

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

IN THE MATTER OF THE ADOPTION : **OPINION**
OF: R.M.P. and B.N.P.

: **CASE NOS. 2011-T-0041
and 2011-T-0042**

Civil Appeals from the Trumbull County Court of Common Pleas, Probate Division,
Case Nos. 2010 ADP 0063 and 2010 ADP 0064.

Judgment: Affirmed.

Douglas J. Neuman, Westenfield, Neuman & Parry, 761 North Cedar Street, Suite 1,
Niles, OH 44446-2566 (For Appellees).

John H. Chaney, III, Daniel Daniluk, L.L.C., 1129 Niles-Cortland Road, S.E., Warren,
OH 44484 (For Appellant).

John M. Rossi, Guarnieri & Secrest, P.L.L., 151 East Market Street, P.O. Box 4270,
Warren, OH 44482-4270 (Guardian ad litem).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Tonina A. Pallone, appeals from the March 29, 2011 judgments of the Trumbull County Court of Common Pleas, Probate Division, dismissing her petitions to adopt her great-grandchildren, R.M.P. and B.N.P. (“minor children”).

{¶2} The minor children were exposed to and affected by “severe domestic violence” while living with their natural parents. The older child, R.M.P., was diagnosed with post-traumatic stress disorder and was required to participate in counseling.

{¶3} Appellant subsequently became the primary caregiver. She filed for custody of the minor children. The court found the natural parents to be unfit and unsuitable. The minor children were found to be dependent. Appellant was granted legal custody.

{¶4} Thereafter, appellant filed petitions to adopt the minor children. The adoption filings included the written consent of the natural father. The court appointed Trumbull County Children Services Board (“CSB”) as an adoption assessor. CSB conducted a home study to determine appellant’s suitability. CSB filed written reports recommending that the adoption petitions be approved.

{¶5} The natural mother filed objections to the adoptions. The court set her objections for hearings. The natural mother requested continuances. The hearings were rescheduled. The natural mother failed to appear at the rescheduled hearings. At those hearings, the court found that in the one year immediately preceding the filing of the petitions, the natural mother failed to communicate with the minor children without justifiable cause. The court held the natural mother’s consent unnecessary for the adoptions to proceed pursuant to R.C. 3107.07(A).

{¶6} The court appointed a guardian ad litem (“GAL”) for the minor children. The GAL recommended that the cases be dismissed for lack of adoptive placements.

{¶7} The court dismissed appellant’s petitions for adoption after finding that there had not been adoptive placements as required under R.C. 5103.16. It is from those judgments that appellant filed timely appeals. This court consolidated the appeals. Appellant asserts the following assignment of error:

{¶8} “Whether the trial court erred in finding that an adoptive placement was necessary, where Appellant was within the category of persons to which Ohio Revised Code 5103.16 is not applicable and was previously awarded legal custody of the potential adoptees.”

{¶9} In her sole assignment of error, appellant argues the court erred by dismissing her petitions for adoption after finding that adoptive placements are required under R.C. 5103.16. She asserts two issues. First, appellant contends that as a great-grandmother, adoptive placements are not required. Second, appellant alleges that the need for adoptive placements was alleviated because she had previously been granted legal custody of the minor children.

{¶10} We review a trial court’s interpretation and application of a statute under a de novo standard of review. *Molk v. Gold Star Pawn Shop, L.L.C.*, 11th Dist. No. 2010-L-089, 2011-Ohio-2454, at ¶29.

{¶11} R.C. 5103.16 should be strictly construed. *In re J.A.S.*, 126 Ohio St.3d 145, 2010-Ohio-3270, at ¶22.

{¶12} With respect to appellant’s first issue, she alleges that as a great-grandmother, adoptive placements are not required pursuant to R.C. 5103.16(E).

{¶13} R.C. 5103.16 was amended on September 30, 2011. The amendment inserted “a grandparent’s husband or wife” in (E). The trial court decided the case on March 29, 2011, prior to the amendment. Therefore, the amendment does not apply to this case.

{¶14} The statute in effect at the time this case was decided states: “[t]his section does not apply to an adoption by a stepparent, a grandparent, or a guardian.” R.C. 5103.16(E).

{¶15} The General Assembly, at the time this case was decided, only excluded adoptions from the adoptive placement requirements by “a stepparent, a grandparent, or a guardian.” Appellant, as a great-grandparent, does not fall within any of the exceptions under either the statute in effect when this case was decided or under the 2011 amended version. Accordingly, the proposed adoptions of the minor children by their great-grandmother are subject to the provisions of R.C. 5103.16(D), which require adoptive placements.

