THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2020-0079, In re Guardianship of A.L.; In re Guardianship of A.L.; In re Guardianship of K.L., the court on October 1, 2020, issued the following order:

Because the New Hampshire Division for Children, Youth and Families (DCYF) cites the statement of facts in the brief of the petitioners, the paternal grandparents (grandparents) of A.L., A.L., and K.L. (children), to support several factual assertions in its own memorandum of law, DCYF's request that we strike the statement of facts in the grandparents' brief is denied. Having considered the grandparents' brief and reply brief, DCYF's memorandum of law, and the record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). The grandparents appeal an order of the Circuit Court (Cardello, J.) granting DCYF's motion to dismiss their petitions for guardianship over the children for failure to state a claim upon which relief may be granted. The grandparents argue that the trial court erred by dismissing the petitions because: (1) "DCYF never fairly assessed their interest in becoming guardians, and eventual adopters" of the children in related child neglect proceedings; (2) the trial court allegedly failed to provide judicial oversight of DCYF in the neglect proceedings; (3) the court allegedly applied an incorrect legal standard in dismissing their petitions; and (4) they were statutorily entitled to preference in being appointed as guardians of the children. Had the trial court held a hearing on the merits, the grandparents assert that they would have demonstrated that they were appropriate guardians, and would have been appointed as guardians. The grandparents further argue that the trial court erred by denying motions, which they filed after they had filed the present appeal, seeking access to the confidential records in underlying neglect and termination of parental rights proceedings. DCYF counters, in part, that because the children have since been adopted by parents who are not party to this case, and because DCYF's guardianship has terminated, the appeal is moot. We agree with DCYF.

A matter is moot if it no longer presents a justiciable controversy because the issues involved in the case have become academic or dead. Londonderry Sch. Dist. v. State, 157 N.H. 734, 736 (2008). The mootness doctrine ultimately raises a question of judicial discretion and convenience; a decision on the merits may be warranted if the case involves a "pressing public interest," or if a merits decision may prevent future litigation. See Batchelder v. Town of Plymouth Zoning Bd. of Adjustment, 160 N.H. 253, 255-56 (2010).

The children were the subject of neglect proceedings brought in 2017. Although DCYF contacted the grandparents in September 2017 and inquired about their willingness to take custody of the children, the grandparents declined at that time because, they assert, they were then residing in a one-bedroom apartment while their home was being built, and remained in that apartment until September 2018. One of the children was placed in the custody of the children's maternal grandmother, and the other children were placed in a foster home. The parental rights of the biological parents were subsequently terminated, and the children became eligible for adoption in April 2019. Accordingly, DCYF became the children's guardian, see RSA 170-C:11, II (2014), and consented to two of the children's adoptions by their foster parent, and to the other child's adoption by a maternal aunt, see RSA 170-B:5, I(e) (2014); In re A.D., 172 N.H. 438, 442 (2019).

The grandparents filed their guardianship petitions in January 2020, asserting that they had been properly certified and trained as foster parents in the state in which they live, and that DCYF had not cooperated with their efforts to maintain contact with the children or to be considered as a placement option. The trial court granted DCYF's motion to dismiss, reasoning that the petition had not established any mistreatment of the children or inability to care for them, or why guardianship by the grandparents was in the children's best interests. The trial court observed that the children's adoptions by the maternal aunt and the foster parent were scheduled for a final hearing later that day, and that DCYF had consented to the adoptions. Thereafter, the adoption petitions were granted, and DCYF's guardianship terminated.

On these facts, we conclude that the appeal is moot. DCYF is no longer the children's guardian. Moreover, the children now have parents who necessarily have fundamental rights as the children's parents and are presumed to act in the children's best interests, see In re Guardianship of Nicholas P., 162 N.H. 199, 203, 205 (2011), and who are not party to this case. Were the grandparents to seek a guardianship now over the parents' objections, they would bear the burden to prove, by clear and convincing evidence, that the children's best interests "require substitution or supplementation of parental care and supervision to provide for the [children's] essential physical and safety needs . . . or to prevent specific, significant psychological harm to" the children. RSA 463:8, III(b) (2018); see also Nicholas P., 162 N.H. at 205 (observing that high evidentiary standard of clear and convincing evidence under RSA 463:8, III(b) satisfies the constitutional presumption that a fit parent acts in the best interest of a child).

To the extent the grandparents argue that the case is not moot because DCYF allegedly "caused" the mootness by "unlawfully consent[ing]" to the adoptions, we note that the adoption cases themselves are not before us in this appeal. We conclude that the issues that are properly before us have become

academic or dead by virtue of the adoptions, and we find no pressing public interest or other reason to decide such issues.[1] Accordingly, the appeal is dismissed.

Dismissed.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

Timothy A. Gudas,
Clerk

Distribution:
5th N.H. Circuit Court - Newport Family Division,
662-2020-GM-00001; 00002; 00003
Honorable Bruce A. Cardello
Honorable David D. King
Joshua L. Gordon, Esq.
Attorney General
Laura E. B. Lombardi, Esq.
Carolyn A. Koegler, Supreme Court
Lin Willis, Supreme Court
File

[1] To the extent the grandparents are arguing that the trial court erred by denying their post-appeal motions seeking access to confidential records in the neglect and termination of parental rights cases because those records were "incorporated by reference" in the motion to dismiss and are thus part of the guardianship record, we assume, without deciding, that the issue is properly before us in this appeal, but see Rautenberg v. Munnis, 107 N.H. 446, 447-48 (1966), and conclude that it is moot. To the extent they are asserting a right to the records that is independent of the guardianship matter, we note that they did not request that we remand the case to decide the motions, and that they neither moved to amend their notice of appeal to include the issue nor separately appealed the trial court's orders denying access to the records. Thus, the issue is not properly before us.