Circuit Court for Montgomery County
Case No. 141625FL

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 0143

September Term, 2023

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MONICA O DUDLEY

v.

STEPHANIE RIVERA, et al

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Graeff,
Reed,
Taylor, Robert K., Jr.,
(Specially Assigned)

JJ.

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Opinion by Graeff, J.

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Filed: November 9, 2023

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal arises from a March 24, 2023 order issued by the Circuit Court for Montgomery County denying Monica Dudley, appellant, third-party intervenor status in a child custody dispute involving the minor children of Juan Rivera ("Father") and Michelle Dudley ("Mother). Appellant contends that the circuit court erred in denying her motion to intervene.[1]

For reasons that follow, we shall vacate the judgment of the circuit court and remand for further proceedings.

## FACTUAL AND PROCEDURAL BACKGROUND

### I.

### Emergency Guardianship Petition

Mother and Father are parents of two children: a son, born in 2008, and a daughter, born in 2011 (the "Children"). On January 3, 2017, Stephanie Rivera, the Children's paternal aunt and appellee, filed two emergency petitions for guardianship of the Children in the Circuit Court for Montgomery County, alleging that Mother was currently homeless and both Mother and Father were unstable. Father consented to Ms. Rivera's emergency guardianship petition.[2] Ms. Rivera attached to her petition an affidavit regarding her

[1] On appeal, appellant, an unrepresented litigant, presents the following issue:

> My Motion to Intervene solely for the purpose of seeking a visitation order so the minor children can remain to have a relationship with their deceased Mother's side of the family[.]

[2] Juan Rivera is Stephanie Rivera's brother.

unsuccessful attempts to locate and contact Mother. The court appointed Ms. Rivera as temporary guardian of the Children the same day.

## II.

## Initial Custody Petition

On February 27, 2017, Ms. Rivera filed a supplemental complaint for custody, alleging that Mother was homeless and Mother and Father were unstable. On June 6, 2017, Ms. Rivera asked the court to order a default judgment against Mother for failing to respond to Ms. Rivera's complaint for custody. On June 28, 2017, Father filed his answer to Ms. Rivera's complaint, asking the court to grant Ms. Rivera's child custody petition and requesting that visitation with Mother be supervised and/or subject to "drug treatment of at least 1 yr." The court found that service on Mother was improper, and it denied Ms. Rivera's request for a default judgment. The court ordered the circuit court clerk to reissue a summons for Mother.

## III.

## Grandmother's Motion to Intervene

On August 18, 2017, Valerie Dudley, the children's maternal grandmother ("Grandmother"), filed a motion to intervene, supplemented by a complaint for visitation. Grandmother alleged that it was in the Children's best interest that she be permitted to intervene because Ms. Rivera was "refusing any visitation or contact." Grandmother noted that the Children had lived with her and Mother for the previous seven years, and she was "a regular fixture in the children's lives."

On September 20, 2017, the court granted Grandmother's motion to intervene. Ms. Rivera did not oppose Grandmother's motion to intervene or request for visitation, but she requested that the court "not allow the children to have unsupervised visitation with their mother."

## IV.

## October 2017 and 2019 Custody and Visitation Orders

On October 12, 2017, the circuit court held a hearing on Ms. Rivera's supplemental complaint for custody and Grandmother's motion to intervene and complaint for visitation. It ordered that Ms. Rivera have primary physical custody of the Children and Ms. Rivera and Father have joint legal custody, with Ms. Rivera having tie-breaking authority. The court ordered visitation for Grandmother, providing "access with the minor children two (2) times per month for six (6) hours," with the dates and times to be agreed upon between her and Ms. Rivera. The court granted Mother supervised access to the Children.

On February 11, 2019, Grandmother filed a petition for contempt, alleging that Ms. Rivera was denying her visitation. She asked the court to order Ms. Rivera to "cooperate in working with [her] on a monthly basis to set up visits for the children." In response, Ms. Rivera claimed that Grandmother was not denied access, and instead, she "insisted upon showing up at [Ms. Rivera's] home unannounced for requested visitation on February 9, 2019."

On April 19, 2019, Mother filed a petition to modify custody. She requested that the court grant her sole physical custody and joint legal custody, to be shared with Father.

