2016 IL App (2d) 160148-U
Nos. 2-16-0148 & 2-16-0149 Cons.
Order filed December 5, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re K.C., a Minor	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	
	)	
	)	Nos. 11-JA-388
	)	15-AD-116
	)	
	)	
(The People of the State of Illinois and	)	Honorable
Deborah Dyer-Webster, DCFS Guardianship	)	Mary Linn Green and
Administrator, Petitioners-Appellees, v.	)	Francis Martinez,
Christel V.D., Putative Intervenor-Appellant).	)	Judges, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Schostok and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: There were no grounds to reverse any of the trial court's rulings in case 11-JA-388 because Christel was not a party to those proceedings and did not argue that the trial court erred in denying her petitions to intervene. Regarding case 15-AD-116, Christel was not entitled to notice that the foster parents had filed a petition to adopt K.C., so the trial court did not err in dismissing her adoption petition in as moot. Therefore, we affirmed.

¶ 2 Putative intervenor, Christel V.D., is the maternal grandmother of minor K.C. Following the termination of K.C.'s parents' parental rights, both Christel and K.C.'s foster parents filed

petitions to adopt K.C. The trial court granted the foster parents' petition to adopt K.C. and subsequently dismissed Christel's petition as moot. On appeal, Christel argues that the trial court's decision to grant the foster parents' petition for adoption, with no notice to her, was an abuse of discretion. We affirm.

¶ 3 I. BACKGROUND

¶ 4 K.C. was born on October 20, 2009, to Brittany V. and Roger C. In November 2011, after a temporary shelter care hearing, he was found to be neglected based on his parents' substance abuse issues.[1] The trial court granted temporary guardianship and custody of K.C. to the Department of Children and Family Services (DCFS). K.C. stayed with his father's aunt and uncle, Crystal and Rob C., on their farm in Pecatonica, Illinois. However, on December 23, 2011, he was placed with Christel V.,[2] his maternal grandmother.

¶ 5 Four months later, on April 23, 2012, the trial court adjudicated K.C. a neglected minor.

¶ 6 On February 20, 2013, Christel filed an emergency petition to intervene, alleging that Roger had sexually abused K.C. Days later, on February 26, 2013, K.C. was removed from Christel's care. In our prior order from Brittany's appeal from the termination of her parental rights, we stated that K.C. was removed from Christel's home "based on the minor's physical and emotional safety." *In re K.C.*, 2015 IL App (2d) 150135-U, ¶ 13. We further stated:

> "Christel had consistently interfered with visits between K.C. and his father over a seven-month period. In addition, she had alleged that the father had sexually abused K.C. during a visit by putting his penis in K.C.'s mouth, despite the fact that the visit was

[1] Judge Mary Linn Green presided over the case.

[2] Although they have similar names, Christel is K.C.'s maternal grandmother whereas Crystal is K.C.'s father's aunt.

> supervised by a caseworker. Without DCFS approval, Christel had then taken K.C. to the Carrie Lynn Center for an interview, and the interviewer found no evidence of sexual abuse." *Id.*

DCFS placed K.C. back with Crystal and Rob, where he has since remained.

¶ 7 On March 12, 2013, the trial court denied Christel's emergency petition to intervene. It stated that she had a right to be present and be heard because she had previously been K.C.'s foster parent. However, it stated that intervenor status was based on the best interest factors, and it did not believe that it was in K.C.'s best interest for Christel to be granted intervenor status.

¶ 8 In a September 12, 2014, report to the court, it was noted that Christel had been allowed some visitation with K.C. during Brittany's visitation time, but the social service agency decided on July 7, 2014, that Christel would no longer be allowed in any visit. The report stated that Christel "did not comply with the visitation," would show up to visits that she was not allowed to attend, would "take over" the visits, and that Brittany would not tell her to leave.

¶ 9 On September 26, 2014, the State filed a motion to terminate Brittany's and Roger's parental rights.

¶ 10 On November 20, 2014, Christel filed another emergency petition to intervene. The same day, the trial court denied it as untimely, as it was filed after the termination proceedings had begun.

¶ 11 On February 4, 2015, the trial court found K.C.'s parents to be unfit. The case then proceeded to a best interest hearing. Among the witnesses was Anna McMahon, K.C.'s caseworker. She testified as follows, in relevant part. She had been the caseworker since October 2013 and had been conducting monthly visits. K.C.'s relationship with Crystal and Rob was very loving and caring, and the two teenagers who also lived in the house treated him like a

younger brother. K.C. helped the foster parents with farm chores, and he had his own horse. K.C. was doing very well in school, and he was involved with 4-H. The agency believed that it was in K.C.'s best interest to remain with Crystal and Rob, and for them to adopt him.

