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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs May 1, 2023

JOHN F. CURRAN v. ANGELA M. MELSON

**Appeal from the Chancery Court for Hardin County
No. AD-653 Vicki Hodge Hoover, Chancellor**

No. W2021-00907-COA-R3-CV

Appellant and Appellee were involved in a romantic relationship during which time Appellee adopted her biological grandson. After Appellee ended the relationship with Appellant, Appellant filed a petition to adopt Appellee's grandson. The trial court dismissed Appellant's petition with prejudice on its conclusion that Appellant did not have standing to file an adoption petition. Discerning no error, we affirm. We grant Appellee's motion to declare Appellant's appeal frivolous and award her damages.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed and Remanded**

KENNY ARMSTRONG, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and THOMAS R. FRIERSON, II, J., joined.

John F. Curran, Savannah, Tennessee, appellant, *pro se*.

Stacie Odeneal, Lawrenceburg, Tennessee, for the appellee, Angela M. Melson.

OPINION

I. Background

Appellant John F. Curran and Appellee Angela M. Melson began a romantic relationship in the fall of 2018. In June 2019, Ms. Melson adopted her biological grandson (the "Child"). Mr. Curran and Ms. Melson never married, and Ms. Melson ended the relationship in December 2019.

On May 27, 2021, Mr. Curran filed a petition in the Chancery Court of Hardin

County (the “trial court”), seeking to adopt the Child. As discussed further, *infra*, Mr. Curran asserted that he: (1) met all legal definitions of “parent” and had parental rights to the Child; (2) had a right to receive custody of the Child; and (3) had standing to petition the trial court to adopt the Child. After filing his petition to adopt, Mr. Curran filed the following motions: (1) July 8, 2021 motion for default judgment; (2) July 13, 2021 motion to compel and for sanctions; and (3) July 15, 2021 motion to disqualify Ms. Melson’s counsel (collectively, “Mr. Curran’s motions”).

On July 26, 2021, Ms. Melson filed a motion to dismiss the adoption petition for failure to state a claim and/or for lack of standing. On July 28, 2021, Ms. Melson filed a response to the petition for adoption and a counter-petition against Mr. Curran. Therein, Ms. Melson denied that Mr. Curran was entitled to any of the relief sought in his petition, asked the trial court to dismiss the petition, and asked for her reasonable attorney’s fees. In the counter-petition, Ms. Melson alleged that Mr. Curran: (1) was neither the legal nor biological father of the Child; (2) never enjoyed legal custody of the Child; (3) never enjoyed physical custody of the Child; and (4) had never been the step-parent of the Child. Ms. Melson also alleged that the adoption lawsuit was an abusive civil litigation under Tennessee Code Annotated section 29-41-101 and that Mr. Curran filed it primarily to “harass or maliciously injure” her. Ms. Melson asked the trial court to find that Mr. Curran was an “abusive civil action plaintiff,” and she also requested attorney’s fees and reasonable costs incurred in defending the adoption suit.

On August 3, 2021, the trial court heard the petition for adoption and Mr. Curran’s motions. By order of August 9, 2021, the trial court found that Mr. Curran lacked standing to file the petition and that the trial court lacked subject-matter jurisdiction to consider the relief Mr. Curran sought. Accordingly, the trial court dismissed the petition with prejudice and denied Mr. Curran’s motions. In the order, the trial court also set a hearing on Ms. Melson’s abusive civil litigation claim for November 2, 2021. The trial court reserved the issue of costs and attorney’s fees. On September 1, 2021, Mr. Curran filed a notice of appeal.

Mr. Curran did not appear for the November 2, 2021 hearing nor did he provide notice to the trial court of good cause for his absence. By order of November 5, 2021, the trial court concluded that Mr. Curran was an abusive civil action plaintiff, and that the petition for adoption was an abusive civil action. Accordingly, the trial court awarded a judgment in favor of Ms. Melson for \$3,178.06 for reasonable attorney’s fees and costs incurred in defending the lawsuit. Mr. Curran does not challenge the November 5, 2021 order.

