

2018 IL App (2d) 180390-U
No. 2-18-0390
Order filed November 1, 2018

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

<i>In re</i> ADOPTION of K.V.D.C., a Minor)	Appeal from the Circuit Court
)	of Winnebago County.
)	
)	No. 15-AD-116
)	
(Christel V.D., Petitioner-Appellant)	Honorable
v. Judith Wukas Ahern, DCFS Guardianship)	Francis M. Martinez,
Administrator, Respondent-Appellee).)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in dismissing Christel’s section 2-1401 petition. Therefore, we affirmed.

¶ 2 Petitioner, Christel V.D., is the maternal grandmother of minor K.V.D.C. Following the termination of K.V.D.C.’s parents’ parental rights, both Christel and K.V.D.C.’s foster parents filed petitions to adopt him. The trial court granted the foster parents’ petition to adopt K.V.D.C. and subsequently dismissed Christel’s petition as moot. We affirmed. *In re K.C.*, 2016 IL App (2d) 160148-U. Almost two years after the trial court entered the adoption order, Christel filed a petition under section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)) seeking relief from that judgment. She argued that the judgment was void because she did not

receive notice of the adoption and because the foster parents' adoption petition was untimely. The trial court dismissed Christel's petition, and she appeals from its ruling. We affirm.

¶ 3

I. BACKGROUND

¶ 4 We restate the relevant facts as set forth in our previous disposition. K.V.D.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. The trial court granted temporary guardianship and custody of K.V.D.C. to the Department of Children and Family Services (DCFS). K.V.D.C. stayed with his father's aunt and uncle, Crystal and Rob C. (foster parents). However, on December 23, 2011, he was placed with Christel.¹ Four months later, on April 23, 2012, the trial court adjudicated K.V.D.C. a neglected minor.

¶ 5 On February 20, 2013, Christel filed an emergency petition to intervene in the juvenile proceeding, alleging that Roger had sexually abused K.V.D.C. Days later, on February 26, 2013, K.V.D.C. was removed from Christel's care "based on the minor's physical and emotional safety." *In re K.C.*, 2015 IL App (2d) 150135-U, ¶ 13. DCFS placed K.V.D.C. back with his foster parents, where he has since remained.

¶ 6 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.V.D.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.V.D.C.'s best interest for Christel to be granted intervenor status.

¹ Although they have similar names, Christel is K.V.D.C.'s maternal grandmother whereas Crystal is K.V.D.C.'s father's aunt.

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

¶ 8 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.

¶ 9 On February 4, 2015, the trial court found K.V.D.C.'s parents to be unfit. At that hearing, the trial court ordered Christel to turn over notes that she had been taking in court.

¶ 10 On February 9, 2015, the trial court terminated Brittany's and Roger's parental rights. It gave guardianship of K.V.D.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.

¶ 11 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.

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

¶ 13 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 to adopt K.V.D.C. under case number 15-AD-116.

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

¶ 15 On September 24, 2015, Christel filed an emergency motion in case number 15-AD-116 to have K.V.D.C. placed with her. On September 30, 2015, the trial court found the motion to be “premature,” and it continued the matter for a hearing.

¶ 16 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.V.D.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.V.D.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.V.D.C. However, the Will County court had denied the motions and stated that it would not enter any order relating to K.V.D.C.’s placement, visitation, or welfare. DCFS further noted that Illinois Supreme Court Rule 903 (eff. July 1, 2006) required that, whenever possible and appropriate, all child custody proceedings should be conducted by a single judge.

¶ 17 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.V.D.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.

¶ 18 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.

¶ 19 The foster parents filed a petition to adopt K.V.D.C. on January 19, 2016, in case 16-AD-117. The petition was up for a hearing on January 21, 2016. 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.V.D.C.'s best interest to be adopted by his foster parents. It allowed them to adopt him, and it terminated the proceedings in 11-JA-388.

¶ 20 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.V.D.C.'s adoption, and she did so for the foster parents instead of Christel. DCFS argued that under the Adoption Act (750 ILCS 50/0.01 *et seq.* (West 2014)), K.V.D.C. was no longer a child eligible to be adopted.