¶ 12 At the conclusion of the witnesses' testimony, the trial court asked Christel if she had been writing things down during the hearing. Christel responded that she had for her "personal reference." The trial court stated that Christel was in a highly confidential juvenile abuse and neglect courtroom, and it ordered her to turn over her notes. Christel instead began to tear up some of the papers and put others in her purse. Only after the trial court summoned the bailiff and threatened Christel with jail did she turn over the notes.

¶ 13 On February 9, 2015, the trial court terminated Brittany's and Roger's parental rights. It gave guardianship of K.C. to the guardianship administrator of DCFS, with the power to consent to his adoption. Brittany appealed, and a stay was placed on any adoption proceedings. Roger did not appeal the trial court's ruling.

¶ 14 On May 4, 2015, Christel filed a petition for adoption in the juvenile neglect case. On August 3, 2015, she filed a motion to substitute the judge for cause, citing, among other things, the trial judge's confiscation of her personal notes on February 4, 2015.

¶ 15 We affirmed the trial court's order terminating Brittany's parental rights on July 9, 2015.

¶ 16 On August 4, 2015, the trial court dismissed, with prejudice, Christel's motion for substitution of judge, stating that Christel was not a party to the proceedings. The trial court also dismissed Christel's petition for adoption due to improper venue, stating that it should have been brought in probate court. The trial court further stated that our mandate had not yet issued, so the stay on adoption proceedings continued. The trial court noted that DCFS was involved as guardian and had to consent to adoption, so it advised Christel's attorney to serve all necessary

parties. The same day, Christel filed a petition for adoption of K.C. under case number 15-AD-116.

¶ 17 Our mandate was issued in the trial court on August 24, 2015, and the trial court lifted the stay on the adoption the same day.

¶ 18 On September 24, 2015, Christel filed an emergency motion in case number 15-AD-116 to have K.C. placed with her. She alleged, among other things, that K.C. was living with a teenager who had been accused of molesting other children in the home; that the foster parents were financially unable to provide a secure and safe environment; that K.C. was forced to do farm work; that K.C. was medically neglected; and that caseworkers were not addressing these concerns. Christel attached various exhibits to her motion. On September 30, 2015, the trial court found the motion to be "premature," and it continued the matter for a hearing.

¶ 19 On October 7, 2015, DCFS filed a motion to transfer the case in 15-AD-116 to the same calendar as the juvenile case, case number 11-JA-388. DCFS stated that K.C. was subject to ongoing proceedings in the neglect and abuse case and that the trial court had made regular findings in that case about his placement, best interests, and permanency goal. DCFS noted that K.C. was also represented by a guardian *ad litem* in the juvenile case. DCFS argued that, in an attempt to circumvent the Winnebago County circuit court's orders, Christel had twice requested emergency mandamus relief in Will County in the form of a placement change for K.C. However, the Will County court had denied the motions and stated that it would not enter any order relating to K.C.'s placement, visitation, or welfare. DCFS further noted that Illinois Supreme Court Rule 903 (eff. July 1, 2006) requires that, whenever possible and appropriate, all child custody proceedings should be conducted by a single judge.

¶ 20 On November 18, 2015, Christel filed a response objecting to transferring her case, stating that Judge Green had shown tremendous bias against her. The same day, the trial court granted DCFS's motion, stating that Christel was attempting to engage in "judge shopping," and that based on Rule 903 and local rules, it would be in K.C.'s best interest that the case be heard by the same judge dealing with the guardianship and custody issues. The trial court stated that the next court date was January 19, 2016.

¶ 21 On that date, Judge Green stated that she could not hear Christel's adoption petition because Christel had filed a motion for substitution of judges. Judge Green noted that case number 15-AD-116 would be transferred to the presiding judge, who would either hear the matter or assign it to another judge.

¶ 22 The foster parents filed a petition to adopt K.C. on January 19, 2016, in case 16-AD-117. The petition was up for a hearing on January 21, 2016.[3] Judge Green was ill, so Judge Francis Martinez heard it in her stead. DCFS consented to the adoption, as did the guardian *ad litem*. The foster parents' attorney asked that the trial court take judicial notice of Christel's competing petition for adoption. The trial court ruled that it was in K.C.'s best interest to be adopted by his foster parents. It allowed Crystal and Roger to adopt him, and it terminated the proceedings in 11-JA-388. Christel mailed a notice of appeal in case 11-JA-388 on February 20, 2016.

