

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN THE MATTER OF: J.O.T., III, A MINOR

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: J.W.

No. 1825 MDA 2013

Appeal from the Order Entered October 1, 2013
In the Court of Common Pleas of Dauphin County
Orphans' Court at No.: 69 Adopt 2012

BEFORE: MUNDY, J., WECHT, J., and FITZGERALD, J.*

JUDGMENT ORDER BY WECHT, J.:

FILED APRIL 22, 2014

J.W. ("Appellant") appeals from the October 1, 2013 order that denied his "Application to File Appeal *Nunc Pro Tunc*." We dismiss Appellant's appeal.

On August 28, 2012, the trial court involuntarily terminated the parental rights of the alleged and unknown fathers of J.O.T., III ("Child"). On June 6, 2013, Appellant filed a notice of appeal. On July 9, 2013, Dauphin County Children and Youth filed an application to dismiss the appeal. On August 2, 2013, we granted that application because Appellant's notice of appeal was filed untimely.

On August 16 2013, Appellant filed a *pro se* "Application for Appeal *Nunc Pro Tunc*," in which he complained that he was never served with notice of the termination proceeding. The trial court denied Appellant's

* Former Justice specially assigned to the Superior Court.

application on October 1, 2013. On October 9, 2013, Appellant filed a notice of appeal.¹

The trial court filed its opinion pursuant to Pa.R.A.P. 1925(a). The trial court stated that Appellant was not named as Child's father and had not established paternity, although Appellant is the father of Child's half-sibling. Trial Court Opinion ("T.C.O."), 11/18/2013, at 1-2 (unpaginated). The trial court found that Appellant was not a party and did not have standing to file an appeal. *Id.* at 3-4. Further, the trial court found that Appellant had not alleged the extraordinary circumstances or a breakdown in court processes necessary to justify the restoration *nunc pro tunc* of Appellant's appellate rights (if any). *Id.* at 4.

The Juvenile Act does not define a party to a dependency action. However, this Court has defined the term as follows:

Under the Juvenile Act, attendance at and participation in dependency proceedings are restricted. Dependency hearings are closed to the general public. Only a 'party' has the right to participate, to be heard on his or her own behalf, to introduce evidence, and to cross-examine witnesses. Although the Juvenile Act does not define 'party,' case law from this Court has conferred the status of party to dependency proceeding on three classes on persons: (1) the parents of the juvenile whose dependency status is at issue; (2) the legal custodian of the juvenile whose dependency status is at issue; or (3) the person whose care and control of the juvenile is in question. These categories logically stem from the fact that upon an adjudication of dependency, the court has the authority to remove the child

¹ The trial court ordered, and Appellant timely filed, a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b).

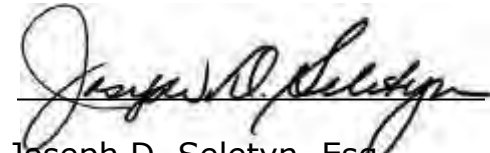
from custody of his or her parents or legal custodian. Due process requires that the child's legal caregiver, be it parent or other custodian, be granted party status in order to be able to participate and present argument in the dependency proceedings.

In the Interest of B.S., 923 A.2d 517, 521 (Pa. Super. 2007) (citations omitted).

Appellant conceded that his care did not lead to Child's dependency and is not at issue. Appellant provided nothing to establish that he is Child's parent or legal custodian.² Appellant is not a party to this matter. The trial court did not err when it denied Appellant's application to appeal *nunc pro tunc* upon the basis that Appellant did not have standing.

Appeal dismissed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/22/2014

² Appellant has also filed an "Application for Stay, Correction and/or Modification of the Record" in which he seeks to supplement the original record with copies of cards that he allegedly received from Child and Child's half-sibling, as well as letters Appellant allegedly wrote to Child. These would not be sufficient to establish paternity. Appellant's application is denied as moot.