Mother alleged that she had "turned her life around" and was "ready, willing and able to resume her role as mother for the children." On May 10, 2019, Grandmother filed an amended petition for contempt, asking the court to "establish a specific visitation/access schedule to include overnights and a mutual place for pick-up and drop-off with visitation."

On October 1, 2019, after a hearing, the circuit court issued an order, continuing its prior order that Ms. Rivera have primary physical custody of the Children. It modified the previous order regarding joint legal custody, ordering that Ms. Rivera and Mother have joint legal custody, with Ms. Rivera retaining tie-breaking authority. Father was to continue to have reasonable access to the Children. The court further found Ms. Rivera in contempt of its October 2017 visitation order and established a visitation and access schedule for Grandmother. Mother was awarded supervised access with the Children one day per month from 9:30 a.m. to 6:00 p.m. over the next 17 months, to be supervised by Grandmother as intervenor.

## V.

## Further Proceedings

On November 8, 2019, appellant filed a motion to intervene, supplemented by a motion to modify custody and visitation. Appellant alleged that Ms. Rivera "no longer wishes to have custody of the minor children," and both Mother and Father were not "physically, mentally or financially stable enough to have custody of the minor children." She expressed her concern about the children and stated that it would be "in the children's best interest if custody be modified" as soon as possible.

On November 13, 2019, Mother filed an emergency motion to modify the court's October 2019 custody order. She stated that Ms. Rivera had communicated that she could no longer care for the Children and no longer wanted anything to do with the Children. Mother alleged that Ms. Rivera was "under a lot of stress, both physically due to her disability and emotionally," and she could "no longer handle the added stress of caring for the[] children." Mother alleged that Ms. Rivera had asked Mother "to take [the] children, but then indicated that she [would] not turn the children over without a court order." Mother asked the court to award her immediate legal and physical custody of the Children.

On December 10, 2019, Grandmother filed a motion in response to appellant's November 8, 2019 motion to intervene. She stated that Mother needed "more time to prepare a more stable living status and financial status before getting her kids back unsupervised." She alleged that it was in the "best interest of the minor children that sole legal and physical custody be granted to . . . [appellant]." She asked the court to maintain the previous visitation and access schedule.

On January 2, 2020, the court granted appellant's motion to intervene, designating her as "Intervenor Plaintiff" in the matter. That same day, Mother dismissed her November 2019 motion to modify custody. Appellant filed a new motion to modify custody and visitation, repeating her previous claim that Ms. Rivera "no longer wishes to have custody of the minor children" and asking the court to grant her sole physical and legal custody. In March 2020, appellant petitioned the court to appoint a best interest attorney, which the court denied.

On January 15, 2021, Grandmother filed a petition for contempt, alleging that Ms. Rivera was denying visitation to Mother. On May 20, 2021, Mother filed an emergency motion to modify custody. She asked the court to award joint legal and physical custody to her and appellant. On June 14, 2021, Grandmother filed a motion in response to Mother's emergency motion. She asked that the court grant the relief requested by Mother.

On September 30, 2021, Grandmother died. On October 18, 2021, appellant filed a motion to dismiss her amended motion to modify visitation. Appellant alleged, among other things, that she was "under immense stress from the recent death of her mother" and continuing with the litigation would "cause more mental anxiety." The court granted her request, dismissing appellant's amended motion to modify visitation, without prejudice.

On January 4, 2022, Ms. Rivera filed an emergency motion to suspend visitation for Mother. Ms. Rivera noted that Mother was granted supervised visitation, with Grandmother as the court-designated supervisor. Following Grandmother's death, she had agreed to allow Mother's boyfriend to "act as the supervisor for the October 24, 2021 access hours," but Mother's boyfriend left the children with Mother unsupervised, and Mother "failed to appear for the scheduled drop-off to return the children." Ms. Rivera stated that she was able to find the Children at appellant's home only after assistance from the Montgomery County Police Department.

On March 4, 2022, appellant filed a motion to modify custody and visitation, alleging that Mother had not been given access to the Children since October 2021. Appellant alleged that there had been "numerous material changes in circumstances," and

she asked that the court award her sole physical and legal custody of the Children. Ms. Rivera filed a response, asking the court to dismiss the motion for, among other things, "failure to allege any material change in circumstance affecting the children, [and] lack of standing."

