

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).

2017 IL App (4th) 160714-U

NO. 4-16-0714

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

March 20, 2017

Carla Bender

4th District Appellate

Court, IL

In re: S.P., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	McLean County
v.)	No. 13JA14
VICKY PAPPAS,)	
Respondent-Appellant.)	Honorable
)	Kevin P. Fitzgerald,
)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justice Steigmann concurred in the judgment.
Justice Pope specially concurred.

ORDER

¶ 1 *Held:* The appellate court dismissed for lack of jurisdiction where the trial court denied respondent's motion to intervene and subsequently denied respondent's request for a special finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016).

¶ 2 In July 2016, the trial court barred the Department of Children and Family Services from placing S.P. with respondent, Vicki Pappas, S.P.'s grandmother. S.P. had been in Pappas' custody for several years; however, when Pappas failed to appear before the court to discuss the status of her adoption case, the court barred placement with Pappas. The following month, Pappas filed a motion to intervene, which the court subsequently denied. The court later denied Pappas' September 2016 motion to reconsider. Pappas requested the court enter a special finding pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016), which would allow her to immediately appeal the court's ruling. The court denied the request. Pappas thereafter

petitioned this court for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. Mar. 8, 2016), which we granted.

¶ 3 On appeal, Pappas asserts the trial court erred by (1) failing to give her appropriate notice of its intent to remove S.P., (2) ordering the immediate removal of S.P. and barring future placement with Pappas, (3) denying her motion to intervene, and (4) failing to conduct an evidentiary hearing regarding her intentions to adopt. The State, in turn, argues this court lacks jurisdiction over the appeal. Finding we lack jurisdiction, we dismiss this appeal.

¶ 4 I. BACKGROUND

¶ 5 Because the issue of jurisdiction is dispositive, we address only the facts necessary to resolve that issue.

¶ 6 In March 2013, the State took S.P. into protective custody and filed a petition for adjudication of wardship based on allegations of neglect by respondent parents. Throughout the neglect proceedings, the Department of Children and Family Services had guardianship of S.P., while Pappas had physical custody. In February 2015, respondent father consented to Pappas adopting S.P. and, following a hearing, the trial court terminated respondent mother's parental rights. The court changed the goal to adoption for S.P.

¶ 7 In July 2015, the trial court held a permanency hearing for an update on S.P.'s adoption. The court expressed concern that Pappas refused the court-appointed special advocate (CASA) access to her home despite a court order requiring her to cooperate with CASA. Pappas told the court, "I'm not having CASA in my home. *** So as far as I'm concerned, it's finished." She then told the guardian *ad litem* she would turn over custody of S.P. before allowing CASA into her home. The court admonished Pappas about the necessity of complying with the court's

orders, but because none of the parties had any concerns over Pappas' home, the court did not order her to cooperate further with CASA.

¶ 8 The paperwork for S.P.'s adoption was completed in July 2015. However, by March 2016, the adoption had not been completed because Pappas cancelled the adoption hearing after deciding she did not want the current judge to oversee the proceedings. In fact, Pappas told the caseworker she would not adopt S.P. if she had to do it in McLean County.

¶ 9 Following a May 2016 hearing date, by which time Pappas still had not completed the adoption, the trial court ordered her to appear on July 7, 2016. The order read, "Foster parent is ordered to appear at the July 7, 2016 hearing. If [f]oster parent fails to appear, the [c]ourt may bar placement of the minor child w[ith] the foster parent." The caseworker delivered a copy of the order to Pappas later that month.

¶ 10 Pappas failed to attend court on July 7, 2016, and, following a hearing, the trial court found, "with some hesitation," it was in S.P.'s best interest to bar placement with Pappas.

¶ 11 On August 3, 2016, Pappas' new attorney entered an appearance and asked for leave to file a motion to intervene and further requested the July 7, 2016, order be set aside. The trial court granted Pappas leave to file a motion to intervene and extended the time for filing a motion to reconsider the July 7, 2016, order until after the court ruled on the motion to intervene. The court thereafter scheduled an August 17, 2016, hearing on the motion to intervene.

¶ 12 On August 17, 2016, the trial court held a hearing on the motion to intervene. The court denied the motion but noted Pappas still had the right to appear as a nonparty due to her previous long-term custody of S.P. Pappas then asked for leave to file a motion to reconsider the court's ruling on the motion to intervene and requested access to the court file, access normally only available to parties. The court denied the motion to access the court file as Pappas

was not a party to the proceedings. Pappas then requested the court make a finding under Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016) that there was no just reason for delaying the appeal. The court declined to make a Rule 304(a) finding and further stated it did not believe this was a final and appealable order due to Pappas' ongoing right to be present at future proceedings.

¶ 13 On September 8, 2016, Pappas filed a motion to reconsider the trial court's August 17, 2016, order denying her motion to intervene. On September 22, 2016, the court held a hearing on the motion to reconsider and subsequently denied the motion.

¶ 14 In October 2016, Pappas filed a notice of interlocutory appeal, seeking to appeal the trial court's September 22, 2016, order denying her motion to reconsider the court orders entered on July 7, 2016, and August 3, 2016 (the notice does not mention the court's August 17, 2016, order denying her motion to intervene). This court subsequently allowed Pappas' petition for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. Mar. 8, 2016). Additionally, in January 2017, Pappas filed a motion to supplement the appendix with the trial court docket entries, and we ordered that motion taken with the case. We grant the motion to supplement the appendix and consider the docket entries in our review.