¶ 21 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.

¶ 22 Judge Martinez stated that the foster parents' adoption was presumed valid and that K.V.D.C. was no longer available for adoption. He granted DCFS's motion to dismiss the petition as moot.

¶ 23 Christel appealed the trial court's rulings in both case number 11-JA-388 and case number 15-AD-116. She argued that the trial court's decision to grant the foster parents' petition for adoption, without notice to her and while her own adoption petition was pending, was an abuse of discretion. We affirmed. *In re K.C.*, 2016 IL App (2d) 160148-U. We held that Christel was not a party to the juvenile proceedings and did not argue that the trial court erred in denying her petitions to intervene in that case, so we had no basis to disturb its rulings in case number 11-JA-388. *Id.* ¶ 32. We also held that she was not required to be given notice in the foster parents' adoption case (number 16-AD-116) because she was not a party to that case (*id.* ¶ 34) nor was any such notice required under the Adoption Act (750 ILCS 50/5(B)(f) (West 2014)) (*In re K.C.*, 2016 IL App (2d) 160148-U, ¶ 36).

¶ 24 On December 27, 2017, Christel filed a section 2-1401 petition in case number 15-AD-116 seeking to vacate the adoption of K.V.D.C. and reinstate her petition to adopt him. She argued that the trial court's prior dismissal of her adoption petition and grant of the foster parents' competing adoption petition was void because the foster parents' petition was untimely and she was given no notice of their petition being filed or granted. She alternatively argued that the lack of notice made the dismissal of her adoption petition voidable. Christel argued that the lack of notice prejudiced her because she was unable to seek consolidation of the two adoption petitions, attack the foster parents' petition as untimely, and present evidence that her adoption of

K.V.D.C. would be in his best interest. Last, she argued that she otherwise satisfied the requirements of section 2-1401 because she had a meritorious claim, she was diligent in filing her adoption petition and appealing the rulings, and she was diligent in filing the section 2-1401 petition because the supreme court denied her petition to leave to appeal our order on June 25, 2017, and its mandate issued on August 30, 2017.

¶ 25 The trial court dismissed the petition with prejudice on April 20, 2018. It stated that we held that Christel was not a party “to this matter” and thus had “no standing” to file the petition. The trial court labeled the petition as “frivolous.” Christel timely appealed.

¶ 26

II. ANALYSIS

¶ 27 Ordered taken with this case was a motion by respondent, DCFS Guardianship Administrator Judith Wukas Ahern, to strike Christel’s brief and dismiss the appeal. She argues that Christel’s brief does not comply with Illinois Supreme Court Rule 341(h)(6), (7) (eff. Nov. 1, 2017) in that Christel has cited exclusively to the record from the prior appeal. Respondent also argues that in our prior order, we explicitly addressed and resolved the issue of whether K.V.D.C.’s adoption properly went forward without notice to Christel. See *In re K.C.*, 2016 IL App (2d) 160148-U, ¶¶ 31-38. Respondent points out that we rejected the authority regarding notice that Christel again cites in the instant case. See *id.* ¶ 34. Respondent argues that although Christel now seeks relief from the underlying judgment under section 2-1401, she cited no new facts or authority that were unknown at the time the judgment was entered, nor has she explained how she thinks we or the circuit court may have erred. According to respondent, Christel simply seeks to rehash issues that have already been resolved in respondent’s favor. Finally, respondent notes that in our prior order, we stated that Christel had created lengthy delays in the briefing schedule and, at times, sought extensions after the due dates for her opening brief had expired.

See *id.* ¶ 28. Respondent highlights that Christel has engaged in similar conduct here. Specifically, Christel filed a motion for an extension of time after her brief was due and, even then, she filed the brief after the new due date.²

¶ 28 Respondent's criticisms are well-taken. However, given that we are already familiar with the circumstances of this case, Christel's incorrect citations to the record do not hinder our review. Moreover, although notice is an issue that we previously addressed, we decline to strike Christel's brief because the case involves the adoption of her grandson. However, we admonish counsel on appeal, Jason R. Craddock, to comply with supreme court rules regarding briefs, respect court deadlines, and not reassert decided issues without providing a legal basis for doing so. We further admonish him to ensure that his appellate filing fee is supported by sufficient funds.