II. Issue

Although Mr. Curran purportedly raises four issues for this Court’s review, we conclude that the dispositive issue is whether Mr. Curran had standing to file the petition

for adoption.

III. Procedural Deficiencies in Mr. Curran's Appellate Brief

Before addressing the substantive issue, we address the procedural shortfalls of Mr. Curran's appellate brief. While we are cognizant of the fact that Mr. Curran is representing himself in this appeal, it is well-settled that "pro se litigants are held to the same procedural and substantive standards to which lawyers must adhere." *Brown v. Christian Bros. Univ.*, 428 S.W.3d 38, 46 (Tenn. Ct. App. 2013). This Court has held that "[p]arties who choose to represent themselves are entitled to fair and equal treatment by the courts." *Hodges v. Tenn. Att'y Gen.*, 43 S.W.3d 918, 920 (Tenn. Ct. App. 2000) (citing *Paehler v. Union Planters Nat'l Bank, Inc.*, 971 S.W.2d 393, 396 (Tenn. Ct. App. 1997)). Nevertheless, "courts must not excuse pro se litigants from complying with the same substantive and procedural rules that represented parties are expected to observe." *Young v. Barrow*, 130 S.W.3d 59, 63 (Tenn. Ct. App. 2003) (citing *Edmundson v. Pratt*, 945 S.W.2d 754, 755 (Tenn. Ct. App. 1996); *Kaylor v. Bradley*, 912 S.W.2d 728, 733 n.4 (Tenn. Ct. App. 1995)). Mr. Curran's brief fails to comply with Tennessee Rules of Appellate Procedure Rule 27(a)(1), (2), (4), (6), and (7)(A), which provide that an appellant's brief shall contain:

- (1) A table of contents, with references to the pages in the brief;
 - (2) A table of authorities, including cases (alphabetically arranged), statutes and other authorities cited, with references to the pages in the brief where they are cited;
- ***
- (4) A statement of the issues presented for review;¹
- ***
- (6) A statement of facts, setting forth the facts relevant to the issues presented for review with appropriate references to the record;
 - (7) An argument, which may be preceded by a summary of argument, setting forth:
 - (A) the contentions of the appellant with respect to the issues presented, and the reasons therefor, including the reasons why the contentions require appellate relief, with citations to the authorities and appropriate

¹ Although Mr. Curran fails to list a statement of issues for review, we deduce from his briefing that he has raised four issues for this Court's review.

references to the record (which may be quoted verbatim) relied on;

Tenn. R. App. P. 27(a)(1), (2), (4), (6), and (7)(A). Mr. Curran’s brief fails to include a: (1) table of contents; (2) table of authorities; (3) statement of issues presented for review; (4) and statement of facts. Furthermore, he fails to provide substantive legal arguments and authority and/or appropriate references to the record throughout his brief. This Court routinely dismisses appeals containing the deficiencies present in Mr. Curran’s brief. See *Forbess v. Forbess*, 370 S.W.3d 347, 355 (Tenn. Ct. App. 2011); *Bean v. Bean*, 40 S.W.3d 52, 55-56 (Tenn. Ct. App. 2000). However, as discussed below, because the question of whether a party has standing is one of law, which we review *de novo* with no presumption of correctness, see *In re Estate of Brock*, 536 S.W.3d 409, 413 (Tenn. 2017), we exercise our discretion to consider the merits of Mr. Curran’s appeal despite the deficiencies in his appellate brief. See Tenn. R. App. P. 2 (allowing this Court to suspend the requirements of the Tennessee Rules of Appellate Procedure “[f]or good cause”).

