In the
Indiana Supreme Court

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

C.L.F.,
Appellant(s),

v.

C.M. and M.B.,
Appellee(s).

Court of Appeals Case No.
21A-AD-02766

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

Published Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, the submitted record on appeal, and heard oral argument. All briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Because the Court is evenly divided on whether to grant or deny transfer, the petition to transfer is deemed DENIED. *See* Ind. Appellate Rule 58(C).

Done at Indianapolis, Indiana, on 5/17/2023.

FOR THE COURT

Loretta H. Rush
Chief Justice of Indiana

Slaughter, J., and Goff, J., vote to deny transfer.
Rush, C.J., dissents from the denial of transfer with separate opinion in which Massa, J., joins.
Molter, J., did not participate in the decision of this matter.

Rush, Chief Justice, dissenting.

Consider the following scenario. You file separate petitions to adopt two of your grandchildren—one is currently under your care, and the other, who was previously under your care, is currently placed with foster parents. Five months later, and unbeknownst to you, the foster parents file a petition to adopt your grandchild in a different county that is not a proper venue. While your petition is pending, the foster parents' second-filed petition is heard and granted, making them the adoptive parents of your grandchild without you ever receiving notice. This confounding situation is precisely what happened here, implicating the well-settled jurisdictional priority rule.

Though the rule is misnamed, as it addresses when the exercise—not the possession—of jurisdiction is proper, its operation is simple: when the same action is filed in different Indiana trial courts, as a matter of comity, the court where the action was filed first has priority jurisdiction. Here, C.L.F. ("Grandmother"), who was first to file her adoption petition over her grandchild, A.E. ("Child"), discovered that a different court issued an adoption decree in favor of Child's foster parents ("Adoptive Parents"). Invoking the jurisdictional priority rule, Grandmother requested that court's permission to intervene in the action under Trial Rule 24(B)(2). But the court denied her motion without any explanation. And our Court of Appeals affirmed this decision, reasoning that she lacked standing to seek permissive intervention and that the circumstances were not sufficiently extraordinary to warrant post-judgment intervention. *In re Adoption of A.E.*, 191 N.E.3d 952, 957–58 (Ind. Ct. App. 2022).

The first conclusion is legally flawed, and the second conclusion ignores a host of extraordinary circumstances, including an unmistakable jurisdictional priority problem. By denying transfer, we pass up important opportunities to both clarify the law and provide necessary guidance to our trial courts regarding when post-judgment intervention may be permissible upon notice of a jurisdictional priority problem. Though upholding the finality of an adoption decree will generally be in a child's best interests, this does not mean intervention is never permissible—yet

that is precisely the effect of the Court of Appeals' published decision. I therefore respectfully dissent from the Court's decision to deny transfer.

I. Transfer is warranted to clarify that a party does not need to satisfy common-law standing requirements to request permissive intervention under Trial Rule 24(B)(2).

Trial Rule 24 provides the mechanism by which parties can move to intervene in an action. While Rule 24(A) recognizes two circumstances under which a trial court is **required** to permit a party to intervene, Rule 24(B) recognizes two circumstances under which a trial court **may** permit a party to intervene. Here, Grandmother filed her motion under Rule 24(B)(2), which stipulates that "anyone may be permitted to intervene" if their "claim or defense and the main action have a question of law or fact in common." Ind. Trial Rule 24(B)(2). The Court of Appeals, citing *In re Adoption of Z.D.*, 878 N.E.2d 495, 498 (Ind. Ct. App. 2007) and seemingly relying on Rule 24(A) authorities, concluded that "Grandmother lacked standing to intervene." *A.E.*, 191 N.E.3d at 957.

The panel's reliance on *Z.D.* is misplaced. In *Z.D.*, a grandmother filed a motion to intervene in an adoption proceeding after a decree was issued in favor of the foster parents' petition. 878 N.E.2d at 496. Though it's unclear whether the grandmother filed her motion under Rule 24(A) or 24(B), at the time she filed it, she did not have custody over the child and the parental rights of the child's parents had been terminated. *Id.* Given the latter circumstances, the panel reiterated the "well-settled" rule that "noncustodial grandparents are not entitled to intervene in adoption proceedings." *Id.* at 498 (quoting *In re Adoption of I.K.E.W.*, 724 N.E.2d 245, 249 (Ind. Ct. App. 2000)). That is, when a grandparent has no cognizable rights related to the child to be adopted, the grandparent lacks any basis for a **right** to intervene under Rule 24(A)(2). *See I.K.E.W.*, 724 N.E.2d at 249; *see also State ex rel. Prosser v. Ind. Waste Sys., Inc.*, 603 N.E.2d 181, 187 (Ind. Ct. App. 1992) (providing that the applicant "must have an interest

recognized by law that relates to the subject of the action in which intervention is sought").