On March 22, 2022, the court held a hearing.[3] At the conclusion of the hearing, it denied Mother's motion to modify physical custody, but it ordered that Ms. Rivera and Mother would have joint legal custody on "major decisions regarding education, medical care, mental health, religious training, discipline, and any other major decision concerning the children's general welfare." It removed Ms. Rivera's tie-breaker authority and instructed the parties to "work together to reach mutual decisions."

Immediately following the hearing and order from the court, Mother filed an emergency motion to modify visitation. She asked that the court modify the order to allow her access to the Children.

On April 4, 2022, this case was designated as a "One Family-One Judge" case and specially assigned to one judge.[4] On May 5, 2022, the court dismissed appellant's March

[3] The record does not contain a transcript of this hearing. The court's order notes that the reason for taking testimony and argument were stated on the record.

[4] The "One Family-One Judge is [a National Council of Juvenile and Family Court Judges] best practice recommendation for both child welfare and delinquency cases." Yolanda A. Tanner, ONE FAMILY – ONE MASTER DOCKETING IN JUVENILE COURT, Md. B.J., May/June 2009, at 30 (2009). When adopted by a court, "[a] family is assigned to a single judge for all hearings, enabling the judge to become thoroughly familiar with the needs of children and their families, increasing the judge's ability to direct services to address those needs." *Id.*

petition to modify custody. The reasons for the ruling were not given in the order, but the court gave appellant thirty days to file an amended motion. The court also issued a supervised visitation order, requiring Ms. Rivera to "make the minor children available for supervised access with [Mother]" and not interfere with that access. The court instructed the parties that supervised access would continue until a review hearing was set for August 29, 2022.

The same day, appellant filed an amended motion to modify the custody and visitation order issued in March 2022. Appellant alleged, among other things, that the children were not being properly supervised. Appellant asked the court to appoint an evaluator so that a social worker could investigate the allegations contained in her motion.

On May 26, 2022, Ms. Rivera filed a motion in opposition, alleging that appellant had failed to meet a "threshold burden of showing a material change of circumstances." She asked the court to dismiss appellant's complaint.

On June 17, 2022, Father filed several motions. In a petition to modify custody and visitation, Father alleged that the court's March 2022 custody and visitation order was no longer in the best interest of the children. With respect to custody, Father stated that the court had previously granted him and his sister, Ms. Rivera, joint legal custody, but the court had modified that arrangement without explanation. He alleged that Mother was not mentally or financially stable and requested that the court reinstate joint custodial rights to him, to be shared with Ms. Rivera. Additionally, Father filed an emergency motion to suspend the Children's visitation with Mother, alleging that Mother was using narcotics in

front of the Children, and appellant was "enabling [Mother's] behavior as she is participating and/or allowing her to get high in her house."[5]

On August 2, 2022, a Court Custody Evaluator Report was filed. Because it was filed under seal, we will not discuss its contents.

In August 2022, appellant, Ms. Rivera, and Father filed pre-trial statements. Ms. Rivera claimed that there had been "no material change in circumstances" to warrant modification of custody and visitation since the circuit court's March 2022 order. Father asked the court to grant joint legal custody to him and Ms. Rivera and requested that it grant Ms. Rivera "sole physical custody" as the court had ordered in October 2017. He also requested that appellant be removed from the case as a third-party intervenor.

On August 29, 2022, the court held a hearing on, among other things, Mother's motion to modify, Father's motion to modify, and appellant's amended motion to modify.[6] On September 26, 2022, appellant filed a motion requesting to be removed as an intervenor, which the court granted on October 19, 2022.[7]

[5] On June 17, 2022, Father also filed a motion to remove appellant as intervenor. Father alleged that appellant was granted intervenor status without his knowledge, she had "never lived, provided, or helped [his] children in time of need," and her continued presence in the matter caused additional issues. On September 30, 2022, the court denied Father's request to remove appellant as intervenor.

[6] There is no transcript of this hearing in the record.

