

Circuit Court for Worcester County
Case No. 23-I-16-000012

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 33

September Term, 2018

In Re: RS

Fader, C.J.,
Friedman,
Beachley,

JJ.

Opinion by Friedman, J.

Filed: January 14, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Interlocutory appeals to this Court are only permitted in limited, carefully-constrained situations. Because this interlocutory appeal does not fall within any authorized exceptions, we cannot entertain it. We, therefore, dismiss the appeal.

BACKGROUND

RS, an infant, and SS, her mother, were discovered living in a broken-down van in a parking lot in Worcester County, Maryland. RS was placed in shelter care with a foster family. The Worcester County Department of Social Services (WCDSS) investigated to determine if RS was a child in need of assistance (CINA) as defined by Maryland law.¹ As part of that inquiry, WCDSS sought to identify RS's father. *See e.g.* Md. Code, Cts. & Jud. Proc. ("CJ"), §3-819(e).² SS suggested that TS, a Delaware resident, might be RS's father; a fact that was subsequently confirmed by genetic testing.

Since that time, the circuit court has been in the process of determining an appropriate placement for RS.³ On **July 17, 2017**, the circuit court entered an order granting custody of RS to WCDSS and granting limited guardianship jointly to RS's paternal grandparents and WCDSS. On **August 28, 2017**, the circuit court held a permanency

¹ Md. Code, Cts. & Jud. Proc. ("CJ"), §3-801(f).

² This statute precludes finding a child to be CINA if another parent is able and willing to accept guardianship. *In re: ER, TR, JR and DB*, 239 Md. App. 334, 340 (2018).

³ Because TS is a Delaware resident, a significant source of dispute has been the role that the Interstate Compact on the Placement of Children (ICPC) should play in making this determination. Because we dismiss this appeal, we do not reach the questions briefed by the parties regarding the applicability of the ICPC in the case of a biological father. We note, however, that before this Court, WCDSS withdrew its former position that Delaware's views on TS's fitness are entitled to dispositive weight in a Maryland proceeding. We anticipate that on remand the case will be litigated in accordance with that concession.

planning review hearing pursuant to CJ §3-823. On **September 12, 2017** as a result of the August 28 hearing, the circuit court entered an order finding RS to be a CINA and changed RS's permanency plan from "reunification with a parent or guardian" to "placement with a relative for ... custody and guardianship." On **November 13, 2017** another permanency planning review hearing was scheduled but postponed. As a result, RS's permanency plan was continued. On **December 11, 2017**, a juvenile magistrate held a permanency planning review hearing pursuant to CJ §3-816.2. The magistrate recommended that custody should be awarded to RS's paternal grandparents, and limited guardianship should be granted jointly with WCDSS and the paternal grandparents. TS and RS filed exceptions to the magistrate's December 11 recommendations. On **March 5, 2018**, the circuit court denied the exceptions and entered an order consistent with December 11 recommendations. It is from the March 5, 2018 order that TS and RS have noted this appeal.

DISCUSSION

Interlocutory appeals to this Court are only permitted in a few, limited circumstances: (1) pursuant to an express statutory exception; (2) pursuant to the collateral order doctrine; or (3) pursuant to Maryland Rule 2-602(b), which permits a circuit court to specially certify an interlocutory order as final when "there is no just reason for delay." *Silbersack v. ACandS, Inc.*, 402 Md. 673, 683-84 (2008). Only the first category is facially applicable here.

An express statutory exception exists to permit the immediate appeal of orders which "depriv[e] a parent, grandparent, or natural guardian of the care and custody of his child, or chang[e] the terms of such an order." CJ § 12-303(3)(x). An order in a CINA

hearing can be immediately appealable pursuant to this statutory exception only if the order operates to (1) deprive the petitioner of the care and custody of a child or (2) change the permanency plan to the parent’s detriment. *In re Joseph N.*, 407 Md. 278, 288 (2009) (holding that an order that continued a permanency plan, but changed temporary physical custody from Department to father, was immediately appealable by the mother because the change had the effect of increasing the likelihood of the father obtaining permanent custody, to the mother’s detriment).⁴

The March 5, 2018 order did not deprive TS of the custody of RS nor did it change the permanency plan to TS’s detriment. As to the first point, the March 5 order did not deprive TS of custody, as he did not have custody of RS before the March 5 order was entered. Although the court changed custody, the change altered only the custody arrangement between the paternal grandparents and WCDSS, not TS. As to the second, the March 5 order did not formally change RS’s permanency plan nor did it have that effect. Her permanency plan was changed on September 12 and not since. Thus, the March 5 order

⁴ *Joseph N.* makes clear that CJ §12-303(3)(x) permits interlocutory appeals from orders changing permanency plans that are either formally detrimental or that are, in effect, detrimental. 407 Md. at 294-95. Thus, while the order appealed from in *Joseph N.* did not formally change the permanency plan to the mother’s detriment, it had the effect of placing her at a “relative disadvantage” that may have “tipp[ed] the custody scales” and was thus immediately appealable. *Id.* See also *In re C.E.*, 456 Md. 209, 223-24 (2017) (explaining *Joseph N.*). In RS’s case by contrast, the order from which appeal is sought didn’t change the permanency plan, either formally or in effect, because RS was already living with the paternal grandparents.

was not an appealable interlocutory order. We, therefore, have no choice but to dismiss the appeal.⁵

**APPEAL DISMISSED. COSTS TO BE PAID
BY APPELLANTS.**

⁵ If we were not compelled to dismiss this appeal, it would be of no avail to TS because we would be compelled to affirm that portion of the Order compelling him to submit to the ICPC study because he, in fact, requested that study. As a result, he has waived his right to complain about the study being conducted. *See, e.g., In re Nicole B.*, 410 Md. 33, 64 (2009). Nevertheless, he retains the right on remand to challenge the admissibility, scientific validity, and weight to be given to the study. *See supra* at 1, n.3.