

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

IN THE INTEREST OF: K.E.R.G., A : IN THE SUPERIOR COURT OF  
MINOR, : PENNSYLVANIA  
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APPEAL OF: L.C., N.C.R. AND S.R.G., : No. 3238 EDA 2014

Appeal from the Order September 16, 2014,  
Court of Common Pleas, Philadelphia County,  
Juvenile Division at No. CP-51-DP-0002118-2013

BEFORE: DONOHUE, SHOGAN and WECHT, JJ.

MEMORANDUM BY DONOHUE, J.:

**FILED JULY 31, 2015**

L.C., N.C.R. and S.R.G.<sup>1</sup> (collectively, “Appellants”) appeal from the trial court order discharging a dependency petition relating to K.E.R.G. (“Child”). On appeal, Appellants challenge the trial court’s denial of their petitions to intervene and to enjoin transfer of Child. Because Appellants failed to join a necessary and indispensable party as a defendant, we vacate the trial court’s orders related to Appellants’ petitions and dismiss the underlying petitions.

Child was born in Mexico in 1999. She suffers from seizures and other medical disorders. Child was conceived as the result of a gang rape perpetrated on her mother. Mother was thirteen years old at the time of Child’s birth. She ran away shortly after Child’s birth and now is presumed

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<sup>1</sup> L.C. and N.C.R. are a married couple who, as discussed *infra*, cared for Child in Mexico. S.R.G. is Child’s maternal grandfather. He is an undocumented immigrant who lives in North Carolina and has never met Child. The record reveals that L.C. and N.C.R. located S.R.G. and instigated his involvement in this matter.

to be deceased. As a result, Child was raised by her great-grandmother. In 2001, Child and her great-grandmother moved into L.C. and N.C.R.'s home located in Matamoros, Mexico.<sup>2</sup> In late 2005, the great-grandmother died. Child remained with L.C. and N.C.R. in their home until 2011, when drug-related gang violence began to escalate in Matamoros. On May 28, 2011, after receiving threats from one of the warring drug gangs, L.C. and N.C.R. placed Child with N.C.R.'s sister, left Mexico, and returned to their home in Texas.<sup>3</sup> In June 2011, L.C. returned to Mexico for the purpose of bringing Child to the United States. At the border, he requested "humanitarian parole" from the Customs and Border Police. The Customs and Border Police denied L.C.'s request and took Child into their custody.<sup>4</sup> She was designated an unaccompanied minor and placed under the jurisdiction of the Office of Refugee Resettlement ("ORR"), which is part of the Department of Health and Homeland Security. ORR placed Child in federal foster care, by which the federal government retains legal custody of a child in its care and delegates physical custody to various approved foster homes throughout the

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<sup>2</sup> L.C. and N.C.R. lived in the house and "provid[ed] assistance to people in need ... especially those who have been abandoned or are in need of health care." Appellants' Brief at 6.

<sup>3</sup> L.C. is an American citizen. His wife, N.C.R., is a lawful permanent United States resident.

<sup>4</sup> This was apparently the result of Child's allegations that she was physically and sexually abused by L.C. Child disclosed these allegations to N.C.R.'s sister while she was in her care.

United States. Child was placed in a facility in Chicago for a short time and then transferred to a foster home in Philadelphia.<sup>5</sup> In Philadelphia, the Support Center for Child Advocates, “an agency that represents children in abuse and neglect cases in Philadelphia,” filed a dependency petition on child’s behalf. Dependency Petition, 10/22/13, at 1. The trial court granted the petition and permanency review hearings were held in January, March, and June 2014. Another review hearing was scheduled for September 16, 2014, but at some point in August 2014, Child was hospitalized. When she was released from the hospital, there were no available beds for her in any approved federal foster care facility, and so ORR transferred her to a facility in California on or about September 9, 2014.

Meanwhile, on August 8, 2014, L.C., N.C.R. and S.R.G. filed petitions seeking to intervene in the dependency action.<sup>6</sup> Appellants named Support Center for Child Advocates, Lutheran Children and Family Services (the agency that placed Child in Chicago and Philadelphia) and the Philadelphia Department of Human Services as the only defendants. **See** L.C. and N.C.R.’s Motion to Intervene, 8/8/14, at 1; S.R.G.’s Motion to Intervene, 8/8/14, at 1. On September 8, 2014, L.C. and N.C.R. filed a motion to

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<sup>5</sup> While in Chicago, Child reiterated allegations of abuse by L.C.

