Circuit Court for Caroline County
Case No. C-05-JV-19-000003

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 494

September Term, 2023

IN RE: D.T.

Nazarian,
Ripken,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: October 11, 2023

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

The current stage of this long-running guardianship case centers around where D.T., a now-fourteen-year-old girl, will go to live. In 2021, the Circuit Court for Caroline County, sitting as a juvenile court, terminated the parental rights of her biological mother, B. B-O, and father, J. T-O, and this Court affirmed that judgment later that year. *See In re: D. T.-O*, No. 1360, Sept. Term 2020 (App. Ct. Md. filed Sept. 3, 2021). As if D's family situation weren't volatile enough, though, the process of identifying and vetting safe alternative placements for her has, to put it charitably, been difficult, even since termination. At this writing, she still lacks a permanent home.

This appeal arises in the context of Ms. B-O's efforts, even after her parental rights were terminated, to participate in the process of establishing D's permanent placement. After appearing and attempting to introduce evidence at a guardianship review hearing in January 2023,[1] Ms. B-O (by herself; D's father has not participated) filed a motion to intervene under Maryland Rule 2-214. The circuit court denied the motion without a hearing and Ms. B-O appeals. And although we recognize that terminated parents could well be permitted to intervene in guardianship proceedings under certain circumstances, we affirm the circuit court's decision to deny intervention in this case.

[1] Ms. B-O's unsuccessful effort to introduce evidence at a review hearing on January 20, 2023 is the subject of a separate appeal. *In re D.T.*, No. 2175, September Term 2022. On September 5, 2023, we entered an order affirming the circuit court's decision declining to enter into the record evidence Ms. B-O proffered at that hearing.

I. BACKGROUND

This case has a long and tortured procedural history that we have recounted at length elsewhere, *see In re: D. T.-O*, slip op. at 1–24, and won't repeat here. As part of the process of leading to the termination of the biological parents' parental rights, the circuit court awarded guardianship of D to the Caroline County Department of Social Services (the "Department"), with the right to consent to adoption. After termination, the case focuses on determining D's permanent placement. This phase also has proven challenging.

D had been living with her foster parents, Mr. and Ms. A, since May 2019. In January 2022, the Department received a report that Mr. A had allegedly sexually abused a minor between 2011 and 2017. The Department responded by putting D briefly in a respite home and entering into a safety plan with Ms. A that eliminated contact between D and Mr. A; the Department continued to investigate the allegations. But when the juvenile court held the first post-termination guardianship review hearing on February 28, 2022, the Department didn't advise the court about the allegations. Before the hearing, the Department filed a report stating that D remained safe in her foster home, was doing well in school, and wanted to remain with the As, but declined to mention the sexual abuse allegations against Mr. A because, it says, it had not yet completed its investigation (under COMAR 07.02.07.09(B)(2), it had sixty days to do so). On the record before it, which did not include the allegations against Mr. A, the court concluded that it was in D's best interest to remain with her foster family.

On March 24, 2022, Mr. A was charged with sexual abuse of a minor based on the allegations the Department had learned about in January. The next day, Ms. B-O filed a petition seeking an emergency review hearing to request that the juvenile court remove D from her foster home and to place her with her adult sister, R. The Department advised the court that Mr. A had been removed from the home and that he would have no contact with D. Although the Department offered some additional safeguards, it also contended that Ms. A planned to move forward with adopting D without Mr. A. On March 28, 2022, the court denied the emergency petition on the grounds that Ms. B-O lacked standing. She later amended her petition, the court denied that as well, and she did not appeal from either decision.

After the Department completed its investigation of the sexual abuse allegations against Mr. A, the Department made a finding that the allegations were "indicated" and revoked his foster home license (although not Ms. A's). He remained incarcerated until August 2022, when the State's Attorney dropped the charges against him. D had no contact with Mr. A until December 2022, when her therapist opined that she could have visits with him, and the Department arranged supervised visits while he appealed the revocation of his foster home license and the indicated sexual abuse finding (both appeals since have been denied).

