

Commonwealth of Kentucky
Court of Appeals

NO. 2004-CA-001031-ME

STEPHEN BERLE RITTER;
ROBIN LOUISE RITTER

APPELLANTS

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE REED RHORER, JUDGE
ACTION NO. 03-AD-00045

JOHN CHRISTOPHER RITTER;
DUSTIN C. SPLITTGERBER;
LISA SPLITTGERBER;
STEVEN SPLITTGERBER

APPELLEES

OPINION AND ORDER

DISMISSING

** ** * * * * *

BEFORE: TACKETT AND VANMETER, JUDGES; MILLER, SENIOR JUDGE.¹

MILLER, SENIOR JUDGE: Stephen Berle Ritter and Robin Louise Ritter appeal from an order of the Franklin Family Court granting the motion of Steven Splittgerber to intervene as a

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110.(5)(b) of the Kentucky Constitution and KRS 21.580.

party pursuant to Ky. R. Civ. P (CR) 24.01 in the Ritters' action seeking a judgment of adoption of Dustin C. Splittgerber. Because the family court order appealed from is interlocutory, we are compelled to dismiss the appeal.

Dustin was born on October 30, 1999. Lisa Splittgerber is Dustin's mother, and John Christopher Ritter is Dustin's father. Stephen Ritter is the biological paternal grandfather of Dustin. Robin Ritter is Stephen's wife and the step-grandmother of Dustin. Steven Splittgerber is Dustin's biological maternal grandfather.

Prior to the filing of the adoption action the Ritters were awarded permanent custody of Dustin pursuant to a dependency action in Franklin Family Court. In connection with the dependency action Steven was awarded visitation with Dustin.

On November 26, 2003, the Ritters filed a Petition for Adoption in Franklin Family Court. On March 24, 2004, Steven filed a motion to intervene in the adoption case pursuant to CR 24.01. On April 30, 2004, the family court entered an order granting Steven's motion to intervene. This appeal followed.

The family court's April 30, 2004, order was limited to permitting Steven to intervene as a party to the case. The Supreme Court has previously stated that a minor child's biological relatives have a sufficient, cognizable legal interest in an adoption proceeding so as to be entitled to

intervene in the proceeding as a matter of right. See Baker v. Webb, 127 S.W.3d 622 (Ky. 2004). However, the trial court's April 30, 2004, order did not adjudicate any right of any party to the action.

Pursuant to CR 54.01, "[a] final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02." Further, CR 54.02(1) states, in pertinent part, that "[w]hen more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final."

However, "[b]efore the processes of CR 54.02 may be invoked for the purposes of making an otherwise interlocutory judgment final and appealable, there must be a final adjudication upon one or more of the claims in litigation." Hale v. Deaton, Ky. App., 528 S.W.2d 719, 722 (1975). Moreover, "[w]here an order is by its very nature interlocutory, even the inclusion of the recitals provided for in CR 54.02 will not make it appealable." Hook v. Hook, Ky., 563 S.W.2d 716, 717 (1978). Further, even if the parties do not raise a finality issue in

their briefs, "the appellate court should determine for itself whether it is authorized to review the order appealed from." Id. at 717.

Although the circuit court's April 30, 2004, order included CR 54.02 finality language, "[t]his is a final and appealable Order, and there is no just cause for delay," the order did not resolve any of the issues between the parties. There was not a final adjudication upon one or more of the claims in litigation.

While the *denial* of a motion to intervene as a matter of right is an appealable order, see City of Henderson v. Todd, 314 S.W.2d 948 (Ky. 1958) and Ashland Public Library v. Scott, 610 S.W.2d 895 (Ky. 1981), it is clear that the family court's April 30, 2004, order granting intervention simply resolved an intermediate issue without disposing of any of the claims or parties. As the order did not finally adjudicate any of the claims in litigation, it is by its very nature an unappealable, interlocutory order which cannot be made final by the inclusion of CR 54.02 language. It necessarily follows that the appeal from that order is not properly before this court.

Being sufficiently advised, this Court sua sponte **ORDERS** that this appeal be and it is hereby **DISMISSED**.

ALL CONCUR.

ENTERED: _____

/s/ John D. Miller
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

Jean Kelley Cunningham
Shelbyville, Kentucky

BRIEF FOR APPELLEE:

James Dean Liebman
Frankfort, Kentucky