IV. Mr. Curran’s Standing to File Adoption Petition

As this Court has explained, “[t]he doctrine of standing is used to determine whether a particular plaintiff is entitled to judicial relief.” *Wood v. Metro. Nashville & Davidson Cnty. Gov’t*, 196 S.W.3d 152, 157 (Tenn. Ct. App. 2005) (citing *Knierim v. Leatherwood*, 542 S.W.2d 806, 808 (Tenn. 1976); *Garrison v. Stamps*, 109 S.W.3d 374, 377 (Tenn. Ct. App. 2003)). When deciding whether a plaintiff has standing to bring an action, the court must determine whether the plaintiff “has alleged a sufficiently personal stake in the outcome of the litigation to warrant a judicial intervention.” *Wood*, 196 S.W.3d at 157 (citing *SunTrust Bank v. Johnson*, 46 S.W.3d 216, 222 (Tenn. Ct. App. 2000); *Browning-Ferris Indus. of Tennessee, Inc. v. City of Oak Ridge*, 644 S.W.2d 400, 402 (Tenn. Ct. App. 1982)). Indeed, “[t]he primary focus of a standing inquiry is on the party, not on the merits of the party’s claim.” *Wood*, 196 S.W.3d at 158 (citing *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 484 (1982); *Petty v. Daimler/Chrysler Corp.*, 91 S.W.3d 765, 767 (Tenn. Ct. App. 2002)).

“The Tennessee Supreme Court has held that the question of standing is ‘interwoven’ with the question of subject matter jurisdiction ‘when a statute creates a cause of action and designates who may bring [the] action[.]’” *Pub. Emps. For Env’t Resp. v. Tennessee Water Quality Control Bd.*, No. M2008-01567-COA-R3-CV, 2009 WL 1635087, at *6 (Tenn. Ct. App. June 10, 2009) (quoting *Osborn v. Marr*, 127 S.W.3d 737, 740 (Tenn. 2004)). In those cases, “the determination of standing ‘becomes a jurisdictional prerequisite.’” *Pub. Emps. For Env’t Resp.*, 2009 WL 1635087, at *6 (quoting *Osborn*, 127 S.W.3d at 740). As discussed below, the Tennessee General Assembly has specifically designated persons who may file a petition for adoption. Accordingly, a court “does not have subject matter jurisdiction to hear such a petition unless the party filing the petition has standing.” *Osborn*, 127 S.W.3d at 740. Thus, standing “is a necessary prerequisite to

the court’s exercise of subject matter jurisdiction in [adoption] cases.” *Id.*² If standing and subject-matter jurisdiction are lacking, the court must dismiss the case. *Dishmon v. Shelby State Cmty. Coll.*, 15 S.W.3d 477, 480 (Tenn. Ct. App. 1999). Whether a court lacks subject-matter jurisdiction presents a question of law, which we review *de novo* without a presumption of correctness. *Chapman v. DaVita, Inc.*, 380 S.W.3d 710, 712-13 (Tenn. 2012).

Tennessee Code Annotated section 36-1-115 governs persons eligible to file adoption petitions. Under the statute, “[a]ny person over eighteen (18) years of age may petition the chancery or circuit court to adopt a person[.]” Tenn. Code Ann. § 36-1-115(a). The petitioner seeking to adopt a child “*must* have physical custody [of the child] or *must* demonstrate to the court that they have the right to receive custody of the child sought to be adopted as provided in § 36-1-111(d)(6) at the time the petition is filed[.]” Tenn. Code Ann. § 36-1-115(b) (emphases added). The statute defines “physical custody” as “physical possession and care of a child.”³ Tenn. Code Ann. § 36-1-102(40).