¶ 15 II. ANALYSIS

¶ 16 On appeal, Pappas asserts the trial court erred by (1) failing to give her appropriate notice of its intent to remove S.P., (2) ordering the immediate removal of S.P. and barring future placement with Pappas, (3) denying her motion to intervene, and (4) failing to conduct an evidentiary hearing regarding her intentions to adopt. The State, in turn, argues this court lacks jurisdiction over the appeal. We begin by addressing our jurisdiction.

¶ 17 A reviewing court has a duty to ascertain whether it has jurisdiction before addressing any issues on appeal. *In re Adoption of S.G.*, 401 Ill. App. 3d 775, 779, 929 N.E.2d 78, 82 (2010). In this case, we granted Pappas' petition for leave to appeal pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. Mar. 8, 2016). However, "the question of our jurisdiction to hear a case may be revisited at any time before final disposition of the appeal." *In re Marriage of Breslow*, 306 Ill. App. 3d 41, 57, 713 N.E.2d 642, 654 (1999). Upon further consideration and after reviewing the briefs, we conclude we lack jurisdiction over this appeal.

¶ 18 Pappas was not a party in the trial court proceedings; rather, she filed a motion to intervene so she could gain party status. After the trial court denied her motion to intervene, Pappas requested the court make a Rule 304(a) finding so she could immediately appeal the court's ruling. See Ill. S. Ct. R. 304(a) (eff. Mar. 8, 2016). The trial court denied Pappas' request for a Rule 304(a) finding.

¶ 19 Rule 304 governs appeals from judgments as to fewer than all parties or claims. Ill. S. Ct. R. 304 (eff. Mar. 8, 2016). Under Rule 304(a), "If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (Mar. 8, 2016). Our courts have firmly established a Rule 304(a) finding is necessary if an individual wishes to immediately appeal the denial of a motion to intervene. *People ex rel. Collins v. Burton*, 276 Ill. App. 3d 95, 97, 658 N.E.2d 49, 50 (1995); *Northern Trust Co. v. Halas*, 257 Ill. App. 3d 565, 574, 629 N.E.2d 158, 166 (1993); *Village of Long Grove v. Austin Bank of Chicago*, 234 Ill. App. 3d 376, 379, 600 N.E.2d 520, 522 (1992); *Velde Ford Sales, Inc. v. John Bearce Ford, Inc.*, 194 Ill. App. 3d 951, 953, 551 N.E.2d 808, 810 (1990). Where the

court makes no Rule 304(a) finding, the individual who was denied leave to intervene may appeal after the court issues a final, enforceable judgment pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994).

¶ 20 Ultimately, Pappas sought leave of this court to file an interlocutory appeal pursuant to Illinois Supreme Court Rule 306(a)(5) (eff. Mar. 8, 2016). Under Rule 306(a)(5), "A *party* may petition for leave to appeal to the Appellate Court *** from interlocutory orders affecting the care and custody of or the allocation of parental responsibilities for unemancipated minors, if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules[.]" (Emphasis added.) Ill. S. Ct. R. 306(a)(5) (eff. Mar. 8, 2016). Because this is a case regarding the care and custody of S.P., Pappas asserts she properly pursued an appeal pursuant to Rule 306(a)(5). Moreover, Pappas argues the language, "if the appeal of such orders is not otherwise specifically provided for elsewhere in these rules" (Ill. S. Ct. R. 306 (eff. Mar. 8, 2016)), applies to the present situation because her ability to appeal is not otherwise provided for in the rules. We disagree.

¶ 21 Although Rule 306(a)(5) pertains to issues of child care and custody, the plain language of Rule 306(a) specifically states it is applicable to *parties* who wish to pursue an interlocutory appeal. Rule 306(a) does not provide the same privilege for nonparties such as Pappas. Pappas does not cite any authority in support of her position, nor did our research uncover any such cases.

¶ 22 Pappas contends it would be "nonsensical" to wait until the court enters a final judgment in this instance because S.P.'s custody and placement is at stake. While we understand the difficulty of Pappas' situation, creating such an exception is for the Illinois Supreme Court Rules Committee, not this court.

and was bonded to Pappas. S.P. was not removed from her placement because of any imminent risk of harm. Had she been removed because of an imminent risk of harm, the statute would not mandate Pappas to have intervenor status. Implicit therein, if S.P. was removed for any other reason, the statute mandated standing and intervenor status for Pappas. The reason S.P. was removed from the foster placement was Pappas' failure to appear in court on July 7, not because of any imminent risk of harm. Thus, the trial court's rationale for denying intervenor status to Pappas because it had already removed the child from the foster placement was not legally sound.

¶ 30 Pappas could have attempted a *mandamus* action to require the trial judge to allow her to intervene based on the mandatory language of the statute. Pappas also failed to include in her notice of appeal the August 17, 2016, order denying her motion to intervene. Last, I agree with the majority the notice of appeal was untimely under Rule 306(a)(5) for the reasons stated in the decision above. As a result, I agree this court does not have jurisdiction.