

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

In the Matter of:	:	Case No. 09CA885
	:	
The Adoption of	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
S.R.N.E.	:	
	:	<b>Released 12/23/09</b>

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APPEARANCES:

Patrick G. Moeller, Hamilton, Ohio, for appellant V.W.

Barbara Moore-Eiterman, West Union, Ohio, for appellees L.W. and M.W.

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Harsha, J.

{¶1} V.W., the former “great aunt by marriage” of S.R.N.E., appeals the trial court’s decision denying her motion to intervene in adoption proceedings initiated by L.W. and M.W. (“appellees”), the child’s maternal great-grandparents. V.W. filed the motion in an effort to continue her court-ordered visitation with S.R.N.E. after the adoption. However, in her position as the child’s former great aunt, V.W. does not have any recognized right to participate in adoption proceedings when she is not seeking to adopt the child. Therefore, the trial court did not err by denying her motion to intervene, and we affirm the court’s judgment.

I. Facts

{¶2} S.R.N.E. was born in 2002. H.E. is the child’s natural mother, and B.H. is her putative father. The Butler County Court of Common Pleas, Juvenile Division named V.W. and her husband, i.e. S.R.N.E.’s maternal great uncle, the child’s legal custodians from December 4, 2003 until February 3, 2006. Then the couple agreed to

the appellees assuming legal custody of the child, and the Butler County court granted V.W. and her husband visitation rights. V.W. and her husband separated approximately one year prior to their divorce in October 2007, but V.W. did not tell the appellees of the separation because she feared losing visitation with the child. In December 2007, V.W. filed a motion to modify the visitation schedule, which the Butler County court did not rule on until January 2009 when it granted some of V.W.'s requested modifications.

{¶3} However, in August 2007 the appellees notified the Butler County court of their intent to relocate to Seaman, Ohio in Adams County. In December 2008, the appellees filed a petition to adopt S.R.N.E. in the Adams County Court of Common Pleas, Probate Division. H.E. consented to the adoption. V.W. filed a motion to intervene in the adoption proceedings. She did not want to adopt S.R.N.E. but instead sought to continue her court-ordered visitation with S.R.N.E. after the appellees adopted the child. The court denied V.W.'s motion to intervene and granted the appellees' petition to adopt. V.W. now appeals the trial court's denial of her motion.

## II. Assignment of Error

{¶4} Appellant assigns the following error for our review:

THE TRIAL COURT ERRED BY DENYING APPELLANT'S MOTION TO INTERVENE AND NOT REAFFIRMING COURT AWARDED VISITATION

## III. Intervention

{¶5} Civ.R. 24 governs intervention and states:

(A) Intervention of right

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter

impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(B) Permissive intervention

Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of this state confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

{¶6} We review a trial court's decision to deny a Civ.R. 24(B) permissive intervention motion for an abuse of discretion. *In re Adoption of T.B.S.*, Scioto App. No. 07CA3139, 2007-Ohio-3559, at ¶10. "The term 'abuse of discretion' connotes more than an error of law or of judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *State v. Adams* (1980), 62 Ohio St.2d 151, 157, 404 N.E.2d 144. When applying this standard, a reviewing court is not free to merely substitute its judgment for that of the trial court. *In re Jane Doe 1* (1991), 57 Ohio St.3d 135, 137-138, 566 N.E.2d 1181.

{¶7} The standard of review for a trial court's decision to deny a Civ.R. 24(A) motion for intervention as of right is less settled. "Ohio courts of appeals have \* \* \* routinely held that appellate review of trial court decisions respecting applications for intervention of right is limited to the deferential abuse of discretion standard." Klein and Darling, *Ohio Civil Practice* (Supp. 2009) Section 24:4 (footnote omitted). However, "[s]everal court of appeals decisions have expressed concern about the propriety of applying that standard[,]" and Klein and Darling suggest that appellate courts review

Civ.R. 24(A) motions under a “more searching scope of appellate review[.]” *Id.* They note that some recent court of appeals decisions have applied *de novo* review for at least some aspects of intervention of right. *Id.* See *In re Young*, Stark App. No. 2008CA00134, 2008-Ohio-5435; *In re M.N.*, Wayne App. No. 07CA0088, 2008-Ohio-3049; and *In re Guardianship of Chambers*, Sandusky App. No. S-07-014, 2007-Ohio-6881.

{¶8} Regardless of which standard we apply here, we conclude the trial court did not err by refusing to permit V.W. to intervene in the adoption proceedings. Regardless of whether an applicant argues for intervention as of right or permissive intervention, she must adhere to the requirements of Civ.R. 24(C). Under that subsection, any motion for intervention “shall be accompanied by a pleading, as defined in Civ.R. 7(A), setting forth the claim or defense for which intervention is sought.” Civ.R. 24(C). V.W. did not include a qualifying pleading with her motion as required by this rule. Thus, the court properly denied the motion.