<sup>6</sup> Appellants also initiated proceedings in the United States District Court for the Eastern District of Pennsylvania seeking the release of Child into their custody.

enjoin Child's transfer out of Pennsylvania. The trial court denied all three of these motions on September 10, 2014.

The September 16, 2014 hearing convened as scheduled. At that time, it was established that Child had been removed from Pennsylvania; that ORR retained legal custody of Child; and that she had obtained legal permanent resident status. N.T., 9/16/14, at 5-6. The federal child advocate assigned to Child moved for the discharge of the dependency petition, and the trial court granted this motion. *Id.* at 6.

This appeal followed, but we do not reach the issues raised because Appellants did not include an indispensable party, the federal government, as a party to their action.

It has long been established that unless all necessary and indispensable parties are parties to the action, a court is powerless to grant relief. *Reifsnyder v. Pittsburgh Outdoor Advertising Company*, [] 152 A.2d 894 ([Pa.] 1959), and *Powell v. Shepard*, 113 A.2d 261 ([Pa.] 1955). ... [T]he absence of an indispensable party goes absolutely to the court's jurisdiction and the issue should be raised sua sponte.

*Tigue v. Basalyga*, 304 A.2d 119, 120 (Pa. 1973). *See also Sprague v. Casey*, 550 A.2d 184, 189 (Pa. 1988). A reflection of this rule of law is found in Pennsylvania Rule of Civil Procedure 2227, which is entitled "Compulsory Joinder" and provides that "[p]ersons having only a joint interest in the subject matter of an action **must** be joined on the same side as plaintiffs or defendants." Pa.R.C.P. 2227(a) (emphasis added). When the

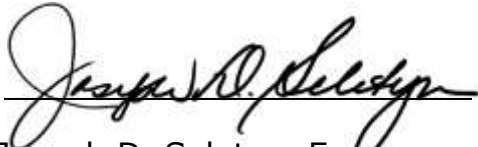
absence of an indispensable party is discovered, the trial court should dismiss the action. **Huston v. Campanini**, 346 A.2d 258, 259 (Pa. 1975); Pa.R.C.P. 1032(b).

“An indispensable party is one whose rights or interests are so pervasively connected with the claims of the litigants that no relief can be granted without infringing on those rights or interests.” **Jacob v. Shultz-Jacob**, 923 A.2d 473, 480 (Pa. Super. 2007) (citation omitted). It is undisputed the federal government - more precisely, ORR - has had legal custody of Child since June 2011. Appellants acknowledge and concede as much. **See** Appellants’ Brief at 8, 14-21 (detailing Appellants’ efforts to work with federal agents and filings in federal court to obtain custody of Child before filing the present action); L.C. and N.C.R.’s Petition to Intervene, 8/8/14, ¶¶ 6, 7, 11; S.R.G.’s Petition to Intervene, 8/8/14, ¶¶ 6, 7. As Child’s legal custodian, it is obvious that ORR had rights and interests “so pervasively connected with the claims of [Appellants] that no relief [could] be granted without infringing on those rights or interests.” **Jacob**, 923 A.2d at 189. Therefore, it is indispensable to Appellants’ action. Yet, Appellants did not name ORR or any other designee of the federal government as a defendant in their petitions to intervene and to enjoin Child’s transfer. As such, the trial court was without subject matter jurisdiction to act. **Tigue**, 304 A.2d at 120; **Sprague** 550 A.2d at 189.

We therefore vacate the September 10, 2014 orders of court and dismiss Appellants' petitions to intervene and to enjoin the transfer of Child. **See Columbia Gas Transmission Corp. v. Diamond Fuel Co.**, 46 A.2d 788, 789-90 (Pa. 1975) (vacating decree and dismissing complaint where plaintiffs failed to join indispensable party); **Tigue**, 304 A.2d at 120 (same); **Barren v. Dubas**, 441 A.2d 1315, 1317 (Pa. Super. 1982) (same).<sup>7</sup>

Orders vacated. Petitions dismissed. Case remanded. Jurisdiction relinquished.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 7/31/2015

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<sup>7</sup> During the pendency of this appeal, Philadelphia Department of Human Services filed a motion seeking the removal of its name as an appellee because it was not involved in the underlying matter and never had custody of Child. Philadelphia Department of Human Services' Motion to Amend [] Caption, 6/9/15, ¶¶ 4-5. We dismiss this motion as moot.