{¶16} Appellant’s first issue is without merit.

{¶17} With regard to her second issue, appellant alleges that the need for R.C. 5103.16(D) adoptive placements was alleviated because she had previously been granted legal custody of the minor children. Appellant believes the Ohio Supreme Court’s holding in *In re J.A.S.*, supra, does not apply to this case. Appellant contends the natural parents were afforded all protections under the law.

{¶18} Our reading of *In re J.A.S.* establishes that it is applicable. *In re J.A.S.* directly addresses this matter and favors the protection of minors during the adoption process. In that case, the Court confirmed that the procedures outlined in R.C. 5103.16(D) apply even when a child has been placed with a custodian by a court order. The Court refrained from expanding the list of exempt persons to include a legal custodian or anyone other than those listed in R.C. 5103.16(E), which included when this case was decided, “a stepparent, a grandparent, or a guardian.”

{¶19} The syllabus of the Court holds: “The procedures in R.C. 5103.16(D) for placing a child for purposes of adoption with a prospective adoptive parent apply even when the child has been living with the prospective adoptive parents pursuant to an award of legal custody by order of the juvenile court.”

{¶20} R.C. 5103.16(D) states, in part:

{¶21} “(D) No child shall be placed or received for adoption or with intent to adopt unless placement is made by a public children services agency, an institution or association that is certified by the department of job and family services ***, or custodians in another state or foreign country, or unless all of the following criteria are met:

{¶22} “(1) Prior to the placement and receiving of the child, the parent or parents of the child personally have applied to, and appeared before, the probate court of the county in which the parent or parents reside, or in which the person seeking to adopt the child resides, for approval of the proposed placement specified in the application and have signed and filed with the court a written statement showing that the parent or parents are aware of their right to contest the decree of adoption subject to the limitations of section 3107.16 of the Revised Code;

{¶23} “(2) The court ordered an independent home study of the proposed placement *** and after completion of the home study, the court determined that the proposed placement is in the best interest of the child;

{¶24} “(3) The court has approved of record the proposed placement.”

{¶25} In the instant case, the foregoing statutory procedures apply, as the minor children have been living with appellant pursuant to an award of legal custody. *In re J.A.S.*, supra, at syllabus. However, the requirements of R.C. 5103.16(D) were not met.

{¶26} Again, the adoption process is a statutory proceeding which must be strictly followed. R.C. 5103.16; *In re J.A.S.* at ¶22. Based on the facts presented, the need for R.C. 5103.16(D) adoptive placements was not alleviated. Appellant, as the legal custodian of the minor children, cannot avoid the protections put into the adoption process by the legislature. R.C. 5103.16(D) makes no exception for a legal custodian. See *In re J.A.S.* at ¶15.

{¶27} Similar to *In re J.A.S.*, the court only awarded legal custody of the minor children to appellant. R.C. 5103.16(D) requires a placement hearing before an adoption may proceed to a conclusion. Here, placement hearings were not held. Also, the court did not approve placements of the minor children for purposes of adoption. Thus, the requirements of R.C. 5103.16(D) were not strictly complied with in this case.

{¶28} Appellant's second issue is without merit.

{¶29} Accordingly, the court did not err by dismissing appellant's petitions for adoption after finding that adoptive placements are required pursuant to R.C. 5103.16.

{¶30} For the foregoing reasons, appellant's sole assignment of error is not well-taken. The judgments of the Trumbull County Court of Common Pleas, Probate Division, are affirmed.

TIMOTHY P. CANNON, P.J., concurs,

MARY JANE TRAPP, J., concurs with Concurring Opinion.

MARY JANE TRAPP, J., concurring.

{¶31} I write separately to address an issue raised at oral argument regarding whether R.C. 5103.16(D) arguably requires that the children be physically removed from the home of the legal custodian in order to properly begin the adoptive placement process.

{¶32} A similar argument was advanced by the appellants/legal custodians in *In re J.A.S.*, 126 Ohio St.3d 145; 2010-Ohio-3270, and the court provided guidance, writing that “*** placement under R.C. 5103.16(D) may be accomplished without physical movement of the children. Although the statute requires the biological parents to seek court approval of placement, this does not mean that the children must physically be with the biological parents in order for them to file. The purpose of the statute is to provide some judicial control over the placement for adoption; *it does not require removing the children from their legal custodians just so they can be placed back in that home for a different purpose.*” (Emphasis added.) *Id.* at ¶21.