[7] Appellant did not state the reasons for her request to be removed as an intervenor. On appeal, she states that she did so because she expected a "new visitation order" to be issued, at the next hearing, which was set for February 10, 2023.

On September 30, 2022, the court denied appellant's amended motion for custody, and granted, in part, Mother's and Father's motions. It ordered that Ms. Rivera have sole legal custody of the Children and primary physical custody, with Mother having supervised access according to an access schedule. The court permitted appellant to participate in supervised visitation, but it noted that she "shall not serve as a supervisor." The court ordered "that a qualified visitation supervisor shall be assigned by the Family Division to supervise" the visits. The court set a hearing for February 10, 2023, to review the status of the supervised visitation.

On February 10, 2023, the court began the status hearing by noting that Mother had passed away. The court stated that nothing had been filed in the case regarding Mother's death, and once the "suggestion of death" was filed, the matter involving Mother's supervised visitation would be closed. The court encouraged the parties "to work together to make sure that" the Children were cared for, stating that, "hopefully [the parties] realize the importance of family, and that [they] are allowed to, are encouraged, and supported to have close relationships with their family on both sides." The court noted that its ability to order relief was limited, but it asked that the "adults make sure that the children . . . remain in contact with their family on both sides."

## VI.

## Proceedings at Issue on Appeal

On March 1, 2023, appellant filed a motion to intervene, supplemented by a complaint for visitation. Appellant stated that she was seeking intervention because she

was the maternal aunt of the Children, and prior to 2017, she "lived in very close proximity to" the Children, "which caused a strong emotional bond . . . to be formed over the course of their childhood." In the attached complaint for visitation, appellant alleged that she was a *de facto* parent of the Children, stating that she had "developed a long-lasting, bonded, and dependent maternal/parental relationship with" the Children. Appellant stated that visitation was in the best interests of the children because "[t]heir biological Mother is deceased, as her next of kin I want to make sure their bond with her side of the family remains strong." She noted that the Children had a six-month-old half brother, and appellant wanted "that relationship to stay strong as well." Appellant requested that the court grant visitation for "[e]very other weekend, rotating holidays and extended time during the summer and winter breaks."

On March 17, 2023, Ms. Rivera filed a motion in opposition to appellant's motion to intervene. Ms. Rivera stated that appellant lacked standing to intervene and seek custody because "[s]he is neither a parent or a grandparent of the minor children at issue."

On March 24, 2023, the circuit court denied appellant's motion to intervene. The court did not provide a reason for its decision, aside from a notation indicating that the court had considered appellant's motion and Ms. Rivera's opposition.

This timely appeal followed.

## DISCUSSION

Appellant contends that the court erred in denying her motion to intervene. She asserts that she initially was permitted to intervene in the custody case involving the children, and she voluntarily removed herself as an intervenor in September 2022 "because a new visitation order was set to be ordered" on February 10, 2023. Mother, however, died prior to that time. Appellant asserts that, allowing her "to intervene again is the only way for [her] to petition for a new visitation order so the minor child can continue to see and have a close relationship with their deceased Mother's side of the family and also with their half biological brother."

Ms. Rivera contends that the court did not abuse its discretion in denying appellant's motion to intervene. She argues that appellant lacked standing to pursue visitation with the Children because she is not a parent, and her claim that she had a "*de facto*" parental relationship with the Children was too late and unsupported by evidence.[8] Ms. Rivera

[8] "[A] third-party seeking *de facto* parent status bears the burden of proving the following" elements:

> (1) that the biological or adoptive parent consented to, and fostered, the petitioner's formation and establishment of a parent-like relationship with the child;
>
> (2) that the petitioner and the child lived together in the same household;
>
> (3) that the petitioner assumed obligations of parenthood by taking significant responsibility for the child's care, education and development, including contributing towards the child's support, without expectation of financial compensation; and

further argues that, even if appellant had been granted permission to intervene, her visitation action would have failed because she offered no "evidence of parental unfitness or the existence of extraordinary circumstances."