The second guardianship review hearing took place on January 20, 2023. Ms. B-O received notice, as required by Maryland Code (1984, 2019 Repl. Vol.), § 5-326(a)(3)(i) of the Family Law Article ("FL") (including a copy of the report the Department was

submitting), appeared in person with counsel (and translators), and both she and her counsel spoke and participated. The court received reports from the Department and from D's Court Appointed Special Advocate. Ms. B-O offered three exhibits—charging documents relating to Mr. A's dismissed criminal charges and an affidavit of an uncle with whom Ms. B-O lived in Pennsylvania—that the court declined to admit, although the court allowed her to read the affidavit into the record. Importantly, Ms. A had indicated before this hearing that she was no longer willing to adopt D without Mr. A. The Department also had considered D's older sister, R, as a potential resource, but R wasn't in a position to take her in and D didn't want to live with R either. The court ultimately was satisfied that D was safe in her current placement and that her current circumstances and placement were in her best interests, continued D's guardianship with the Department, found that the Department had made reasonable efforts, and added a concurrent plan of custody and guardianship to an individual. Ms. B-O appealed the court's exclusion of her exhibits, and we affirmed that decision. *In re D.T.*, No. 2175, Sept. Term 2022 (App. Ct. Md. filed Sept. 27, 2023).

On April 5, 2023, Ms. B-O filed a motion to intervene in the case; this is the motion that brings the case back before us in this appeal. Ms. B-O sought to intervene under Maryland Rules 11-316 and 2-214 and argued that she qualified to intervene "as of right," under Rule 2-214(a), and permissively under Rule 2-214(b). She contended that she qualified for intervention because of (1) her interest in having D live with a relative and (2) her interest in protecting herself and her family from national origin discrimination

since her family was not chosen as guardians. The circuit court denied Ms. B-O's motion without a hearing on April 14, 2023, and she filed a timely notice of appeal.

II. DISCUSSION

Ms. B-O raises two questions on appeal[2] that boil down to one issue: whether the trial court erred in denying her motion to intervene in D's guardianship review proceedings. The denial of a motion to intervene under Rule 2-214 constitutes "an appealable final order." *Hiyab, Inc. v. Ocean Petroleum*, *LLC*, 183 Md. App. 1, 9 (2008). Her separate

[2] Ms. B-O phrased the Questions Presented in her brief as follows:

1. Did the lower court err when it denied B-B.-O.'s Motion to Intervene, without a hearing, where all the requirements for intervention as of right and permissive were met, in an order that failed to articulate any reason but apparently relied solely on B.B.-O.'s lack of standing?
2. To the extent that *In re L.B.*, 229 Md. App. 566 (Md. App. 2016) represents the larger proposition that post-termination, natural parents have no standing to challenge any action taken in a guardianship review hearing, should that premise be reversed or at a minimum severely cabined as it is inconsistent with the plain language of statutory scheme, legislative intent, and other holdings of the Maryland Supreme Court?

The Department phrased the Questions Presented in its brief as follows:

1. Did the juvenile court correctly determine that Ms. B.-O., who no longer possesses any parental rights, does not meet either required criteria under Maryland Rule 2-214(a) to intervene as of right in a guardianship review proceeding?
2. Did the juvenile court properly exercise its broad discretion in denying Ms. B-O.'s request for permissive intervention where she does not meet the requirement of Maryland Rule 2-214(b)(1) that she has a "question of law or fact in common with" the guardianship review proceeding?

arguments for intervention as of right and permissive intervention raise two separate standards of review: we review denials of motions to intervene as of right *de novo*, *Doe v. Alt. Med. Md. LLC.*, 455 Md. 377, 414 (2017), and denials of permissive intervention for abuse of discretion. *Maryland-Nat'l Cap. Park & Plan. Comm'n v. Town of Wash. Grove*, 408 Md. 37, 65 (2009).

On this record, the circuit court did not err in denying Ms. B-O's motion to intervene. Ms. B-O stands in an unusual posture in this case. She is D's biological mother, a status that normally would imbue her with constitutionally protected rights to make parenting decisions for D without intervention by the State. As a result of the earlier proceedings in this case, though, her parental rights have been terminated, *see In re: D. T.-O*, slip op. at 22, and so she stands on the outside of this proceeding looking in. Under the Family Law Article, she is entitled as D's biological parent, even after termination, to notice and an opportunity to participate in D's post-termination guardianship review hearings. *See* FL § 5-326(a)(2)–(a)(3). But she no longer is a party to these proceedings, *see In re Adoption/Guardianship of L.B.*, 229 Md. App. 566, 599 (2016), and she lacks standing to challenge the Department's guardianship recommendations beyond her statutory notice and participation rights unless she is permitted to intervene anew. After the second post-termination guardianship review hearing, that is precisely the relief she sought.

