

2017 IL App (2d) 170288-U

No. 2-17-0288

Summary Order filed August 28, 2017

Modified on denial of rehearing and issued as a Rule 23 Order November 1, 2017

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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<i>In re</i> JULIANNA M.	)	Appeal from the Circuit
	)	Court of Winnebago County.
a minor.	)	
	)	
(The People of the State of Illinois,	)	No. 15-JA-0329
Petitioner-Appellee v. Joshua M. &	)	
Jessica T., Respondents	)	
	)	
Anthony M. & Rita M.	)	Honorable
	)	Mary Linn Green,
Intervenors-Appellants.)	)	Judge, Presiding.

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JUSTICE HUTCHINSON delivered the judgment of the court.  
Justices Zenoff and Birkett concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in denying grandparents leave to intervene in abuse and neglect proceedings.

¶ 2 Anthony M. and Rita M. appeal from the trial court's judgment, which denied them leave to intervene as "foster parents" in an underlying abuse and neglect proceeding. See Ill. S. Ct. R. 304(a). We affirm.

¶ 3 Anthony and Rita are the parents of Joshua M. and the grandparents of the minor, Julianna M. (Joshua’s paternity is not in dispute.) Joshua has an extensive history of engaging in domestic violence against Jessica T., Julianna’s mother. As a result of domestic violence, and Joshua’s incarceration (from January 2011 to January 2015 for aggravated robbery), Julianna has largely resided with her mother in the home of Jessica’s parents, Peter and Margaret T.

¶ 4 In June 2015, the Department of Children and Family Services (DCFS) opened an “intact case” concerning Julianna’s welfare. Then, in September 2015, the State filed a petition alleging that Julianna was a neglected minor. See 705 ILCS 405/2-3 (West 2014). In July 2016, Julianna was adjudicated neglected and made a ward of the court. Up to this point, guardianship and custody of Julianna remained with Jessica, subject to DCFS’ supervision.

¶ 5 In August 2016, Jessica moved out of Peter and Margaret’s home. The following month, DCFS learned that Joshua “had been living” with Jessica “for a short period of time” which contravened Jessica’s service plan. In October 2016, the court granted temporary guardianship and custody of Julianna to Peter and Margaret. (In November 2016, Jessica was hospitalized after being beaten and held hostage by Joshua. Joshua was arrested for multiple offenses and remains in the county jail awaiting trial.)

¶ 6 In February 2017, Joshua’s parents, Anthony and Rita, petitioned to intervene in the underlying abuse and neglect proceedings as “foster parent[s].” The Juvenile Court Act, which governs these proceedings, states that the term “ ‘[f]oster parent’ includes a relative caregiver selected by the Department of Children and Family Services to provide care for the minor.’ ” 705 ILCS 405/1-3(7.05) (West 2014). According to a stipulation presented by the parties, Anthony and Rita, though not selected by DCFS to provide care for Julianna, have nevertheless provided care for Julianna in that she generally “lived with [Anthony and Rita] from Sunday through

Wednesday” since 2012 “by agreement with the maternal Grandparents”—*i.e.*, Peter and Margaret. Thus, Anthony and Rita contended that they qualified as foster parents in the common plain meaning of the term even though they were not designated by DCFS as Julianna’s foster parents.

¶ 7 The trial court rejected Anthony’s and Rita’s arguments, and we affirm. We review the trial court’s determination on matters of permissive intervention under the highly deferential abuse of discretion standard. See *In re Adoption of S.G.*, 401 Ill. App. 3d 775, 784 (2010). To the extent we are called upon to interpret the Juvenile Court Act, our review is *de novo*. *In re C.C.*, 2011 IL 111795, ¶ 29.

¶ 8 We find nothing unreasonable in the trial court’s decision denying Anthony and Rita intervenor status as foster parents. As the trial court noted, Anthony and Rita, though not the minor’s foster parents, have certain designated rights as “relative caregivers” under the Juvenile Court Act. For example, Anthony and Rita “ha[ve] the right to and shall be given adequate notice” of all proceedings concerning the minor and “ha[ve] the right to be heard by the court.” See 705 ILCS 405/1-5(2)(a) (West 2014). But the Act is clear that despite these rights, relative caregivers “do[ ] not thereby become a party to the proceeding.” *Id.* Our supreme court recently explained that we are not to depart in any way from the strict framework set forth in section 1-5 of the Juvenile Court Act with respect to the designation of necessary parties and nonparties. See *In re C.C.*, 2011 IL 111795, ¶¶ 26-54 (explaining at length that “responsible relatives” who are not respondents are nonparties in abuse and neglect proceedings). We take the supreme court at its word on this issue.

¶ 9 Anthony and Rita, however, suggest that the Act’s definition of “foster parent” merely lists a single example of the term—*i.e.*, that a foster parent “*includes* a relative caregiver selected

by [DCFS] to provide care for the minor” (emphasis added) (705 ILCS 405/1-3(7.05)), and therefore that it does not specifically *exclude* a relative caregiver *not* selected by DCFS to care for the minor. “The surest and most reliable indicator of legislative intent is the language of the statute itself, given its plain and ordinary meaning.” *In re C.C.*, 2011 IL 111795, ¶ 30. The clear import of the definition of “foster parent” in section 1-3(7.05) is that the condition of being “selected by [DCFS] to provide care for the minor” must be satisfied, regardless of the distinction of whether the selected caregiver is a relative. We note, too, that the purpose of the Act is to provide for children and to strengthen families, when possible, with DCFS’s assistance and under court supervision. See 705 ILCS 405/1-2 (West 2014). In light of this purpose, the trial court was correct when it refused to ignore the critical role played by DCFS in both the care of abused and neglected children and in the designation of their caregivers.

¶ 10 In addition, although Anthony and Rita do not cite it, we note that the Foster Parent Law sets forth the rights and responsibilities of foster parents in this state. See 20 ILCS 520/1-1 *et seq.* (West 2016). Under section 1-10 of the statute, “ ‘Foster Parent’ means a person who is *licensed* as a foster parent under the laws of this State.” (Emphasis added.) 20 ILCS 520/1-10 (West 2016); see also 89 Ill. Adm. Code 402.1 *et seq.* (West 2016) (DCFS’s requirements for licensure and supervision). The Foster Parent Law is particularly relevant here because there has been no suggestion that either Anthony or Rita is, in fact, a licensed foster parent approved and supervised by DCFS. Thus, under Illinois law, Anthony and Rita are not “foster parents” and the trial court would have been in error to designate them as such.

¶ 11 Finally, we note that the trial court, after explaining the nonparty rights of relative caregivers to Anthony and Rita also stated that Anthony and Rita could “cross-examine witnesses” but could not “receive reports or present evidence[.]” We assume that the trial court’s

statement regarding cross-examination was erroneous since the right to cross-examine witnesses is both inextricably tied to the ability to present evidence as well as one's status as a party. See *Sankey v. Interstate Dispatch*, 339 Ill. App. 420, 425 (1950) (parties are all persons having a right to control the proceedings, to make a defense, to call and cross-examine witnesses, and to appeal from the decision). We emphasize that nothing in the Juvenile Court Act compels the trial court to permit cross-examination by a nonparty responsible relative.

¶ 12 We therefore affirm the judgment of the circuit court of Winnebago County denying Anthony and Rita the right to intervene as foster parents.

¶ 13 Affirmed.