We recall that the relationship between Mr. Curran and Ms. Melson ended in December 2019. A year-and-a-half after the relationship ended, Mr. Curran filed the petition for adoption. Turning to the petition, Mr. Curran did not allege that he had physical custody of the Child. Rather, he alleged that despite his attempts to act as the Child’s father, Ms. Melson had “taken active steps to deny [Mr. Curran] from fulfilling his desire to be the [Child’s] father[.]” In support of his contention, Mr. Curran alleged that Ms. Melson filed a petition for protective order to prevent Mr. Curran from seeing the Child. Because he did not have physical custody of the Child, to have standing to file the adoption petition, Mr. Curran was required to demonstrate that he had the right to receive custody of the Child as provided in Tennessee Code Annotated section 36-1-111(d)(6). Tennessee Code Annotated section 36-1-111(d)(6) provides:

No surrender shall be valid unless the person or persons or entity to whom or to which the child is surrendered or parental consent is given:

(A) Has, at a minimum, physical custody of the child;

² Subject-matter jurisdiction refers to a court’s “lawful authority to adjudicate a controversy brought before it.” *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000). A court’s subject matter jurisdiction is derived—“either explicitly or by necessary implication”—from the state constitution or statute. *Benson v. Herbst*, 240 S.W.3d 235, 239 (Tenn. Ct. App. 2007). The existence of subject matter jurisdiction depends on “the nature of the cause of action and the relief sought.” *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994).

³ The statute also provides that “physical custody” “may be constructive, as when a child is placed by agreement or court order with an agency, or purely physical, as when any family, including a formal or informal foster family, has possession and care of a child, so long as such possession was not secured through a criminal act.” Tenn. Code Ann. § 36-1-102(40).

(B) Will receive physical custody of the child from the surrendering parent or guardian within five (5) days of the surrender;

(C) Has the right to receive physical custody of the child upon the child's release from a health care facility; or

(D) Has a sworn, written statement from the person, the department, the licensed child-placing agency, or child-caring agency that has physical custody pursuant to subdivision (d)(5), which waives the rights pursuant to that subdivision (d)(5).

Tenn. Code Ann. § 36-1-111(d)(6). As an initial matter, Ms. Melson neither surrendered the Child nor consented to his adoption by Mr. Curran, and Mr. Curran did not allege that she did so. Furthermore, as discussed *supra*, Mr. Curran did not allege that he had physical custody of the Child. Additionally, Mr. Curran failed to allege any facts to show he was going to receive physical custody of the Child in the future as provided in the statute. Tenn. Code Ann. § 36-1-111(d)(6). Rather, Mr. Curran alleged that Ms. Melson took active steps to prevent him from visiting the Child. On this Court's review of the petition for adoption, Mr. Curran failed to allege facts to show that he was eligible to file a petition to adopt the Child. In other words, Mr. Curran failed to show that he had a "sufficiently personal stake in the outcome of the litigation to warrant a judicial intervention." *Wood*, 196 S.W.3d at 157 (citing *SunTrust Bank*, 46 S.W.3d at 222; *Browning-Ferris Indus. of Tennessee, Inc.*, 644 S.W.2d at 402). Thus, Mr. Curran lacked standing to pursue adoption, *Osborn*, 127 S.W.3d at 740; *Pub. Emps. For Env't Resp.*, 2009 WL 1635087, at *6, and the trial court properly concluded that it did not have subject-matter jurisdiction to hear the case and it dismissed Mr. Curran's petition with prejudice. See *Dishmon*, 15 S.W.3d at 480.

For completeness, we address the other statutory provision cited in Mr. Curran's petition for adoption. In the petition, Mr. Curran alleged that he "me[t] all legal definitions of parent, and having parental rights, under Tennessee Code Annotated [section] 36-1-102(26)(C), and has not terminated those rights." As an initial matter, the foregoing provision concerns the definition of "guardianship." Mr. Curran did not allege in the petition that he was appointed by a court as the Child's guardian. Thus, based on the petition, he does not meet the definition of the Child's "guardian." Turning to Tennessee Code Annotated section 36-1-102(37), "parent" or "parents" is defined as "any biological, legal, adoptive parent or parents or, for purposes of §§ 36-1-127 -- 36-1-141, stepparents." Tenn. Code Ann. § 36-1-102(37). Based on the allegations in his petition, Mr. Curran is neither the biological, adoptive, or stepparent of the Child. Turning to Tennessee Code Annotated section 36-1-102(29)(iii), a "legal parent" may include:

(iii) A man who attempted to marry the biological mother of the child before the child's birth by a marriage apparently in compliance with the law, even if the marriage is declared invalid, if the child was born during the attempted marriage or within three hundred (300) days after the termination of the attempted marriage for any reason[.]

