notice of those documents. This court reviews the court of appeals' refusal to take judicial notice for an abuse of discretion. *See In re Change of Name of K.S.G. to K.S.G.-B.*, 3d Dist. Hancock No. 5-20-03, 2020-Ohio-4515, ¶ 7; *see also State v. Finnerty*, 45 Ohio St.3d 104, 109, 543 N.E.2d 1233 (1989) (trial-court decisions regarding admission or exclusion of evidence are reviewed for abuse of discretion). A court abuses its discretion when its decision results from an attitude that is unreasonable, arbitrary, or unconscionable. *See Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

{¶ 22} On appeal, Andrea argues that each of the exhibits attached to her complaint has a clerk of court's "official stamp" and that "[n]o issue of dispute has been raised by either party" regarding the exhibits. Thus, Andrea argues, the court of appeals should have taken judicial notice of the exhibits because, in her view, they are indisputably authentic under Evid.R. 901(B)(7). But this argument is flawed because it assumes that the documents attached to the parties' filings below are self-authenticating.

{¶ 23} Andrea's argument confuses Evid.R. 901(B)(7) with Evid.R. 902(4). A copy of a public record is not self-authenticating under Evid.R. 902(4) unless the copy is *certified* as correct by the custodian or other person authorized to make the certification. *State ex rel. Columbia Res., Ltd. v. Lorain Cty. Bd. of Elections*, 111 Ohio St.3d 167, 2006-Ohio-5019, 855 N.E.2d 815, ¶ 25. With one exception, the documents attached to Andrea's complaint are not certified copies. Thus, to properly authenticate the noncertified documents under Evid.R. 901(B)(7), Andrea had to supply an affidavit attesting that the exhibits were authentic copies of the public records they purported to be. *See Columbia Res*. at ¶ 25, citing Evid.R. 901(B)(7); *see also State ex rel. Mun. Constr. Equip. Operators' Labor Council v.*

Cleveland, 114 Ohio St.3d 183, 2007-Ohio-3831, 870 N.E.2d 1174, ¶ 39. None of the documents was authenticated by affidavit. Thus, the court of appeals did not abuse its discretion by declining to take judicial notice of them. *See State ex rel. Banker's Choice, L.L.C. v. Cincinnati*, 1st Dist. Hamilton No. C-200017, 2020-Ohio-6864, ¶ 12 (trial court erred by taking judicial notice of facts in unauthenticated documents).

{¶ 24} Andrea's one authenticated document does not change the result. The first three pages of Exhibit B to Andrea's complaint include a certified copy of the Nevada court's January 2016 order affirming Andrea's and Randall's stipulation to modify the shared-parenting order. But this document establishes only that the Nevada court approved the parties' stipulation; the exhibit does not include a certified copy of the stipulation itself. Thus, even if the court of appeals could have taken judicial notice of this one document, it did not abuse its discretion in declining to do so.

III. CONCLUSION

{¶ 25} Because no evidence was properly submitted below, Andrea fails in her burden of showing that she is entitled to a writ of prohibition by clear and convincing evidence. And because the record contains no evidence properly submitted to the court of appeals, we need not reach the merits of the jurisdictional arguments Andrea raises on appeal. We deny the juvenile court's motion for leave to respond to Andrea's reply brief, and we deny Andrea's motion for oral argument. And because we hold that the Second District Court of Appeals did not abuse its discretion in declining to take judicial notice of the documents attached to Andrea's complaint and to the juvenile court's motion to dismiss, we affirm its judgment denying her complaint for a writ of prohibition.

Judgment affirmed.

KENNEDY, C.J., and FISCHER, DEWINE, STEWART, BRUNNER, and DETERS, JJ., concur.

DONNELLY, J., concurs in judgment only and would reach the merits and conclude that appellant has not shown a patent and unambiguous lack of jurisdiction.

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