¶ 29 We now turn to the substance of the appeal. Christel argues that the trial court erred in denying her section 2-1401 petition. Section 2-1401 typically allows for relief from final orders and judgments more than 30 days but less than two years after their entry. 735 ILCS 5/2-1401 (West 2016). A section 2-1401 petition seeking to vacate an adoption judgment must be filed within one year after the judgment. *Id.*; 750 ILCS 50/20(b) (West 2016). Generally, to obtain relief under section 2-1401, a party must set forth specific factual allegations showing (1) the existence of a meritorious defense or claim; (2) due diligence in presenting the defense or claim in the original action; and (3) due diligence in filing the section 2-1401 petition. *Giles v. Parks*, 2018 IL App (1st) 163152, ¶ 19. However, the time limitation and aforementioned criteria do

² Correspondingly, we note that, given the extensions in the briefing schedule, we have good cause for issuing our decision after the 150-day deadline under Illinois Supreme Court Rule 311(a)(5) (eff. July 1, 2018).

not apply if the section 2-1401 petition seeks to vacate a void judgment. *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 104 (2002); see also 735 ILCS 5/2-1401(f) (West 2008). Instead, “ ‘[t]he allegation that the judgment or order is void substitutes for and negates the need to allege a meritorious defense and due diligence.’ ” *Id.* A void judgment is one that a court enters without subject matter or personal jurisdiction, or a judgment that was based on a statute that was facially unconstitutional and void *ab initio*. *People v. Price*, 2016 IL 118613, ¶ 31. In contrast, a judgment is voidable where it was entered erroneously by a court having jurisdiction, and it is not subject to collateral attack. *People v. Castleberry*, 2015 IL 116916, ¶ 11.

¶ 30 Where the petition presents a fact-dependent challenge to the final judgment, we apply an abuse-of-discretion standard. *Warren County Soil & Water Conservation District*, 2015 IL 117783, ¶ 51. However, we review the ruling on the petition *de novo* where, as here, the case presents solely a legal question, such as whether the judgment is void. See *id.* ¶¶ 47-48.

¶ 31 Christel argues that the trial court’s decisions, allowing the adoption of K.V.D.C. by his foster parents and dismissing her petition, were void because she was not given notice of the foster parent’s adoption proceedings, and her adoption petition was timely-filed whereas the foster parents’ adoption petition was untimely.

¶ 32 On the subject of notice, Christel argues that she received no notice that the foster parents had filed an adoption petition or of their adoption hearing, which took place on January 21, 2016, within the context of the juvenile proceedings (number 11-JA-388). She argues that, as a result, she never had an opportunity to present evidence that it was in K.V.D.C.’s best interest for her to adopt him. She cites *In re A.W.*, 343 Ill. App. 3d 396, 399 (2003), where 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. We held that without the notice, the trial court order dismissing the plaintiff's subsequent section 2-1401 petition was void. *Id.*

¶ 33 Regarding timeliness, Christel argues that section 5 of the Adoption Act (750 ILCS 50/5 (West 2016)) requires that the prospective adoptive parents commence proceedings to adopt the child within 30 days after the child becomes available for adoption. She notes that she filed her petition for adoption on August 4, 2015, and that the trial court lifted the stay on adoption on August 24, 2015, the date our mandate issued. In contrast, the foster parents filed their petition to adopt on January 19, 2016.

¶ 34 Respondent counters that the adoption judgment was not void for lack of notice to Christel because she was not a party to the juvenile proceedings. Respondent argues that the Adoption Act also did not require that Christel be given notice. She argues that, even otherwise, the lack of notice would make the underlying judgment voidable rather than void, meaning that Christel would have to satisfy section 2-1401's requirements.