But there is no precedent supporting that this "well-settled" rule applies when, such as here, a party seeks permissive intervention under Trial Rule 24(B)(2), which plainly does not require that party to demonstrate any cognizable right. Indeed, Rule 24(B) isn't even mentioned in *Z.D.*, and the authority it relied upon concerned only requests to intervene in an adoption matter as a matter of right under Rule 24(A)(2). *See Z.D.*, 878 N.E.2d at 498. Despite these differences, the panel here summarily concluded that because Grandmother did not have custodial rights over Child and because parental rights had been terminated before she filed her Rule 24(B)(2) motion, she lacked standing to intervene. *A.E.*, 191 N.E.3d at 957–58. *Z.D.* simply does not support this conclusion.

Furthermore, the panel's application of this no-standing rule is problematic for a more fundamental reason: a litigant does not need to establish standing to request the court's permission to intervene in an action under Trial Rule 24(B)(2). And this conclusion makes sense—the judicial doctrine of standing focuses on whether a party asserting a **claim** "is entitled to have a court decide the substantive issues of a dispute." *Solarize Ind., Inc. v. S. Ind. Gas & Elec. Co.*, 182 N.E.3d 212, 216 (Ind. 2022). But asserting a claim is different from seeking permissive intervention. *Cf. Llewellyn v. Beasley*, 415 N.E.2d 789, 792 (Ind. Ct. App. 1981) (observing that "standing to bring an original action is not synonymous with the requisite interest establishing the right to intervene"); *United States v. Bd. of School Commr's of Indianapolis*, 466 F.2d 573, 577 (7th Cir. 1972) (recognizing that "requirements for intervention . . . should generally be more liberal than those for standing to bring suit").

Instead, and as Rule 24(B)(2) plainly instructs, "anyone" may be permitted to intervene in an action so long as their "claim or defense and the main action have a question of law or fact in common." T.R. 24(B)(2). Here, Grandmother noted in her motion that she first filed an adoption petition "in another court of competent jurisdiction," and thus, she properly raised a claim or defense and a question of law in common with

Adoptive Parents' action. Grandmother's basis indisputably satisfies Rule 24(B)(2)'s requirements. Now, whether a trial court should exercise its discretion and permit intervention is a separate issue—one that plainly requires inquiry beyond a petitioner's basis for seeking intervention. *See id.* But Grandmother was not required to demonstrate common-law standing to **request** permissive intervention under Rule 24(B)(2); the panel's contrary conclusion significantly departs from accepted law. Transfer is warranted for that reason alone. Ind. Appellate Rule 57(H)(6). Yet transfer is also warranted to provide meaningful guidance on an important legal issue that is likely to recur.

II. Transfer is warranted to clarify when a jurisdictional priority problem presents "extraordinary circumstances" compelling post-judgment intervention.

Grandmother sought permissive intervention after the trial court issued its decree granting the adoption of Child to Adoptive Parents. Though such post-judgment intervention is "disfavored," it is appropriate under "extraordinary and unusual circumstances," including when "the petitioner's rights cannot otherwise be protected." *Citimortgage, Inc. v. Barabas*, 975 N.E.2d 805, 816 (Ind. 2012) (quoting *Bd. of Comm'rs of Benton Cnty. v. Whistler*, 455 N.E.2d 1149, 1153 (Ind. Ct. App. 1983)). The panel here found that Grandmother failed to make the requisite showing, focusing exclusively on her "complaint that the final hearing occurred without Grandmother having secured her desired terms for sibling visitation between" Child and her sister. *A.E.*, 191 N.E.3d at 958. But a review of this record reveals that this conclusion is oversimplified, and additional, meaningful guidance on this issue is needed. App. R. 57(H)(4).

The panel overlooked a host of "extraordinary and unusual circumstances" warranting post-judgment intervention. Grandmother asserted—both in her motion and on appeal—the Harrison County Court where she filed her adoption petition had jurisdictional priority over the adoption, and the Hamilton County Court that issued the adoption decree

was not a proper venue. While the panel did not reach these concerns, *A.E.*, 191 N.E.3d at 958 n.1, they are material to a trial court's exercise of its discretion under Rule 24(B)(2) and should be considered.

When the same action is filed in two courts of competent jurisdiction, the well-settled jurisdictional priority rule applies. *See, e.g.*, *State ex rel. Ferger v. Cir. Ct. of Marion Cnty.*, 227 Ind. 212, 84 N.E.2d 585, 587 (1949). This rule provides that two courts cannot exercise concurrent jurisdiction over the same matter. *State ex. rel. Am. Fletcher Nat'l Bank & Trust Co. v. Daugherty*, 258 Ind. 632, 283 N.E.2d 526, 528 (1972). And even when venue is proper in more than one county, the court where the matter was filed first is vested with jurisdiction "to the exclusion of the other." *Id.* These same principles apply when, as here, competing adoption petitions are filed in different courts. *See, e.g.*, *State ex rel. Otten v. Henderson*, 953 N.E.2d 809, 814–15 (Ohio 2011).

