

Circuit Court for Anne Arundel County
Case No. C-02-JV-000088

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1866

September Term, 2021

IN RE: A.W.

Wells, C.J.,
Berger,
Leahy,

JJ.

Opinion by Berger, J.

Filed: June 29, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

B.F., appellant, is the former foster mother of A.W., the respondent minor child in the child welfare proceeding below. B.F. has appealed the orders of the Circuit Court of Anne Arundel County, sitting as a juvenile court, denying B.F.’s motions to intervene in A.W.’s guardianship proceeding and to stay the guardianship proceeding. B.F. also appealed the order granting guardianship of A.W. to the Department of Social Services and terminating A.W.’s Child in Need of Assistance (“CINA”) case.¹ The Anne Arundel County Department of Social Services (the “Department”) and A.W. have moved to dismiss B.F.’s appeal on the grounds that the appeal is moot and for lack of standing. For the reasons explained herein, we shall grant the motion and dismiss B.F.’s appeal.

FACTS AND PROCEEDINGS

A.W. was born on October 26, 2019. Before A.W.’s discharge from the hospital, the Department filed a petition for shelter care, which was granted by the juvenile court pending an adjudicatory hearing.² Upon her discharge from the hospital on November 1, 2019, A.W. was placed in the licensed foster home of B.F. and her husband, J.F. A.W. was determined to be a CINA on December 2, 2019. During the time that A.W. resided with B.F. and J.F., the Department had no concerns regarding the ability of B.F. and J.F.

¹ A “CINA,” or “child in need of assistance,” is “a child who requires court intervention because: (1) [t]he child has been abused, has been neglected, has a developmental disability, or has a mental disorder; and (2) [t]he child’s parents, guardian, or custodian are unable or unwilling to give proper care and attention to the child and the child’s needs.” Md. Code (1974, 2020 Repl. Vol.), § 3-801(f) of the Courts and Judicial Proceedings Article (“CJP”).

² Shelter care is “a temporary placement of a child outside of the home at any time before disposition.” CJP § 3-801(bb).

to care for A.W. appropriately. By all indications, A.W. was well adjusted in her foster home.

A.W.'s initial permanency plan was reunification with her parents, but the permanency plan was changed to adoption by a non-relative on April 14, 2021. B.F. and J.F. hoped to adopt A.W. On May 5, 2021, the Department filed a petition for guardianship of A.W. with the right to consent to adoption and asked the court to terminate the parental rights of A.W.'s biological parents.

On July 25, 2021, before the guardianship trial occurred, J.F. told B.F. that he wanted to obtain a divorce. J.F. took A.W. with him and left the home he shared with B.F. J.F. and A.W. went to stay with J.F.'s parents in Howard County. On or about August 5, 2021, J.F. reported to the Department that B.F. had been abusive to him during their marriage. There were no allegations that A.W. had been abused. While J.F. and A.W. were residing with J.F.'s parents, B.F. visited with A.W. regularly. A.W.'s Court Appointed Special Advocate wrote a lengthy letter in support of B.F. and requesting that A.W. remain in B.F.'s care.

On or about August 26, 2021, the Department placed A.W. in a different foster home with foster parent Ms. P. On September 3, 2021, the Department notified B.F. that her foster home license would not be renewed. B.F. challenged the removal of A.W. and the non-renewal of her foster home license in a proceeding before the Maryland Office of Administrative Hearings ("OAH").

The guardianship hearing was originally scheduled for October 12, 2021, but it was postponed to January 21, 2022 upon the request of the biological father. On January 13, 2022, B.F. filed a motion to intervene in the guardianship case.³ On January 17, B.F. filed a motion to stay the guardianship case until the motion to intervene was ruled upon and until the conclusion of the administrative proceeding pending in the OAH.⁴ B.F. did not file any motion requesting that the court shorten time for the parties to respond to her motions. Late in the afternoon on January 20, 2022, the day before the scheduled hearing in the guardianship case, B.F. filed a Motion for Ex Parte Immediate Order of Stay of Guardianship Proceedings.

