

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

FILED

In Re: E.T.

October 20, 2014

No. 14-0535 (Mingo County 14-JA-28 & 14-JA-29)

RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Guardian ad litem (“GAL”) Karen S. Hatfield appeals the order of the Circuit Court of Mingo County, entered on May 1, 2014, that, *inter alia*, temporarily placed one-year-old E.T. in the custody of A.H., his biological father. The West Virginia Department of Health and Human Resources (“DHHR”), by counsel S.L. Evans, filed its response in support of the circuit court’s order. Respondent Mother, B.T., by counsel Stacey Kohari, filed a summary response supporting the GAL’s position. The GAL filed a reply. The only issue presented on appeal is whether the circuit court erred when it placed E.T. in the temporary custody of his biological father pending further abuse and neglect proceedings.

This Court has considered the parties’ briefs and the appendix on appeal. The facts and legal arguments are adequately presented in the parties’ written briefs and the appendix on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the Rules of Appellate Procedure, the briefs, and the appendix presented, the Court finds that the petitioner’s appeal is premature for review on direct appeal. For these reasons, a memorandum decision that dismisses this appeal is appropriate under Rule 21 of the Rules of Appellate Procedure.

On April 15, 2014, the DHHR filed an abuse and neglect petition that alleged Respondent Mother and her then-boyfriend, W.J., took E.T.’s half-sibling, L.J., to the hospital with a broken arm.¹ Neither parent could describe how the broken arm occurred. The only references in the petition to E.T.’s biological father came from Respondent Mother’s statements to DHHR, which included that the biological father (1) lived in Columbus, Ohio; (2) paid child support for E.T. for all but the most recent month; (3) had seen E.T. once or twice in the child’s life; and (4) had “domestic violence issues” when she was with him years earlier. Nowhere in the petition did DHHR allege that the biological father was an unfit or abusing parent to E.T.²

¹L.J. is the biological child of Respondent Mother and her then-boyfriend, W.J. The circuit court’s temporary placement of L.J. is not at issue in this appeal.

²The petition also stated that DHHR placed E.T. temporarily with Respondent Mother’s uncle, but that uncle was “unable to keep the child long term.” The GAL states in her brief that E.T. was in foster care prior to the preliminary hearing. Underscoring the need for finality prior to appellate review, the appendix in this matter is minimal. The appendix does not support or refute the claim that E.T. was placed in foster care prior to the preliminary hearing, and no transcript of the preliminary hearing was included in the appendix.

On April 23, 2014, the circuit court held a preliminary hearing. In its resulting order entered on May 1, 2014, the circuit court found probable cause for the removal of the children from Respondent Mother and W.J. and did not find that E.T.'s biological father abandoned E.T. The circuit court then placed temporary custody of E.T. with his biological father. The GAL now appeals the circuit court's preliminary hearing order insofar as it relates to the temporary placement of E.T. pending further proceedings.

This Court lacks appellate jurisdiction to address the GAL's direct appeal of the circuit court's preliminary hearing order in this matter. Thus, we will not consider the issue at this time. We appreciate the GAL's efforts on her client's behalf.³ However, the circuit court's preliminary hearing order insofar as it relates to the GAL's direct appeal is interlocutory in nature. We have often explained that it is axiomatic that this Court's appellate jurisdiction extends only to final judgments. *McDaniel v. Kleiss*, 198 W.Va. 282, 284, 480 S.E.2d 170, 172 (1996) ("Since the circuit court's order . . . is interlocutory and not subject to appeal, we find the petition for appeal was improvidently granted and accordingly dismiss the same for lack of appellate jurisdiction."); *Sipp v. Yeager*, 194 W.Va. 66, 67, 459 S.E.2d 343, 344 (1995) ("[T]he circuit court's decision is an interlocutory rather than a final order and therefore, we dismiss this appeal as improper before this Court."); Syl. Pt. 3, in part, *James M.B. v. Carolyn M.*, 193 W.Va. 289, 456 S.E.2d 16 (1995) (A case is final "only when it . . . leaves nothing to be done but to enforce by execution what has been determined."); *see also*, Rule 11(a) of Rules of Appellate Procedure ("Applicability. This Rule governs all appeals from a circuit court *final* judgment in abuse and neglect cases[.]") (emphasis added); *but cf.*, *State ex rel. Amy M., et al. v. Kaufman*, 196 W.Va. 251, 470 S.E.2d 205 (1996) (Prohibition is appropriate remedy for abused and/or neglected children to restrain courts from granting improvement period in excess of legitimate powers); *State ex rel. Chafin v. Halbritter*, 191 W.Va. 741, 743–44, 448 S.E.2d 428, 430–31 (1994) ("[P]rohibition may be substituted for a writ of error or appeal when the latter alternatives would provide an inadequate remedy."); *McFoy v. Amerigas, Inc.*, 170 W.Va. 526, 532, 295 S.E.2d 16, 22 (1982) ("Our modern practice is to allow the use of prohibition, based on the particular facts of the case, where a remedy by appeal is unavailable or inadequate, or where irremediable prejudice may result from lack of an adequate interlocutory review.").

After careful consideration, this Court dismisses petitioner's appeal as premature for review on direct appeal.

Dismissed as premature.

³We have previously held that a guardian ad litem "must exercise reasonable diligence in carrying out the responsibility of protecting the rights of the children[.]" including "exercising the appellate rights of the children, if, in the reasonable judgment of the guardian *ad litem*, an appeal is necessary." Syl. Pt. 3, in part, *In re Scottie D.*, 185 W.Va. 191, 406 S.E.2d 214 (1991) (emphasis in original).

ISSUED: October 20, 2014

CONCURRED IN BY:

Chief Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Menis E. Ketchum
Justice Allen H. Loughry II