The fact that Child's adoption had already been finalized underscores the sensibility of deferring to the jurisdictional priority rule in these circumstances. Though the interests of finality are compelling, they do not render moot or insignificant the interests of a party who both first filed an adoption petition and maintains that their adoption is in a child's best interests. To conclude otherwise undermines our collective effort to facilitate access to courts, renders our jurisdictional priority precedent optional, and impairs the integrity of our adoption system by perpetuating—even explicitly tolerating—uncertainty and gamesmanship among parties seeking to adopt the same child. Our judicial system cannot be so easily manipulated when the stakes are so immensely high.

The only way to prevent such manipulation is to provide clear guidance. In providing that guidance, the prevailing consideration is how—under these and similar circumstances—can our trial courts be assured that their decision on an adoption petition is in a child's best interests. To this end, I would first hold that when a jurisdictional priority issue arises in adoption proceedings with an open CHINS case in either county, the Department of Child Services—as a party in both cases—has a duty to ensure the courts in these counties are aware of the competing

adoption petitions. Such a rule promotes efficiency, fairness, and timely resolution of the competing petitions.

I would then hold that a jurisdictional priority problem presumptively qualifies as a potential ground for permissive intervention under Trial Rule 24(B)(2). When this problem is raised after a trial court issues an adoption decree, the dispositive interest is not who was first to file or the finality of the judgment. Instead, it is the assurance that the child's best interests were properly heard and evaluated before the court enters an adoption decree. And this assurance can be secured by permitting intervention, which does not require disturbing the trial court's decision.

Informed by these principles, trial courts should permit post-judgment intervention unless the record indicates either that (1) the first-to-file petitioner has relinquished their interest in pursuing the adoption, or (2) intervention is unnecessary because the child's placement with the second-to-file petitioner is clearly in the child's best interests. But when neither finding is supported by the record, the circumstances are sufficiently "extraordinary and unusual" to permit intervention under Rule 24(B)(2).

Applying this proposed framework here demonstrates that the trial court abused its discretion in denying Grandmother's post-judgment motion. The record confirms that the Harrison County Department of Child Services, a necessary party to both petitions, knew about the competing petitions, but there is no evidence that it ever notified the Harrison County Court. That failure is problematic, to say the least. And there is no question that the Harrison County Court had jurisdictional priority over Child's adoption.

Grandmother filed her adoption petition in Harrison County, a place of proper venue under Indiana Code section 31-19-2-2(a)(2) (2020). While her petition was pending, Adoptive Parents filed their petition in Hamilton County. That petition, however, did not inform the court that Grandmother had already filed an adoption petition in Harrison County. *See* I.C. § 31-19-2-6(a)(9) (requiring an adoption petition include "[a]dditional information . . . that is considered relevant to the proceedings"). And the Hamilton County Court was not a proper venue

under Section 31-19-2-2 at the time. Yet, despite these concerns, the court held a hearing on and then granted Adoptive Parents' petition, which, according to Child's CASA, was "unbeknownst to every party to" Child's open CHINS case in Harrison County.

At that point, Grandmother used the only procedural mechanism available to her. Though Trial Rule 12(B)(8) permits dismissal of an action when the same action is pending in another Indiana state court, Grandmother did not have the opportunity to file a Rule 12(B)(8) motion, as she had no notice of the competing adoption. So, she filed a motion for permissive intervention, which made the Hamilton County Court aware that the Harrison County Court had jurisdictional priority over the adoption and that Grandmother maintained her interest in adopting Child. But the trial court denied the motion without holding a hearing and without any explanation. When it made this decision, there was no basis to conclude either that (1) Grandmother relinquished her interest in pursuing the adoption, or (2) intervention was unnecessary because placement with Adoptive Parents was clearly in Child's best interests.

If these circumstances are not sufficiently "unusual and extraordinary," I do not know what is. Yet, while I would find the Court of Appeals erred by concluding that the trial court did not abuse its discretion in denying Grandmother's motion, I would not find she is entitled to reversal. During oral argument, Grandmother conceded she does not wish to disturb Child's placement with Adoptive Parents but rather seeks intervention to pursue the "entry of a specific post adoption sibling contact order." Having relinquished her interest in adopting Child, I cannot conclude that the trial court's error affected her substantial rights. *See* App. R. 66(A).

I nevertheless deem transfer necessary for two reasons. First, we must clarify that a party does not need to satisfy common-law standing requirements to seek permissive intervention under Trial Rule 24(B)(2). And second, we need to provide guidance to the bench regarding when a jurisdictional priority problem presents "extraordinary circumstances" compelling post-judgment intervention. For these reasons, I dissent from the Court's decision to deny transfer.

Massa, J., joins.