{¶9} Moreover, V.W., as the child’s former great aunt by marriage, had no recognized right to participate in the adoption proceedings. The Supreme Court of Ohio previously addressed grandparent intervention in adoption proceedings and held:

[T]here is no statutory basis for allowing [grandparents] to intervene. Under Civ.R. 24(A), a party has the right to intervene “when a statute of this state confers an unconditional right to intervene.” Under Civ.R. 24(B), the judge may permit a party to intervene “when a statute of this state confers a conditional right to intervene.” Unfortunately for the appellees, the relevant statutes, R.C. Chapter 3107, which govern all adoptions in Ohio, contain no provision giving the appellees either a conditional or an unconditional right to intervene. In fact, under R.C. 3107.11, the trial court is not even required to give the appellees notice of the adoption proceeding. R.C. 3107.11 does not mention grandparents as persons who must be notified and appellees do not fit the description of any of the parties who are entitled to notification under R.C. 3107.11(A).

Moreover, the appellees do not qualify as persons who must consent to an adoption pursuant to R.C. 3107.06. R.C. 3107.06, which requires the written consent of particular parties before an adoption petition may be granted, contains no reference to grandparents. Furthermore, appellees do not satisfy the description of any of the parties who are listed in R.C. 3107.06. \* \* \* Moreover \* \* \* the portion of the juvenile court's visitation order granting the appellees post-adoption visitation rights is void as violative of R.C. 3107.15. Therefore, it may not provide a basis for granting the appellees' motions to intervene.

Appellees have pointed to no other provision granting them the right to intervene and we have found no such provision in our examination of the adoption statutes. Thus, the only question that remains is whether the juvenile court order granting visitation rights to the biological grandparents gives them a legally protectible interest which would allow them to intervene in the adoption proceeding pursuant to Civ.R. 24(A)(2). \* \* \* We acknowledge that under R.C. 3107.15, the grandparents will lose their visitation rights if the adoptions are granted. However, \* \* \* the purpose of the adoption proceeding is not to protect the grandparents' rights. The purpose is to determine, on the basis of the best interests of the child, whether to grant or deny the adoption petitions. \* \* \* [U]nless the appellees are themselves seeking to adopt, they do not have an interest in the adoption proceeding *per se* sufficient to give them standing to intervene. Consequently, we conclude that the trial judge erred in permitting the appellees to intervene.

*In re Adoption of Ridenour* (1991), 61 Ohio St.3d 319, 328-330, 574 N.E.2d 1055.

{¶10} While *Ridenour* involved a "stranger" adoption, the court later expressly expanded its holding to include "non-stranger" adoptions as well. *State ex rel. Kaylor v. Bruening*, 80 Ohio St.3d 142, 146, 1997-Ohio-350, 684 N.E.2d 1228; *In re Martin* (1994), 68 Ohio St.3d 250, 254, 626 N.E.2d 82. The legislature has since amended R.C. Chapter 3107 to establish a right of grandparent and other relative visitation after a stepparent adoption but not in other circumstances. See *In re Busdiecker*, Warren App. No. CA2002-10-104, 2003-Ohio-2556, at ¶26.

{¶11} Although V.W. attempts to distinguish *Ridenour* from this case, its holding on grandparent intervention in adoption proceedings applies with equal force to

intervention by V.W. in her position as a “former great aunt” with pre-adoption visitation rights. There is no statutory basis allowing V.W. to intervene in this action. Under R.C. 3107.11, the trial court was not even required to give her notice of the adoption proceeding. In addition, V.W. does not qualify as a person who must consent to an adoption under R.C. 3107.06. Thus, the court did not err in denying her motion under Civ.R. 24(A)(1) or (B)(1).

{¶12} We recognize V.W. lost her visitation rights when the trial court granted the adoption petition. However, like the *Ridenour* court, we also must recognize that the purpose of the adoption proceeding was not to protect V.W.’s rights. The purpose was to determine, on the basis of the best interests of the child, whether to grant or deny the adoption petition. Because V.W. was not herself seeking to adopt the child, she did not have an interest in the adoption proceeding sufficient to give her standing to intervene. See *Ridenour* at 330. Thus, the trial court did not err in denying V.W.’s motion to intervene under Civ.R. 24(A)(2).

{¶13} Moreover, the trial court did not abuse its discretion in denying V.W.’s motion to intervene under Civ.R. 24(B)(2), which permits intervention when the “applicant’s claim or defense and the main action have a question of law or fact in common.” Again, V.W. failed to enunciate any “claim or defense” in a qualifying pleading as required by Civ.R. 24(C). Even if V.W. filed an appropriate pleading setting forth a claim for post-adoption visitation rights, she cites no authority that would permit the trial court to grant her such rights. See *Ridenour* at 325, 329. Thus, the court’s decision to deny V.W.’s motion to intervene was not unreasonable, arbitrary or unconscionable.

{¶14} Accordingly, we overrule V.W.'s sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

**JUDGMENT ENTRY**

It is ordered that the trial court's JUDGMENT IS AFFIRMED. Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

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

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

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

Abele, J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: \_\_\_\_\_  
William H. Harsha, 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.**