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IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Adoption of A.E.,

C.L.F.,

Appellant,

v.

C.M. and M.B.,

Appellees-Petitioners.

July 11, 2022

Court of Appeals Case No. 21A-AD-2766

Appeal from the Hamilton Superior Court

The Honorable David K. Najjar, Judge

Trial Court Cause No. 29D05-2007-AD-1070

Molter, Judge.

[1] C.L.F. ("Grandmother") filed a petition to adopt her grandchild, A.E. ("Child"), in the Harrison Circuit Court, and C.M. and M.B. (together, "Adoptive Parents") filed a petition to adopt Child, for whom they were foster parents, in the Hamilton Superior Court. After the Hamilton Superior Court granted Adoptive Parents' adoption petition and entered a Decree of Adoption,

Grandmother filed a motion to intervene and a motion to correct error, and the Hamilton Superior Court denied both motions. Grandmother appeals, arguing that the Hamilton Superior Court abused its discretion when it denied her motion to intervene, and that Harrison County had exclusive jurisdiction over the adoption. Because we find that the trial court did not abuse its discretion in denying Grandmother's motion to intervene, we affirm.

Facts and Procedural History

[2] B.M. ("Mother") and K.E. ("Father") are the biological parents of Child, born on April 21, 2015. On April 22, 2015, the Harrison County Department of Child Services received a report that Child and her siblings were victims of neglect because Mother tested positive for drugs throughout her pregnancy with Child and because Child's urine tested positive for opiates at birth. Child was removed from the care of Mother and Father under a dispositional decree on January 7, 2016.

[3] Grandmother, who resides in Harrison County, took care of Child and her older half-sister, K.F., off and on after removal. On January 2, 2020, Child and K.F. were placed together with Adoptive Parents, but two months later, K.F. had to be removed from their care and placed with Grandmother because her "behaviors escalated in the home to where [Adoptive Parents] were concerned about the safety of everyone in the home." Appellant's App. Vol. 2 at 41. Child remained in the care of Adoptive Parents from January 2020 throughout the proceedings, and after removal from Adoptive Parents' home, K.F.

remained in Grandmother's care throughout the proceedings at issue. Adoptive Parents live in Jackson County.

[4] On February 2, 2020, Grandmother filed a petition to adopt Child and K.F. in the Harrison Circuit Court. On July 9, 2020, Adoptive Parents filed a petition to adopt Child in the Hamilton Superior Court. In their petition, Adoptive Parents stipulated that, while they were residents of Jackson County and Child was a ward of the Harrison County Department of Child Services, they were consenting to the venue and jurisdiction of the Hamilton Superior Court. Adoptive Parents stated that the Harrison County Department of Child Services would be providing its consent to the adoption and that petitions to terminate Mother's and Father's parental rights were pending in Harrison County. On January 5, 2021, the Harrison Circuit Court terminated Mother's and Father's parental rights to Child.

[5] On October 27, 2021, the Hamilton Superior Court conducted a hearing on Adoptive Parents' petition to adopt. That same day it issued a Decree of Adoption, finding that the parent-child relationship between Child on the one hand and Mother and Father on the other had been terminated, that the Harrison County Department of Child Services had consented to the adoption, and that adoption was in the best interests of the Child.

[6] On November 15, 2021, Grandmother filed a motion to intervene and a motion to correct error in the Hamilton Superior Court. In her motion to intervene, she claimed that "having filed her prior adoption petition" for Child in another

court of competent jurisdiction, she had a "claim or defense and a question of law in common" with the adoption action in the Hamilton Superior Court and should be permitted to intervene under Indiana Rule of Civil Procedure 24(B)(2). *Id*. at 7. In her motion to correct error, Grandmother claimed that the adoption decree was an abuse of discretion, that the trial court lacked jurisdiction to hear the case and was not a proper venue to conduct the adoption proceedings, and that the adoption was not in the best interests of Child.

[7] Adoptive Parents filed their objection to Grandmother's motions on December 8, 2021, and on December 10, 2021, the trial court denied Grandmother's motions. Grandmother timely appealed, and Adoptive Parents filed a motion to dismiss Grandmother's appeal, arguing that the order denying Grandmother's motion to intervene was a non-appealable interlocutory order. Our court's motions panel held the motion in abeyance to be addressed by this writing panel.

Discussion and Decision

Grandmother argues the Hamilton Superior Court abused its discretion by denying her motion to intervene and her motion to correct error. Adoptive Parents argue we lack jurisdiction to consider Grandmother's appeal, but, even if we do have jurisdiction, there was no abuse of discretion. We agree with Grandmother that we have appellate jurisdiction, but we agree with Adoptive Parents that the Hamilton Superior Court did not abuse its discretion by

declining Grandmother's request to intervene after the court had entered the adoption decree.

I. Jurisdiction

[8] We first address Adoptive Parents' threshold argument that we lack jurisdiction to consider Grandmother's appeal because she is appealing an order denying her motion to intervene, which is a non-appealable interlocutory order. Adoptive Parents rely on Trial Rule 24(C) for this argument, which provides:

[9]

> A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and set forth or include by reference the claim, defense or matter for which intervention is sought. Intervention after trial or after judgment for purposes of a motion under Rule 50, 59, or 60, or an appeal may be allowed upon motion. **The court's determination upon a motion to intervene shall be interlocutory for all purposes unless made final under Trial Rule 54(B).**

Ind. Trial Rule 24(C) (emphasis added). Because we generally lack jurisdiction over interlocutory appeals unless a rule provides otherwise, *Truelove v. Kinnick*, 163 N.E.3d 344, 347 (Ind. Ct. App. 2021), Adoptive Parents argue the emphasized language above deprives us of jurisdiction since Grandmother did not seek Trial Rule 54(B) certification of the order denying her motion to intervene.

[10] Adoptive Parents misunderstand Trial Rule 24(C). It used to be that an order granting intervention was an interlocutory order, appealable only after the case

was over as part of an appeal from a final judgment, but an order denying intervention was treated as a final, appealable order as to the party whose motion was denied. *See Weldon v. State*, 279 N.E.2d 554, 555 (1972) ("It is well settled in Indiana that persons denied the right to intervene are entitled to appeal therefrom as a final judgment. . . . However, if the appellant had been granted the right to intervene, as pointed out by the authorities, the controversy would not have been ended and no appeal would lie at that point."). The emphasized language in the rule above changes the practice so that regardless of whether the trial court grants or denies the motion to intervene, it is an interlocutory order unless properly certified as a final order through Trial Rule 54(B).

[11] Trial Rule 24(C) does not otherwise change appellate practice or jurisdiction. It remains the case that non-appealable interlocutory rulings merge into the final judgment and are subject to appellate review through an appeal from the final judgment. *See Ind. Serv. Corp. v. Town of Flora*, 31 N.E.2d 1015, 1016 (Ind. 1941) (explaining that for interlocutory orders "there may be no review until after the rendition of the final judgment"); *see generally* 5 Am. Jur. 2d *Appellate Review* § 577 ("A properly taken appeal from a final order or judgment generally authorizes the appellate court to review any interlocutory order involving the merits of the case or affecting the judgment, regardless of whether the order itself is appealable. Thus, many interlocutory rulings that could not have been appealed before final judgment are merged into the final judgment and are open to review on appeal from the final judgment."). So, like any other interlocutory

ruling, an interlocutory order granting or denying intervention may be appealed as part of an appeal from a final judgment.

[12] Here, the trial court entered the Decree of Adoption on October 27, 2021, and then on November 15, 2021, Grandmother filed both a motion to intervene and a motion to correct error, as Trial Rule 24(C) expressly permitted. Because the trial court denied both motions on December 10, 2021, Grandmother's deadline to appeal the final judgment was January 10, 2022. She filed her Notice of Appeal on December 12, 2021, so her appeal was timely. She also properly noted in her Notice of Appeal that we have appellate jurisdiction because she was timely appealing from a final judgment, and that appellate review may entail review of interlocutory orders leading up to the final judgment. We therefore do not lack jurisdiction for want of a timely, ripe appeal from a final judgment.

[13] This approach is consistent with the purpose and structure of our trial and appellate rules. Where a final judgment has already been entered granting the adoption petition, including Trial Rule 54's "magic language"—that there is no just reason for delay and that judgment should be entered as to one or more but fewer than all the claims or parties—is superfluous. "The purpose of Trial Rule 54(B) is to avoid piecemeal litigation and appeal of various issues in a case and to preserve judicial economy by protecting against the appeal of orders that are not yet final." *Paulson v. Centier Bank*, 704 N.E.2d 482, 488 (Ind. Ct. App. 1998), *trans. denied.* Thus, an order as to fewer than all the parties and/or issues can become final only by meeting the requirements of Trial Rule 54(B). *Front*

Row Motors, LLC v. Jones, 5 N.E.3d 753, 757 (Ind. 2014). But the trial court's order denying Grandmother's motion to intervene disposed of all issues as to all parties, and was, by definition, itself a "final judgment" as there was nothing more to be decided by the trial court after the order was entered. *See* Ind. Appellate Rule 2(H)(1); *see, e.g.*, *JPMorgan Chase Bank, N.A. v. Claybridge Homeowners Ass'n, Inc.*, 39 N.E.3d 666, 669–70 (Ind. 2015) (wherein the appellant filed a notice of appeal within thirty days of an order denying its post-judgment motion to intervene and the court considered the propriety of the denial without commenting on whether the order contained the Trial Rule 54(B) language).

[14] Because our jurisdiction is secure, we turn to the merits of Grandmother's appeal.

II. Motion to Intervene

[15] Grandmother argues the Hamilton Superior Court abused its discretion when it denied her motion to intervene. The decision to grant or deny a motion to intervene is within the discretion of the trial court, and we will reverse only for an abuse of that discretion. *Granite State Ins. Co. v. Lodholtz*, 981 N.E.2d 563, 566 (Ind. Ct. App. 2012), *trans. denied*. An abuse of discretion occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id*.

[16] Grandmother's motion to intervene alleged she was entitled to permissive intervention under Indiana Trial Rule 24(B) because she had filed a prior

petition for Child's adoption in another court of competent jurisdiction and had a claim or defense and a question of law in common with the action in the trial court. Trial Rule 24(B) provides:

> Upon timely filing of his motion anyone may be permitted to intervene in an action:
>
> . . . .
>
> (2) when an applicant's claim or defense and the main action have a question of law or fact in common . . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

[17] The trial court's decision to deny Grandmother's motion to intervene was not an abuse of discretion for several reasons. First, the Harrison Circuit Court terminated the parental rights of Mother and Father before the Hamilton Superior Court issued the Decree of Adoption. So, Grandmother lacked standing to intervene in the adoption proceedings when she filed her motion to intervene. *In re the Adoption of Z.D.*, 878 N.E.2d 495, 498 (Ind. Ct. App. 2007) (holding that a grandmother had no standing to intervene where parental rights of parents had been terminated before the motion to intervene had been filed and grandmother did not have custody of the child).

[18] Second, Grandmother filed her motion to intervene after the trial court had already issued its adoption decree granting the adoption of Child to Adoptive Parents. Although Trial Rule 24(C) allows intervention for purposes of filing a

motion to correct error or for relief from judgment, a petition to intervene after a judgment is disfavored. *Hiles v. Null*, 716 N.E.2d 1003, 1005 (Ind. Ct. App. 1999). Accordingly, a party seeking to intervene after judgment has been entered must make a showing of "extraordinary or unusual circumstances[.]" *Id*. This is especially important in adoption cases because the finality of an adoption decree "is desirable in order to prevent the emotional strain which would otherwise be imposed upon both the adoptive child and parents, making it difficult for a normal parent-child relationship to develop." *M.R. ex rel. Ratliff v. Meltzer*, 487 N.E.2d 836, 840 (Ind. Ct. App. 1986) (quotation omitted), *trans. denied*; *see also In re Adoption of T.L.W.,* 835 N.E.2d 598, 601 (Ind. Ct. App. 2005) (noting, in review of trial court's denial of motion for relief from judgment of adoption decree, that the biological father's recent discovery of adoption of his children was not an "extraordinary circumstance in light of the need for stability and permanency in [the children's] lives.").

[19] Grandmother's motion to intervene and motion to correct error primarily focused on her complaint that the final hearing occurred without Grandmother having secured her desired terms for sibling visitation between Child and K.F. These are not sufficiently extraordinary or unusual circumstances to require intervention, particularly where the finality of an adoption decree "is desirable in order to prevent the emotional strain." *See M.R.*, 487 N.E.2d at 840.

[20] Finally, noncustodial grandparents are not entitled to intervene in adoption proceedings. *In re the Adoption of Z.D.*, 878 N.E.2d 495, 498 (Ind. Ct. App. 2007). In *Kennedy v. Kennedy, 688 N.E.2d 1264, 1268* (Ind. Ct. App. 1997)*, trans.*

denied, this court noted that, with respect to grandparent visitation, "[a]lthough a handful of cases have afforded grandparents due process rights with respect to their grandchildren, a careful examination of those cases reveals that a liberty interest exists only where the grandparent-grandchild relationship is essentially a custodial one." That is not the case here. Although Grandmother at one time had custody of Child when Child was removed from the care of Mother and Father, she had not had custody of Child since January 2, 2020, when Child was placed with Adoptive Parents, and where she remained until the adoption decree was issued.

[21] Because we conclude the trial court did not abuse its discretion in denying the motion to intervene, we affirm.[1]

[22] Affirmed.

Riley, J., and Robb, J., concur.

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[1] Grandmother dedicates most of her argument section to challenging the jurisdiction and venue of the trial court to grant the adoption. However, because we find that the trial court properly denied her motion to intervene, we do not reach the merits of these arguments.