The purpose of the guardianship review process is to establish a permanency plan for the child and to determine whether the child's current placement remains in their best interests. Md. Rule 11-316(b)(1)–(2). Terminated parents are entitled to "be heard and

participate at a guardianship review hearing," not as a party, but "solely on the basis of the right to notice and to be heard and participate." Md. Rule 11-316(d)(1). Although the Department has satisfied its obligations to provide Ms. B-O with notice and opportunities to participate in the guardianship review process, it has opposed her motion to intervene. At oral argument, the Department conceded, and appropriately so, that there may be circumstances in which a terminated parent may properly be allowed to intervene—most notably, where the parent is seeking reunification with the child. In this case, the Department argues that Ms. B-O has no independent right to intervene and that her request for permissive intervention isn't grounded in any relief she's seeking on her own behalf. Put another way, the Department contends that Ms. B-O seeks to offer a generalized opposition to the Department's guardianship recommendations and not to assert her own rights in the context of this child placement proceeding. And although it is important to recognize the possibility that some terminated parents may well have a basis to intervene in guardianship proceedings, we agree with the Department that on this record, the circuit court did not err in denying Ms. B-O's motion to intervene.

In essence, to allow someone to intervene in a case is a decision that the intervenor has an interest that an existing party won't or can't pursue. To justify intervention, then, a putative party must be able to establish that they have an "actual legal stake in the matter being adjudicated." *In re L.B.*, 229 Md. App. at 595 (cleaned up). This stake generally must be theirs—an individual "may not assert the constitutional rights of others," *In re Lee*, 132 Md. App. 696, 709 (2000) (*citing Turner v. State*, 299 Md. 565, 571 (1984)), unless (1) the

third person's rights are bound to the litigant's activity, (2) the litigant is an effective proponent of the third person's rights, and (3) the rights of the third person are likely to be adversely affected. *Id.* at 710 (*citing Turner*, 299 Md. at 572).

These principles can be especially tricky to apply in cases like this, where the core (and really only) question in the case is the best interests of a child. A potential intervenor's interest has to be understood in that context. In her motion to intervene, Ms. B-O characterized her interest in two ways: an interest in placing D with a relative rather than with the As and in "securing equal protection for herself, the biological father of [D], and for their biological relatives and not being discriminated against because of their national origin." These interests fail, either as too indirect (the relatives who might be placement resources could assert those and aren't) or beyond the scope of the issues to be decided in the guardianship proceedings (which turn entirely on D's best interests). The answer might well be different if Ms. B-O were seeking an order reunifying her and D—although that outcome might seem like a longshot on the merits (in this or any other case where a parent's rights have been terminated), that asserted interest is a direct one. But she has not sought reunification, and the interests she has asserted fall short of justifying party status at this point in the case.

With regard to possible relative placements, Ms. B-O can't bring claims on behalf of her family members. *In re Lee*, 132 Md. App. at 709. The biggest roadblock, and a foundational one here, is that the relatives do not appear to have any rights that Ms. B-O could pursue in this context. Generally, "[a] private third party has no fundamental

constitutional right to raise the children of others." *McDermott v. Dougherty*, 385 Md. 320, 353 (2005). If they were to come forward as potential adoption resources, it might well be appropriate for *them* to intervene to assert that claim. But Ms. B-O can't assert any such claim on their behalf, nor any contention that they were discounted as possible adoption resources due to discrimination based on national origin or immigration status (we addressed the impact of Ms. B-O's immigration status in the termination decision in our opinion affirming that judgment). *See In re Ryan W.*, 434 Md. 577, 602 (2013) (juvenile courts have limited jurisdiction and may only exercise powers granted by statute).

This brings us to the intervention question itself, and specifically to Maryland Rule 2-214. Guardianship review proceedings here are subject to Maryland Rules 11-300 to 11-319, *see* Maryland Rule 11-301(a)–(b) (chapter 300 applies to Child In Need of Assistance (CINA) guardianship proceedings and subsequent review proceedings), and Rule 2-214, which governs intervention in most civil cases, and applies in CINA guardianship proceedings. Ms. B-O has sought to intervene as of right and permissively, so we look at both Maryland Rule 2-214(a) and 2-214(b).

A. Ms. B-O Does Not Qualify For Intervention As Of Right Under Rule 2-214(a).

To intervene as of right, an individual must demonstrate (1) an unconditional right to intervene as a matter of law; or (2) an interest "relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties." Md. Rule 2-214(a). This rule has been

interpreted to have four separate requirements: (1) the application was timely, (2) the person claims an interest relating to the property or transaction of the case, (3) the person's position may impair their ability to protect their interest, and (4) their interest is not represented adequately by the current parties. *Maryland-Nat'l Cap. Park*, 408 Md. at 69–70 (citation omitted).

There doesn't appear to be any dispute that Ms. B-O's motion was timely, but she cannot satisfy the other criteria, all of which related to her interest in the proceedings. *Id.* Ms. B-O argues in her brief that she has "clear interests in the ongoing matter, including addressing discriminatory intent and treatment of herself, the Father, and the relatives [and] attempting to secure a more safe and stable placement for [D] . . . ." But neither her nor her family members have any interest or status that imbues them with a right to intervene. As for Ms. B-O herself, the decision to terminate her parental rights left her with no present legal interest or standing vis-à-vis D. *In re L.B.*, 229 Md. App. at 599. D's relatives are third parties, who also have no inherent rights to raise or parent her. *See McDermott*, 385 Md. at 353 (2005) ("[A] private third party has no fundamental constitutional right to raise the children of others."). Neither Ms. B-O herself nor any of the relatives appears to be asserting their own interest in parenting D—Ms. B-O is not seeking reunification and the relatives have not attempted to appear in the case at all. And because the purpose of the guardianship proceedings is solely to determine D's best interests, *see* Md. Rule 11-316(b)(2)(A)–(C) (the purpose of the guardianship review hearings is to determine the best interests of the child with regards to permanency plans and current placement); *see*

also Chapman v. Kamara, 356 Md. 426, 445 (1999) (appellant's interest in the case was "neither speculative nor contingent on the happening of other events" such that the case's resolution had a *direct effect* on appellant's position in the subsequent federal lawsuit), their generalized interest in placing her with some relative is at best an indirect one.

Ms. B-O seems to acknowledge as much when she claims a "general interest" in the case via FL § 5-326. But a "general interest" is not a right to intervene, and FL § 5-326 refutes that notion in this specific context. While providing that a parent is "entitled to be heard and to participate at a guardianship review hearing," FL § 5-326(a)(3)(ii), that same section says in so many words that "a parent *is not a party* solely on the basis of the right to notice or opportunity to be heard or participate at a guardianship review hearing." FL § 5-326(a)(3)(iii) (emphasis added). Section 5-326 gives what it gives, but nothing more: it requires the Department to give Ms. B-O notice of guardianship review hearings and gives her the right to be present and participate, but nothing more, and it specifically denies her party status. We don't read § 5-326 to deny any possibility that a terminated parent could make a case to intervene permissively (more on that below), but there is no way to read FL § 5-326, or any other provision, as granting Ms. B-O an affirmative right to intervene, and we discern no error in the circuit court's decision to deny intervention as of right in this case.

B. Ms. B-O's Legal Basis For Permissive Intervention Does Not Relate Sufficiently To The Guardianship Review Proceedings.

To intervene permissively, an individual must demonstrate that their "claim or defense has a question of law or fact in common with the action." Md. Rule 2-214(b)(1).

Courts also may consider "whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Md. Rule 2-214(b)(3). In *Simpson v. Consolidated Construction Services, Inc.*, we affirmed the denial of an appellant's permissive intervention claim because the basis for the original motion was unrelated to the original case. 143 Md. App. 606, 636, *rev'd in part on other grounds*, 372 Md. 434 (2002). In the original case, the main claims involved negligence, breach of warranty, and breach of contract, but the appellants had sought to intervene to "enforce their writs of garnishment by challenging the propriety of appellees' settlement agreement," which was unrelated. *Id.*

Ms. B-O's claims here are similarly indirect. She argues that she is entitled to intervene permissively because "the common factual and legal issues primarily relate to whether the agency and lower court are discriminating with intent and derogating from statutory mandates . . . by failing to evaluate any relative placements; [and] whether the same entities are intentionally discriminating against B.B.-O., the Father, and potential relative placements . . . ." But again, there is no direct connection between Ms. B-O, the potential intervenor, and these claims. Ms. B-O is not seeking reunification herself, so she faces no impact from any discrimination in the ongoing placement decisions. And to the extent she asserts that the Department is discriminating against the relatives in the way it is (or isn't) pursuing them as potential resources, those claims aren't hers to assert. As framed, Ms. B-O seeks essentially to bring equal protection claims of others, who are third parties to D, in a guardianship review hearing designed to evaluate D's well-being and best

interests. As in *Simpson*, these claims are too attenuated to compel Ms. B-O's intervention for that purpose. 143 Md. at 636. The circuit court could have held a hearing to explore the issues further, but was not required on this record to do so, and we see no abuse of discretion in its decision to deny permissive intervention in this case.

JUDGMENT OF THE CIRCUIT COURT FOR CAROLINE COUNTY AFFIRMED. APPELLANT TO PAY COSTS.