¶ 35 Respondent argues that Christel's own adoption petition was defective in that it was not served on the DCFS Guardianship Administrator and failed to state whether the guardianship administrator had consented to Christel's adoption. See 750 ILCS 50/5(B)(j) (West 2016)). Respondent points out that the guardianship administrator consented to the foster parents' adoption of K.V.D.C. rather than Christel's adoption of him. Respondent further contends that because Christel was not a party to the foster parents' adoption proceedings, she lacked standing to collaterally attack them.

¶ 36 Regarding Christel's argument that her petition for adoption should have been consolidated with the foster parents' petition, respondent argues that it was Christel's own act of moving for a substitution of judge that prevented the consolidation from taking place.

Respondent also argues that Christel's section 2-1401 petition was defective in other respects, in that she lacked standing to seek relief from the trial court's judgment because she was not a party to the juvenile neglect case or the foster parents' adoption petition. Respondent argues that Christel also has not presented any information unknown to the trial court at the time that it entered its judgment, and that she has no meritorious defenses or claims.

¶ 37 We agree with respondent's assertions. Specifically, Christel argues that the adoption judgment was void because she should have received notice of the foster parent's adoption proceedings and because their adoption petition was untimely. However, we already determined that Christel was not entitled to notice of the foster parents' adoption case. *In re K.C.*, 2016 IL App (2d) 160148-U, ¶ 36. In doing so, we distinguished *In re A.W.*, 343 Ill. App. 3d 396, which Christel again cites in this appeal, on the basis that there a party to the proceedings did not receive notice, whereas here, Christel was not a party in the foster parents' adoption case. *In re K.C.*, 2016 IL App (2d) 160148-U, ¶ 34. As for the timeliness of the foster parents' adoption petition, the provision that Christel cites for the 30 day-requirement applies to a child "other than a related child." 750 ILCS 50/5 (West 2016)). Here, the foster parents are related to K.V.D.C., rendering the 30-day deadline inapplicable.

¶ 38 Even taking the above arguments as true, they would not render the adoption judgment void, as the trial court had subject matter and personal jurisdiction over the case. See *Price*, 2016 IL 118613, ¶ 31. Thus, Christel would have to satisfy section 2-1401's requirements. However, Christel's section 2-1401 petition was untimely. Section 2-1401 states that "[e]xcept as provided in Section 20b of the Adoption Act [750 ILCS 50/20b (West 2016)] ***, the petition must be filed not later than 2 years after the entry of the order or judgment." 750 ILCS 5/2-1401(c) (West 2016). Section 20b provides that a section 2-1401 petition seeking relief from an

order or judgment under the Adoption Act must be filed no later than one year after the entry of the order of judgment. 750 ILCS 50/20b (West 2016). “The one-year time limit on contesting adoptions promotes stability and finality in these cases.” *In re J.D.*, 317 Ill. App. 3d 445, 451 (2000). Here, the trial court entered the order for adoption on January 21, 2016, but Christel did not file her section 2-1401 petition until almost two years later, on December 27, 2017.

¶ 39 As respondent points out, Christel’s section 2-1401 petition was also deficient for other reasons. Aside from some narrow exceptions (see *G.M. Sign, Inc. v. Schane*, 2013 IL App (2d) 120434, ¶ 34), “[a] nonparty to a judgment has no standing to seek relief from that judgment by filing a section 2-1401 petition” (*In re J.D.*, 317 Ill. App. 3d at 449-50). Although Christel filed the section 2-1401 under the case number of her adoption petition, she was seeking to vacate the adoption ruling in the foster parents’ adoption case, to which she was not a party and therefore had no standing to obtain such relief. Finally, as discussed, she has failed to present a meritorious defense or claim to the entry of the adoption judgment. See *supra* ¶ 37. Based on all of these considerations, it is clear that the trial court did not err in dismissing Christel’s section 2-1401 petition.

¶ 40

III. CONCLUSION

¶ 41 For the reasons stated, we affirm the judgment of the Winnebago County circuit court.

¶ 42 Affirmed.