

IN THE COURT OF APPEALS OF TENNESSEE

HARSE RAY and wife,
 FLORENCE RAY,

Plaintiffs-Appellants,

v.

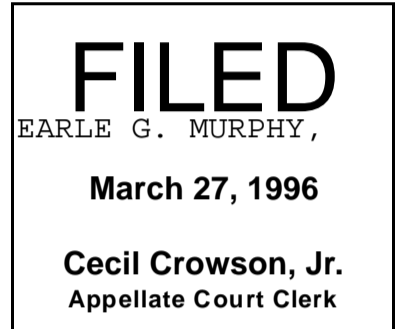
JAMES ANTHONY SCOTT,

Defendant-Appellee.

) C/A NO. 03A01-9511-JV-00411
) BRADLEY COUNTY CIRCUIT COURT
)

) HONORABLE EARLE G. MURPHY,
) JUDGE
)

) REVERSED AND REMANDED



SHERIDAN C. RANDOLPH, Cleveland, for Appellants

PHILLIP C. LAWRENCE of POOLE, LAWRENCE, THORNBURY, STANLEY &
 MORGAN, Chattanooga, for Appellee

O P I N I O N

Susano, J.

This is a grandparents' visitation rights case. We are asked to review the judgment of the Circuit Court of Bradley County dismissing the grandparents' complaint.

This case originated in the Bradley County Juvenile Court. The plaintiffs, Harse Ray and his wife, Florence Ray, filed a complaint seeking visitation with their granddaughter Sarah Jane Scott pursuant to the provisions of T.C.A. § 36-6-302¹, the so-called grandparents' visitation rights statute. It is undisputed that the mother of Sarah Jane Scott died prior to the filing of the complaint. It is also undisputed that at the time of her death she was married to the child's father, the defendant James Anthony Scott.

The Juvenile Court granted the plaintiffs visitation with their granddaughter. Within ten days, the defendant-father filed a notice of appeal as follows:

James Anthony Scott . . . hereby gives notice of the appeal to the Circuit Court for Bradley County, Tennessee of an Order and Judgment rendered in favor of Harse Ray and wife, Florence Ray . . . on February 25, 1994 in the Juvenile Court for Bradley County, Tennessee.

Subsequent to the filing of the notice of appeal, the grandparents filed a motion in Circuit Court to dismiss the appeal on the ground that "it [was] not filed in the appropriate Court." The Circuit Court denied the grandparents' motion. That court then proceeded to hold that the Juvenile Court was without

¹This section was previously numbered 36-6-301. It was transferred to 36-6-302 by Chapter 428, Public Acts of 1995, effective June 12, 1995.

subject matter jurisdiction to entertain "the original cause" for grandparents' visitation rights. Consequently, the Circuit Court dismissed the grandparents' complaint. This appeal followed.

There are two issues before us: first, whether the Circuit Court had jurisdiction of the appeal from Juvenile Court; and, second, whether the Juvenile Court had subject matter jurisdiction of a grandparents' visitation rights case under the facts of this case.

Appeals from juvenile courts are governed by T.C.A. § 37-1-159. That statute provides, in pertinent part, as follows:

(a) the juvenile court shall be a court of record and any appeal from any final order or judgment in a *delinquency proceeding, unruly child proceeding, or dependent and neglect proceeding*, filed under this chapter, . . . may be made to the circuit court which shall hear the testimony of witnesses and try the case de novo. The appeal shall be perfected within ten (10) days, excluding nonjudicial days, following the juvenile court's disposition.

* * *

(g) Appeals in all other civil matters heard by the juvenile court shall be governed by the Tennessee Rules of Appellate Procedure.

(Emphasis added).

There were no allegations in this case to suggest that this was "a delinquency proceeding, unruly child proceeding, or dependent and neglect proceeding." The sum and substance of the complaint was an application for court-ordered visitation with

the plaintiffs' granddaughter. The father of the child does not attempt to argue on this appeal that this is other than a straightforward grandparents' visitation rights case.

Under subsection (g) of T.C.A. § 37-1-159, the appeal of the Juvenile Court's judgment should have been pursued directly to the Court of Appeals. It results that the Circuit Court was without appellate jurisdiction under T.C.A. §37-1-159. In the absence of such jurisdiction, that court could not address the propriety of the Juvenile Court's action, including whether that court had jurisdiction to grant grandparents' visitation rights; nor can we.

We are without jurisdiction to reach the issue of the Juvenile Court's jurisdiction. That issue is not before us because the Juvenile Court's judgment was not properly appealed to us pursuant to the Rules of Appellate Procedure as required by T.C.A. § 37-1-159(g). In so finding, we are true to precedent holding that "[i]t is axiomatic that the appellate jurisdiction of a court in any given case is dependent upon the existence of jurisdiction, either original or appellate, in the court from which the appeal comes." *Morgan v. Betterton*, 109 Tenn. 84, 69 S.W. 969, 970 (Tenn. 1902). If the court from which an appeal is pursued was without jurisdiction to address the issues at hand, so are we.

The judgment of the Bradley County Circuit Court is reversed, and the judgment of the Juvenile Court of Bradley County is reinstated. This case is remanded to the Juvenile

Court. Costs on appeal are taxed to the appellee.

Charles D. Susano, Jr., J.

CONCUR:

Houston M. Goddard, P.J.

Don T. McMurray, J.