¶ 23 Meanwhile, Christel's adoption petition was transferred to Judge Martinez pursuant to her substitution motion. On February 19, 2016, DCFS moved to dismiss Christel's adoption petition. A hearing on the motion took place on February 24, 2016. DCFS argued that its guardianship administrator was given the authority to consent to K.C.'s adoption, and she did so

[3] A copy of the petition is not present in the common law record, but the trial court mentioned the filing date during the hearing.

for the foster parents instead of Christel. DCFS argued that under the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2014)), K.C. was no longer a child eligible to be adopted.

¶ 24 Christel's attorney argued that she was not given notice that there was a separate adoption case pending, and that she had filed a notice of appeal in the juvenile case. The attorney reacted in surprise when told that the foster parents' adoption case had a different case number than the juvenile case. DCFS argued that when Christel had attempted to file a petition for adoption within the juvenile case, it was dismissed as inappropriate, so she was aware that such petitions had to be filed with different case numbers. DCFS also argued that notice to Christel was not required because she was not a party to that proceeding, and she had not appealed the order granting the foster parents' petition for adoption.

¶ 25 Judge Martinez stated that the foster parents' adoption was presumed valid and that K.C. was no longer available for adoption. He granted DCFS's motion to dismiss the petition as moot. Christel filed a notice of appeal in case number 15-AD-116 the same day.

¶ 26 The State appellate prosecutor has filed an appellee's brief on behalf of the State/Winnebago County, and the Illinois Attorney General's office has filed an appellee's brief on behalf of the DCFS guardianship administrator.

¶ 27 II. ANALYSIS

¶ 28 We initially comment on the lengthy delays in the briefing schedules. Christel's notices of appeal were filed in February 2016. Supreme Court Rule 311(a)(5)(eff. Mar. 8, 2016) requires the appellate court to issue its decision within 150 days after the filing the notice of appeal, except for good cause shown. Christel's briefs were originally due on April 20, 2016. We consolidated the cases a few days before that, on April 13, 2016. We subsequently amended our order on May 10, 2016, to clarify that the consolidation was "for decision only," and that

each appeal would have its own briefing schedule. Christel's attorney made numerous requests for extensions, including some that were not filed until after the briefs were due. We eventually ordered that the attorney file the briefs by a certain date or appear in front of this court. Christel's brief was filed on October 4, 2016. Even then the attorney filed only one brief, contrary to our amended consolidation order. We recognize that Christel's attorney entered his appearance as *pro bono* counsel, but we remind him that this status does not decrease his obligations to his client or this court.

¶ 29 The State argues that Christel has forfeited all of her arguments on appeal because her brief fails to comply with Supreme Court rules. The State maintains that although Christel claims the status of "putative intervenor" in case 11-JA-388, she never cites the intervenor statute or argues that she had the right to intervene. The State contends that in the arguments that Christel does raise, she fails to cite the record and relevant authority. We agree that Christel's brief is deficient in many ways, but we do not believe that it is so deficient as to justify the forfeiture of her entire appeal. We address the forfeiture of individual arguments later in the disposition.

¶ 30 The State next argues that because Christel was denied intervenor status in the juvenile case (case 11-JA-388), she was not a party to the proceeding, and her appeal must be dismissed.

¶ 31 Under the Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-1 (West 2014)), current and prior foster parents and relative caregivers have a right to be heard in juvenile court proceedings. Section 1-5(2)(a) of the Act states, in relevant part,

> "Though not appointed guardian or legal custodian or otherwise made a party to the proceeding, *any current or previously appointed foster parent or relative caregiver*,

> or representative of an agency or association interested in the minor *has the right to be heard by the court, but does not thereby become a party to the proceeding.*
>
> In addition to the foregoing right to be heard by the court, *any current foster parent or relative caregiver of a minor* and the agency designated by the court or the Department of Children and Family Services as custodian of the minor who is alleged to be or has been adjudicated an abused or neglected minor under Section 2-3 or a dependent minor under Section 2-4 of this Act has the right to and *shall be given adequate notice at all stages of any hearing or proceeding under this Act.*" (Emphases added.) 705 ILCS 405/1-5(2)(a) (West 2014).

Thus, under the statute's plain language, Christel, as a former foster parent/relative caregiver, was entitled to be heard in the juvenile proceedings, but she did not automatically become a party to the proceedings. Notably, the statute also requires notice only for *current* foster parents/relative caregivers.

¶ 32 Christel did seek to intervene in the juvenile case on more than one occasion. Section 1-5(2)(d) of the Act provides: "The court may grant standing to any foster parent if the court finds that it is in the best interest of the child for the foster parent to have standing and intervenor status." 705 ILCS 405/1-5(2)(d) (West 2014); see also 735 ILCS 5/2-408 (West 2014) (general intervention statute). The trial court apparently relied on section 1-5(2)(d) in stating that it was not in K.C.'s best interest for Christel to intervene. Although Christel listed the denials of her motions to intervene in her notice of appeal, she presents no argument that these decisions were in error, thereby forfeiting them for review. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (points not argued are forfeited). As Christel was not a party to the juvenile proceedings and has not argued against the trial court's denials of her petitions to intervene, we have no basis to disturb

any of the trial court's rulings in case 11-JA-388.[4] We further note that Crystal and Rob's petition for adoption was under a separate case number (16-AD-117).