Tenn. Code Ann. § 36-1-102(29)(iii). We deduce that Mr. Curran relies on this section of the statute to allege that he is the Child's "legal parent." Specifically, Mr. Curran alleged that he attempted to marry Ms. Melson and that Ms. Melson became the adoptive parent of the Child "within 365 days of the anticipated date of marriage." Even if the foregoing were true (Ms. Melson disputes that she intended to marry Mr. Curran), Mr. Curran is still not a legal parent of the Child for two reasons. First, it is undisputed that Ms. Melson is the biological *grandmother* of the Child, not the biological mother, as required under the statute. Second, although Ms. Melson formally adopted the Child during the parties' relationship, the Child was born before the relationship began. Accordingly, even if Mr. Curran attempted to marry Ms. Melson, he still does not meet the statutory definition of a "legal parent" of the Child. As discussed above, Mr. Curran did not have standing to file a petition to adopt the Child. Because Mr. Curran did not have standing to file the petition, the trial court did not have jurisdiction to hear the petition and dismissed it with prejudice. This dismissal also disposed of Mr. Curran's other pending motions. For the reasons discussed, *supra*, we affirm the trial court's dismissal of the petition for adoption and pretermite all remaining issues and arguments.

V. Frivolous Appeal

Ms. Melson asks this Court to find Mr. Curran's appeal frivolous. Under Tennessee Code Annotated section 27-1-122,

[w]hen it appears to any reviewing court that the appeal from any court of record was frivolous or taken solely for delay, the court may, either upon motion of a party or of its own motion, award just damages against the appellant, which may include, but need not be limited to, costs, interest on the judgment, and expenses incurred by the appellee as a result of the appeal.

Tenn. Code Ann. § 27-1-122. Whether this Court awards damages for a frivolous appeal lies solely within our discretion. *Young v. Barrow*, 130 S.W.3d 59, 66-67 (Tenn. Ct. App. 2003). We exercise this discretion "sparingly so as not to discourage legitimate appeals." *Eberbach v. Eberbach*, 535 S.W.3d 467, 475 (Tenn. 2017) (quoting *Whalum v. Marshall*, 224 S.W.3d 169, 181 (Tenn. Ct. App. 2006)). However, "[s]uccessful litigants should not have to bear the expense and vexation of groundless appeals." *Whalum*, 224 S.W.3d at 181 (quoting *Davis v. Gulf Ins. Group*, 546 S.W.2d 583, 586 (Tenn.1977)). This Court has concluded that an appeal is frivolous "when it has 'no reasonable chance of success,' or is 'so utterly devoid of merit as to justify the imposition of a penalty.'" *Whalum*, 224

S.W.3d at 181 (internal citations omitted). Exercising our discretion, we conclude that Mr. Curran's appeal is so devoid of merit as to justify an award of damages against him for the filing of a frivolous appeal. Accordingly, we remand this case to the trial court for entry of an award of damages in favor of Ms. Melson, including reasonable attorney's fees and expenses incurred in defending this appeal.

VI. Conclusion

For the foregoing reasons, we affirm the trial court's dismissal of Mr. Curran's petition for adoption. Ms. Melson's motion to declare the appeal frivolous is granted. The case is remanded to the trial court for such further proceedings as are necessary and consistent with this opinion, including, but not limited to, the calculation of damages in favor of Ms. Melson, to include reasonable attorney's fees and expenses incurred in defending this appeal, and entry of judgment on same. Costs of the appeal are assessed to the Appellant, John F. Curran, for all of which execution may issue if necessary.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE