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IN THE
COURT OF APPEALS OF INDIANA

In re the Matter of the Adoption
of Minor Children, C.M.L. and
C.T.L.

K.C. and F.M., Paternal Aunt
and Uncle,

Appellants-Petitioners,

v.

Indiana Department of Child
Services,

Appellee-Respondent.

August 13, 2021

Court of Appeals Case No.
21A-AD-714

Appeal from the Madison Circuit
Court

The Honorable Stephen J. Koester,
Judge

Trial Court Cause No.
48C02-2006-AD-27

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellants-Petitioners, K.C. and F.M. (Paternal Aunt and Uncle), appeal Madison Circuit Court 2's denial of their motion requesting relief from judgment pursuant to Indiana Trial Rule 60(B).
- [2] We affirm.

ISSUE

- [3] Paternal Aunt and Uncle present this court with two issues on appeal, which we consolidate and restate as the following single issue: Whether Madison Circuit Court 2 abused its discretion when it denied Paternal Aunt and Uncle's motion for relief from judgment pursuant to Indiana Trial Rule 60(B).

FACTS AND PROCEDURAL HISTORY

- [4] On June 26, 2020, Paternal Aunt and Uncle filed a verified petition for kinship adoption of two minor children in Madison Circuit Court 3 (trial court). The minor children's Father, C.A.L., consented to the adoption. In their petition, Paternal Aunt and Uncle alleged, among other things, that Mother had moved to Alabama, that she had abandoned the children for six months prior to the filing of the petition, and that for the past year, Mother had failed to communicate with and support the children. Paternal Aunt and Uncle alleged that the Indiana Department of Child Services (DCS) had wardship of the children and that the maternal grandparents were the minor children's nearest kin. At the time of Paternal Aunt and Uncle's filing of the adoption petition, a

Child in Need of Services (CHINS) Petition had been filed for each of the children in Madison Circuit Court 2.

[5] On July 28, 2020, Mother, appearing *pro se*, filed a pleading contesting the adoption. In her petition, she disputed Paternal Aunt and Uncle’s allegations and asserted that DCS had placed the children with the maternal grandparents until Mother would be able to reunite with them. She alleged that she had contact with the children and spent time with them. Mother informed the trial court that she had moved out of state to address her substance abuse issues and to get married.

[6] On July 30, 2020, DCS filed a motion to intervene, which the trial court granted on August 4, 2020. In its motion, DCS objected to the children’s adoption by Paternal Aunt and Uncle. That same day, by separate motion, DCS informed the trial court that on May 2, 2019, Madison Circuit Court 2 had adjudicated the children as CHINS and that on May 27, 2020, DCS had placed the children with maternal grandparents. DCS contested the adoption as not being in the best interests of the children because the children had been placed with maternal grandparents for two months, they had established a bond with them, the children have special needs that are being addressed through services in Madison County, that Aunt and Uncle lived in New York and had met the children a “handful of times,” and that the adoption would remove the children from the community and the services that were in place for them. (Appellants’ App. Vol II, p. 95). DCS further contended that it believed “the

filing of this adoption proceeding [to be] an attempt to circumvent the findings and ruling of the CHINS court.” (Appellant’s App. Vol. II, p. 95).

[7] On August 5, 2020, Paternal Aunt and Uncle filed their response to DCS’s motion to contest adoption and on August 28, 2020, maternal grandparents filed a motion to intervene in the adoption case, requesting the trial court to dismiss Paternal Aunt and Uncle’s petition for adoption. Maternal grandparents alleged, among other things, that Paternal Aunt and Uncle had filed the adoption petition without theirs or DCS’s consent. On September 1, 2020, the trial court granted maternal grandparents’ motion to intervene. That same day, Paternal Aunt and Uncle filed a motion to strike maternal grandparents’ pleadings and for Rule 11 sanctions, arguing that they were neither required to serve their petition on maternal grandparents, or obtain DCS’s consent for the children’s adoption. On September 22, 2020, Paternal Aunt and Uncle filed a motion requesting the trial court to reconsider its order granting maternal grandparents’ motion to intervene on the basis that they lacked standing.

[8] On November 12, 2020, DCS filed a motion to transfer the cause to Madison Circuit Court 2, which was the venue for the children’s CHINS and termination of parental rights cases. DCS further contended that both Paternal Aunt and Uncle and maternal grandparents had intervened in the CHINS cases and that transferring the adoption case to Madison Circuit Court 2 would promote efficiency, fair distribution, and the timely resolution of the cases. On

November 13, 2020, the trial court granted the transfer of the adoption case to Madison Circuit Court 2.

[9] On November 16, 2020, Paternal Aunt and Uncle filed a motion for relief from judgment before the trial court pursuant to Indiana Trial Rule 60(B), relying on subsections (1), (2), and (6), arguing that the trial court erroneously granted DCS's motion to transfer without giving Paternal Aunt and Uncle the opportunity to respond. They also asserted that probate courts have exclusive jurisdiction over adoption cases and that the adoption case was properly before Madison Circuit Court 3, the trial court, which had been designated as a probate court. On November 18, 2020, DCS responded, asserting that the timing of the trial court's order was irrelevant, that jurisdiction was not an issue between Madison Circuit Courts 2 and 3, and that venue in Madison Circuit Court 2 was proper. It does not appear the trial court ruled on Paternal Aunt and Uncle's T.R. 60(B) motion. A docket was started for the case in Madison Circuit Court 2.

[10] On January 19, 2021, Paternal Aunt and Uncle filed an application for removal of judge under Trial Rule 53.1, arguing that the court failed to hold a hearing on their T.R. 60(B) motion in excess of 30 days in violation of T.R. 60(D) and that conducting a hearing was mandatory before the trial court can rule on a T.R. 60(B) motion. On February 4, 2021, the Madison County clerk forwarded the application for removal to the Chief Administrative Officer (CAO) of the Indiana Office of Judicial Administration. On February 26, 2021, the CAO issued a notice, warranting the removal of Judge Stephen J. Koester. However,

on March 2, 2021, the Indiana supreme court issued an order, remanding jurisdiction to Judge Koester “as if the Notice Withdrawing the Submission filed February 26, 2021, had not been issued.” (Appellants’ App. Vol. II, p. 17).

[11] On April 5, 2021, Paternal Aunt and Uncle filed a motion for entry of ruling in Madison Circuit Court 2, requesting the court to issue a ruling on their T.R. 60(B) motion. On April 12, 2021, Madison Circuit Court 2 denied Paternal Aunt and Uncle’s motion and specifically stated that it would retain jurisdiction over the adoption proceedings.

[12] Paternal Aunt and Uncle now appeal. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

[13] Paternal Aunt and Uncle contend that Madison Circuit Court 2 abused its discretion when it denied their T.R. 60(B) motion for relief from judgment. Indiana Trial Rule 60(B) provides, in relevant part, that

On motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons:

- (1) Mistake, surprise, or excusable neglect;

- (2) Any ground for a motion to correct error, including without limitation newly discovered evidence, which by due diligence could not have been discovered in time to move for a motion to correct errors under Rule 59;

(6) the judgment is void.

The motion shall be filed within a reasonable time for reasons [] (6), and not more than one year after the judgment, order or proceeding was entered or taken for reasons (1), (2) [.]

The propriety of relief under Indiana Trial Rule 60(B) is a matter entrusted to the trial court's equitable discretion. *Citimortgage, Inc. v. Barabas*, 975 N.E.2d 805, 812 (Ind. 2012). Appellate courts review the exercise of that discretion only for abuse, which "may occur if the trial court's discretion is clearly against the logic and effect of the facts and circumstances before the court, or if the trial court has misinterpreted the law." *Id.*

[14] Paternal Aunt and Uncle's main contention of error focuses on the trial court's transfer of their adoption petition to Madison Circuit Court 2, a juvenile court, whereas the trial court carried a probate docket. Initially, they contend that the trial court abused its discretion by transferring the case upon DCS's motion to transfer without allowing Paternal Aunt and Uncle an opportunity to file objections to DCS's motion.

[15] On November 12, 2020, DCS filed a motion to transfer the cause to Madison Circuit Court 2, which was the venue for the children's CHINS and termination of parental rights cases. The following day, the trial court granted the transfer

and later that day, Paternal Aunt and Uncle filed their opposition and objections to DCS's transfer motion. Relying on Indiana Trial Rule 6(C) and 12(A), Paternal Aunt and Uncle claim that the transfer was a mistake and should be declared void.

[16] Indiana Trial Rule 12(A) provides that “[t]he time allowed for the presentation of defenses and objections in a motion or responsive pleading shall be computed pursuant to the provisions of Rule 6(C).” In turn, Trial Rule 6(C) specifies that “[a] responsive pleading required under these rules, shall be served within twenty (20) days after service of the prior pleading Unless the court specifies otherwise, a reply shall be served within twenty (20) days after entry of an order requiring it.” Accordingly, reading both rules together, if a response is required to a motion filed pursuant to T.R. 12, then the response is to be served within twenty days. However, Paternal Aunt and Uncle fail to point to any rule, and neither can we locate one, requiring them to respond to DCS's motion to transfer. Accordingly, as no response was required, the grant of DCS's motion was not erroneous.

[17] Moreover, even if a response were required and the trial court prematurely transferred the cause without awaiting Paternal Aunt and Uncle's objections to DCS's motion, we cannot say that the transfer was erroneous as Madison Circuit Courts are courts of general jurisdiction without a separate, designated probate court.

[18] Indiana Code section 33-33-48-12 identifies the Madison Circuit Court as a “court of general jurisdiction with six judges.” The statute further specifies that the court shall maintain:

- (1) A small claims and misdemeanor division []
- (2) A criminal docket
- (3) A juvenile docket
- (4) A civil docket
- (5) A probate docket
- (6) A problem solving docket

I.C. § 33-33-48-12. Madison County Local Rule 1, which explains the “jurisdiction of divisions,” clarifies, in relevant part:

A. Dockets for each division of the [c]ourt shall be assigned as follows:

Civil dockets Divisions 1, 2, 3, 4, 5, and 6.

Criminal dockets Divisions 1, 3, 4, 5, and 6

Probate dockets Divisions 1, 3, and 6

Juvenile dockets Divisions 2

B. Civil cases may be filed in any appropriate division in accordance with the caseload plan for Madison County []
Division selection in criminal cases will be effectuated randomly by the Clerk of the Court, [].

Madison County Local Rule 2 states:

Caseload Plan

A. In compliance with Administrative Rule 1(E), the following chart reflects the caseload allocation for the Madison Circuit Court. No part of this rule shall prohibit the transfer of individual cases to promote efficiency, fair distribution, or the timely resolution of cases.

[19] Statutorily, in each Indiana county that has a separate probate court, “the probate court has exclusive jurisdiction in all adoption matters.” I.C. § 31-19-1-2(b). Reading the second prong of the statute in combination with the local rules, Paternal Aunt and Uncle argue that the transfer to Madison Circuit Court 2, which has a designated juvenile docket, was erroneous and DCS’s motion to transfer should have been denied as the trial court carried a probate docket. In response, DCS posits that because none of the six divisions of Madison Circuit Court has exclusive jurisdiction over the cases assigned to them by the caseload plan, the local rules allow for the transfer of the case if judicial economy and fairness require it. In support of their respective arguments, both parties contend that our supreme court’s decision in *In re Adoption of J.T.D.*, 21 N.E.3d 824 (Ind. 2014) is directly on point.

[20] In *In re Adoption of J.T.D.*, DCS removed minor children from their foster mother, who intended to adopt them, and placed them with another pre-adoptive family in Lake County. *Id.* at 826. After the Lake County Juvenile Division denied foster mother’s petition to intervene in the CHINS cases, foster mother filed adoption petitions to adopt the minor children in Lake Superior Court 2, which is part of the court’s civil division. *Id.* Because Lake County’s