¶ 33 We now turn to Christel's notice argument, particularly as it relates to her adoption case (15-AD-116). Christel argues that because she was not given notice of any proceedings in which Rob and Crystal would be allowed to adopt K.C. while her own adoption petition was pending, the foster parents' adoption of K.C. is void.

¶ 34 Christel cites *In re A.W.*, 343 Ill. App. 3d 396 (2003). There, we held that a party to an adoption proceeding was entitled to notice that the children's biological mother was withdrawing her consent to the adoption. *Id.* at 399. We stated that without the notice, the trial court's order dismissing the plaintiff's subsequent petition under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2000)) was void. *Id.* at 399. *In re A.W.* is distinguishable, as there a party to the proceedings did not receive notice, whereas here Christel was not a party in Crystal's and Roger's adoption case.

¶ 35 Christel also cites *GMB Financial Group*, 385 Ill. App. 3d 978, 983 (2008), where we stated that the failure to provide notice made an order voidable rather than void, and the determining factor was whether a party was prejudiced. *GMB Financial Group* is likewise distinguishable in that it was discussing notice to a party in the proceedings.

[4] This does not mean that we must dismiss the appeal for lack of jurisdiction, as Christel appealed the trial court's denials of her motions to intervene, without arguing this issue in her brief. See *Northern Trust Co. v. Halas*, 257 Ill. App. 3d 565, 574 (1993) (trial court's order denying intervention was not immediately appealable, so party timely appealed within 30 days of the final judgment).

¶ 36 Christel cites no relevant authority for the proposition that she was entitled to notice in the foster parents' adoption case. Section 5 of the Adoption Act (750 ILCS 50/5(B)(f) (West 2014)) requires that a petition for adoption state the names and addresses of the parents, but it states that this information should be omitted, and the parents shall not be made parties, if, among other things, their rights have been terminated. Here, K.C.'s parents' rights were terminated by the time Crystal and Rob filed their adoption petition, so they were not entitled to notice. Moreover, when a natural parent's parental rights are terminated, the rights and interests of that parent's relatives are also completely severed. *In re Adoption of S.G.*, 401 Ill. App. 3d 775, 787 (2010). Thus, grandparents may not intervene in an adoption case as a matter of right. *Id.* at 784-85. In sum, no portion of the Adoption Act requires that grandparents, former foster parents, or other parties petitioning to adopt the child be given notice. As such, the lack of notice to Christel of the foster parents' adoption petition does not provide a basis to disturb the trial court's dismissal of Christel's adoption petition.

¶ *37* Christel argues that due to a lack of notice, she did not have a chance to present her evidence that it was in K.C.'s best interest for her to adopt him. Christel argues that K.C. lived with her for most of the first three years of his five-year life,[5] and that "[a]ppellee[s']" actions have "ruthlessly and deliberately" sought to destroy that bond. Christel cites *In re B.B.*, 386 Ill. App. 3d 686, 703 (2008), where the appellate court reversed the trial court's ruling that it was in the children's best interest for their mother's parental rights be terminated. The appellate court's decision emphasized the strong mutual bonds between the mother and child. *Id.*

[5] K.C. lived with Christel from December 23, 2011, to February 26, 2013, which constitutes about two years of his now seven-year life.

¶ 38 The State argues that Christel has forfeited this argument by failing to specify to which actions she is referring and by failing to cite to the record. We agree. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) ("Argument *** shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on."); *Diaz v. Legat Architects, Inc.*, 397 Ill. App. 3d 13, 40 (2009) (the failure to comply with supreme court rules is grounds for disregarding the argument on appeal). Moreover, Christel's argument is rooted in her assertion that she should have received notice of the foster parents' petition for adoption, which is an argument that we have rejected. Finally, we note that the foster parents' attorney reminded the trial court that Christel's competing petition for adoption was pending; the DCFS administrator consented to the adoption of K.C. by his foster parents, as opposed to Christel; and the guardian *ad litem* opined that it would be in K.C.'s best interest to be adopted by his foster parents.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the judgments of the Winnebago County circuit court. Also, given the many extensions in the briefing schedules, we have good cause for issuing our decision after the 150-day deadline under Illinois Supreme Court Rule 311(a)(5) (eff. Mar. 8, 2016)).

¶ 41 Affirmed.