In *Doe v. Alternative Medicine Maryland, LLC*, 455 Md. 377, 414 (2017), the Supreme Court of Maryland articulated the standard of review regarding rulings on a motion to intervene, as follows:

> An appellate court reviews for abuse of discretion a trial court's denial of a motion to intervene on the ground of untimeliness, where the trial court articulates why the motion was untimely. *See* [*Maryland-Nat. Capital Park and Planning Comm'n v. Town of Washington Grove*, 408 Md. 37, 65, 968 A.2d 552, 568-69 (2009)]. In all other instances, an appellate court reviews without deference a trial court's conclusion that a party may not intervene as of right. *See id.* at 65, 968 A.2d at 568-69. An appellate court reviews for abuse of discretion a trial court's decision to deny permissive intervention. *See id.* at 65, 968 A.2d at 569.

With that standard of review in mind, we look to Maryland Rule 2-214, which addresses intervention. Rule 2-214(a) addresses intervention as "of right," as follows:

> Upon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties.

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> (4) that the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent relationship parental in nature.

*Conover v. Conover*, 450 Md. 51, 74 (2016). Additionally, *de facto* parent status "cannot be achieved without knowing participation by the biological parent." *Id. Accord Caldwell v. Sutton*, 256 Md. App. 230, 267 (2022).

In *Washington Grove*, 408 Md. at 69-70, the Court explained that there are four requirements for intervention of right:

> 1) the application was timely; 2) the person claims an interest relating to the property or transaction that is the subject of the action; 3) the person is so situated that the disposition of the action, as a practical matter, may impair or impede that person's ability to protect that interest; and 4) the person's interest is not adequately represented by existing parties to the suit.

"Permissive" intervention is governed by Maryland Rule 2-214(b), which states:

> (1) *Generally*. Upon timely motion a person may be permitted to intervene in an action when the person's claim or defense has a question of law or fact in common with the action.
>
> * * *
>
> (3) *Considerations*. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

The motion to intervene at issue here was filed by appellant on March 1, 2023. Although her motion did not specify whether she was seeking intervention "of right" or "permissive" intervention, she did assert that she was a *de facto* parent. A *de facto* parent has the same rights as a biological parent, and therefore, has standing to challenge custody or visitation if there is a showing of a material change in circumstances. *See Caldwell v. Sutton*, 256 Md. App. 230, 269-70 (2022). Here, the motion clearly showed a change of circumstances; appellant's visitation was tied to Mother's supervised visitation, and after Mother's death, that would no longer occur.

As indicated, however, to show a right to intervene, there are several requirements that need to be satisfied. Initially, Md. Rule 2-214(a), requires that a motion to intervene be "timely." *See Washington Grove*, 408 Md. at 65. As we have stated,

> [i]n determining whether a motion to intervene has been timely filed, a court must consider the purpose for which intervention is sought, the probability of prejudice to the parties already in the case, the extent to which the proceedings have progressed when the movant applies to intervene, and the reason or reasons for the delay in seeking intervention.

*Id.* at 70 (alteration in original) (quoting *Pharmaceia Eni Diagnostics, Inc. v. Wash. Suburban Sanitary Comm'n*, 85 Md. App. 555, 568 (1991)). "Timeliness depends upon the individual circumstances in each case, and . . . consideration of those circumstances rests initially with the sound discretion of the trial court, which, unless abused, will not be disturbed on appellate review." *Id.*

Moreover, pursuant to Md. Rule 2-214(c), appellant was required to "state the grounds" upon which she sought to intervene. Those grounds would include facts that support a finding that she has a *de facto* relationship with the children, that there was a material change in circumstances, and that it would be in the Children's best interest for her to have visitation with the Children.

The parties have not addressed the issue of timeliness, or prejudice to Ms. Rivera, and the circuit court did not discuss any factors relating to the motion to intervene or otherwise explain the basis for its decision denying the motion. Under these circumstances, we conclude that a remand to the circuit court is appropriate so the court can state the basis for its decision. If, on remand, the court determines that dismissal is warranted because

the motion did not adequately state the grounds to intervene, appellant could request leave to amend her pleading.

**JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED AND REMANDED FOR FURTHER PROCEEDINGS; COSTS TO BE SPLIT BY THE PARTIES; 50% TO BE PAID BY APPELLANT AND 50% TO BE PAID BY APPELLEE.**