Caseload Allocation Plan required the adoptions of minors “to be exclusively filed in the Juvenile Division,” DCS and the Court Appointed Special Advocate moved to intervene in the adoption proceedings and transfer them to the Juvenile Division. *Id.* Before the trial court, DCS argued that the Caseload Allocation Plan “expands the jurisdiction of the Juvenile Division to include all adoptions of minors, and it clearly says all adoptions of minors are to be exclusively filed in the Juvenile Division.” *Id.* The foster mother countered the argument and noted that because “local rules can’t supersede legislative enactments,” the statute creating the Lake Superior court’s “civil (including probate), criminal, county, and juvenile divisions” was controlling over the Caseload Allocation Plan and awarded the trial court with probate jurisdiction. *Id.* at 826-27 (citing I.C. § 33-33-45-2). The trial court agreed with foster mother’s position and denied DCS’ s motion to transfer. *Id.* at 827. On appeal, this court affirmed the trial court, stating that the “Civil division has . . . exclusive subject matter jurisdiction over adoption proceedings,” which the Caseload Allocation Plan, as a local rule, cannot defeat. *In re Adoption of J.T.D. and J.S.*, 5 N.E.3d 786, 792 (Ind. Ct. App. 2014), *trans granted, opinion vacated sub nom.* On transfer, our supreme court concluded that because Lake County has no separate probate court, the exclusive jurisdiction provision, as enacted in I.C. § 31-19-1-2, did not apply. *In re Adoption of J.T.D.*, 21 N.E.3d at 827. Finding Lake Superior court to be one court of broad original, and concurrent jurisdiction shared among its divisions, the supreme court held that caseloads were a matter of venue, rather than jurisdiction. *Id.* at 828 (citing I.C. §33-33-45-3). “[T]he Lake Superior court’s divisions are imbued with the same broad

subject matter jurisdiction as the court as a whole, and their statutory names are merely descriptive of the venue.” *Id.* at 831. Because the Lake County Caseload Allocation Plan was consistent with the controlling statutes, the supreme court concluded that the foster mother was obligated to file her adoption petition in the juvenile division and when she failed to do so, the trial court was required to yield venue to the juvenile division. *Id.* at 831-32.

[21] Similar to Lake County, Madison County has no exclusive probate court as “[t]he Madison circuit court is a court of general jurisdiction with six (6) judges.” I.C. § 33-33-48-12. Therefore, as in Lake County, the exclusive jurisdiction provision of Indiana Code section 31-19-1-2 does not apply and caseloads become a matter of venue rather than jurisdiction. The fact that Lake County refers to divisions to characterize its distinct jurisdictional venues, while Madison County identifies dockets is a distinction without avail. It is clear that no exclusive probate court was established in either County, with venue in Madison County for the probate docket being shared between three different divisions. While it appears that cases must initially be filed in the appropriate divisions, as identified in Madison County Local Rule 1, the Madison County caseload plan, which is included in Local Rule 2, specifically states that “no part of this rule shall prohibit the transfer of individual cases to promote efficiency, fair distribution, or the timely resolution of cases.” (Appellants’ App. Vol. II, p. 50).

[22] Paternal Aunt and Uncle filed their petition for adoption in Madison Circuit Court 3, a division with a probate docket. While the case was appropriately

filed, CHINS and termination proceedings with respect to the minor children were already pending in Madison Circuit Court 2, which had accumulated information about the children’s situation, wellbeing, and best interests. The evidence that had been submitted in the CHINS and termination cases is similar to that needed to decide the adoption petition. Accordingly, as the adoption proceeding was just initiated and to avoid contradictory results, a transfer of the cause to Madison Circuit Court 2 promoted efficiency, fair distribution, and timely resolution of the petitions. Therefore, as transfer was appropriate, was not made by mistake, and is not void, we conclude that Madison Circuit Court 2 did not abuse its discretion by denying Paternal Aunt and Uncle’s T.R. 60(B) motion.¹

CONCLUSION

[23] Based on the foregoing, we conclude that Madison Circuit Court 2 did not abuse its discretion by denying Paternal Aunt and Uncle’s request for relief from judgment, pursuant to Indiana Trial Rule 60(B).

¹ In their appellate Brief, Paternal Aunt and Uncle make various allegations about “impropriety” or “appearance of improprieties.” (Appellants’ Br. pp. 15-17). These arguments include a change of judge in Madison Circuit Court 2 due to the initial judge not being re-elected, DCS’s presumed failure to give notice to Paternal Aunt and Uncle about the children’s detention in the CHINS proceeding, and maternal grandparents’ alleged lack of standing to intervene before the trial court. None of these allegations of improprieties were raised in Paternal Aunt and Uncle’s T.R. 60(B) motion. Because Paternal Aunt and Uncle filed their appeal through Madison Circuit Court 2 after the transfer was effectuated, the only issue before this court is whether Madison Circuit Court 2 abused its discretion in denying Paternal Aunt and Uncle’s T.R. 60(B) motion. As we concluded that no abuse of discretion occurred and the transfer was proper, we will not address Paternal Aunt and Uncle’s other allegations.

[24] **Affirmed.**

[25] Najam, J. and Brown, J. concur