On January 21, 2022, the juvenile court held an uncontested hearing on the Department’s petition for guardianship of A.W. with the right to consent to adoption or long-term care short of adoption. The biological father conditionally consented to the termination of his parental rights with the condition that A.W. be adopted by her current

³ B.F. cites Md. Rule 11-122 as the authority for her motion to intervene. The Department observes that, as of January 1, 2022, there is no longer a Rule 11-122. The current Md. Rule 11-215, which we shall discuss further *infra*, is derived from the former Md. Rule 11-122. The Department further observes that no rule, under the prior or current version of the rules, allows for intervention in guardianship proceedings.

⁴ The Administrative Law Judge (“ALJ”) issued her proposed decision in B.F.’s administrative proceeding on March 9, 2022. The decision became final after neither party filed exceptions to the proposed decision. The ALJ “conclude[d] as a matter of law that the OAH does not have the authority to hear and decide the issue of the local department’s removal of [A.W.] and placement of [A.W.] in another resource home.” The ALJ further “conclude[d] as a matter of law that the local department’s decision not to renew [B.F.’s] resource home license and to close her resource home was correct.” The ALJ affirmed the decision of the Department not to renew B.F.’s resource home license.

foster parent, Ms. P. The biological mother was deemed to have consented by operation of law. A.W., by and through her attorney, also conditionally consented to the termination of her biological parents' parental rights. The juvenile court found that it was in A.W.'s best interests to grant the guardianship petition and granted guardianship of A.W. to the Department with the right to consent to adoption. The court entered a separate order terminating A.W.'s CINA case as required by Md. Code (1984, 2019 Repl. Vol.), § 5-301 of the Family Law Article ("FL").

On January 25, 2022, the juvenile court denied B.F.'s motion to intervene and motions to stay as moot. The court explained that the Motion for Ex Parte Immediate Order of Stay of Guardianship Proceedings "was not sent to the [c]ourt's queue until after the TPR proceeding had begun and had the motion been sent up to the [c]ourt prior to the hearing the [c]ourt would have DENIED the motion." With respect to B.F.'s earlier motion to stay and motion to intervene, the juvenile court explained that "[t]he [c]ourt did not previously rule on the motions because they were not ripe when they were original[ly] sent up to the [c]ourt and the [c]ourt had not yet [received] the [j]oint response [from the Department and A.W.] until after the hearing was held. Had the motions been ripe, the [c]ourt would have denied them both." B.F. noted an appeal of the denial of her motions to intervene and to stay to this Court.⁵ On March 25, 2022, the juvenile court entered a decree of adoption of A.W.

⁵ B.F. also appealed the juvenile court's orders granting guardianship and terminating A.W.'s CINA case.

On April 6, 2022, the Department filed a stand-alone motion to dismiss B.F.’s appeal as moot. We denied the motion with leave to raise the issue in the parties’ briefs and at oral argument. When the Department filed its appellate brief, the Department included a motion to dismiss B.F.’s appeal on the grounds of mootness and B.F.’s lack of standing. In her appellate brief, A.W. joined in the Department’s motion to dismiss.

When B.F.’s appeal in the guardianship proceeding was pending, B.F. filed a Motion to Vacate Decree of Adoption in the juvenile court on April 16, 2022. The juvenile court denied B.F.’s motion on May 3, 2022, and B.F. subsequently noted an appeal. *In re: A.W.*, Case No. 394, Sept. Term 2022. The Department and A.W. moved to dismiss B.F.’s appeal of the denial of the motion to vacate. We granted the motion to dismiss B.F.’s appeal of the denial of B.F.’s Motion to Vacate Decree of Adoption on May 31, 2022.⁶

MOTION TO DISMISS

The Department and A.W. have moved to dismiss B.F.’s appeal on the grounds that: (1) B.F. lacked standing to intervene and lacks standing to pursue this appeal; and (2) this appeal is moot in light of A.W.’s adoption having been finalized. As we shall explain, we agree with the Department and A.W. and shall grant the motion to dismiss.

⁶ On May 23, 2022, A.W. filed a separate motion to dismiss in Case. No. 1866, Sept. Term 2021, which was identical to the motion to dismiss filed in Case No. 394, Sept. Term 2022 on May 24, 2022, and presented argument regarding B.F.’s motion to vacate the juvenile court’s adoption decree. We denied A.W.’s May 23, 2022 motion to dismiss filed in Case No. 1866, Sept. Term 2021 on May 31, 2022.

I. Standing

Pursuant to CJP § 12-303(3)(x), “a parent, grandparent, or natural guardian” may note an interlocutory appeal of an order “depriving [them] of the care and custody of [their] child, or changing the terms of such an order[.]” With respect to appeals of final judgments, CJP § 12-301 provides that only “a party may appeal” a final judgment. The definition of “party” in guardianship cases is set forth in FL § 5-301(h) as follows:

(h) “Party” means:

(1) in a guardianship case under this subtitle:

(i) the child;

(ii) except as provided in § 5-326(a)(3)(iii) of this subtitle, the child’s parent; and

(iii) the local department to which the child is committed[.]

The definition of “party” does not include a former or current foster parent.⁷

Although Md. Rule 11-215 allows for permissible intervention in certain juvenile proceedings, it is not applicable in guardianship proceedings such as this. Rule 11-215 provides that “[a]ny person, other than a parent, may file and serve a motion to intervene in a disposition, including a proceeding to review, modify, or vacate a dispositional order, for the sole purpose of seeking custody or guardianship of the respondent child.” Critically,

⁷ We further observe that the consent of a former or current foster parent is not required before a juvenile court may grant guardianship of a child. *See* FL § 5-320 (requiring that “each of the child’s living parents consents” to a guardianship unless “a governmental unit or person other than the parent” has been granted “the power to consent to adoption, and the unit or person consents” or “parental rights have been terminated.”).

however, Md. Rule 11-215 is applicable only to CINA proceedings -- *not* to guardianship proceedings. Maryland Rule 11-201 expressly provides that “[t]he Rules in this Chapter govern child in need of assistance proceedings under Code, Courts Article, Title 3, Subtitle 8.”

The Rules set forth in Title 11, Chapter 300 are applicable to “[g]uardianship proceedings in a juvenile court to terminate parental rights after a child has been found to be a child in need of assistance” and “[g]uardianship review proceedings in a juvenile court after the entry of an order of guardianship that terminated parental rights.” Md. Rule 11-301. Accordingly, Md. Rule 11-215 allows intervention in certain circumstances *in CINA cases*, but *not in guardianship proceedings* such as the case at issue in this appeal.⁸ Title 11, Chapter 300 includes no rule that establishes the authority to intervene in a guardianship proceeding.

There is no rule providing for intervention in guardianship proceedings. Furthermore, we have explained that the general rule governing intervention in civil cases is inapplicable to adoption proceedings, and, in our view, the same reasoning applies to the guardianship proceeding at issue in this appeal. *In re Malichi W.*, 209 Md. App. 84, 92-93 (2012). In *Malichi*, we explained that “[i]t is necessarily implied that intervention under Title 2 is inapplicable to adoption proceedings because Title 9 has its own rules for ‘intervening’ in adoption proceedings.” *Id.* at 93. Guardianship proceedings to terminate

⁸ As we noted *supra* in note 3, B.F. cites Md. Rule 11-122 as the authority for her motion to intervene. As of January 1, 2022, there is no longer a Md. Rule 11-122. The current Md. Rule 11-215 is derived from the former Md. Rule 11-122.

parental rights also have their own rules, and the rules applicable to such actions do not allow for intervention. B.F., an unrelated former foster parent, had no legal basis to intervene in A.W.’s guardianship action. Accordingly, we hold that B.F. lacks standing to pursue this appeal.

II. Mootness

A case is moot when there is no longer an existing controversy or when there is no longer an effective remedy the Court could grant. *Suter v. Stuckey*, 402 Md. 211, 219 (2007). Only in rare instances will the reviewing court address the merits of a moot case. *Id.* at 220 (“Under certain circumstances, however, [the Court of Appeals] has found it appropriate to address the merits of a moot case . . . [i]f a case implicates a matter of important public policy and is likely to recur but evade review, this court may consider the merits of a moot case.”).

In this case, the motion to intervene, motion to stay, and motion for ex parte relief did not reach the presiding judge until after the conclusion of the guardianship proceeding. B.F. filed the motion to intervene on January 13, 2022 and did not file a motion to shorten time to respond to the motion. The Department and A.W. filed oppositions to the motion, but the biological father’s time to respond to the motion had not yet expired by the time of the scheduled guardianship hearing on January 21, 2022. *See* Md. Rule 11-104(b) (providing that, in juvenile proceedings, “any response [to a motion] shall be filed within 10 days after service of the motion”). At the January 21, 2022 hearing, the juvenile court acknowledged that the motion to intervene had been filed, but observed that the “motion is

not ripe.” The subsequent motions to stay and for ex parte relief were similarly not ripe prior to the guardianship hearing. By the time the motions were ripe for the juvenile court’s consideration, they were moot because all parties had consented to the granting of the guardianship petition and the court had awarded guardianship of A.W. to the Department.

Moreover, at this juncture, A.W. has been adopted by another individual. Even if we were to set aside all of the other considerations we have discussed *supra*, A.W.’s adoption renders B.F.’s appeal moot because there is no relief available for B.F. to obtain. B.F. was not and could not be a party to the adoption proceeding. *See Malichi W.*, *supra*, 209 Md. App. at 96. B.F. asserts that the decree of adoption of A.W. does not render this appeal moot because the adoption decree could potentially be vacated. B.F., however, presents no authority for her proposition that an adoption decree could be vacated upon the motion of an unrelated third party. The cases cited by B.F. in support of this assertion involve a biological parent’s challenge to a previously given consent to an adoption. *See Falck v. Chadwick*, 190 Md. 461, 467-68 (1948) (remanding to consider whether biological parents had knowingly and voluntarily consented to an adoption); *In re Adoption No. 85365027*, 71 Md. App. 362, 367-68 (1987) (involving a motion to vacate adoption filed by the biological mother and remanding for consideration of whether “the rights of the natural mother have been terminated in a manner consistent with justice”); and *In re Adoption/Guardianship No. 11137*, 106 Md. App. 308, 317-29 (1995) (vacating a decree of adoption where the biological mother had timely revoked her previous consent to an adoption). B.F. is not a biological parent and the fundamental right to parent is not

implicated in this case.⁹ Furthermore, B.F. moved to vacate the decree of adoption in the juvenile court, but her motion to vacate was denied by the juvenile court, and her appeal of the denial was dismissed by this Court. Accordingly, we hold that B.F.'s appeal in this case is moot.

For these reasons, we shall grant the motion to dismiss filed by the Department and A.W.

**MOTION TO DISMISS APPEAL
GRANTED. COSTS TO BE PAID BY
APPELLANT.**

⁹ By emphasizing the fact that B.F.'s relationship with A.W. was not that of a biological parent and not entitled to the same legal protections, we do not suggest that her emotional connection to A.W. was insignificant or unimportant. We are mindful that B.F., having cared for A.W. for the first twenty-two months of her life, had a close bond with A.W., and, indeed, the record reflects that close relationship. We are certainly empathetic to the pain and hurt B.F. experienced when A.W. was removed from her care. Nonetheless, it is the legal relationship (or lack thereof) that determines the scope of the rights implicated in child welfare proceedings such as this one.