

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CU 2071

NATHAN THOMASEE

VERSUS

ANGELA PARFAIT

Judgment Rendered: February 9, 2007

* * * * *

**Appealed from the
32nd Judicial District Court
In and for the Parish of Terrebonne, Louisiana
Case No. 137,456 c/w Adoption No. 2167**

The Honorable Timothy C. Ellender, Judge Presiding

* * * * *

**Charles Gary Blaize
Houma, Louisiana**

**Counsel for Appellee/Intervenor
Katie Parisean**

**Noel E. Vargas, Jr.
New Orleans, Louisiana
Robert M. Louque, Jr.
Thibodaux, Louisiana**

**Counsel for Appellants
Cheryl E. Parfait and
Calvin Parfait, Jr.**

* * * * *

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

GAIDRY, J.

MEMORANDUM OPINION

The adoptive parents of a minor child appeal a judgment of the 32nd Judicial District Court awarding visitation rights to the former paternal grandmother.¹ We reverse.

PERTINENT FACTS AND RULING OF THE TRIAL COURT

The unmarried parents of a minor child separated and became involved in contentious custody litigation. After the parents were granted joint custody of their child, the paternal grandmother, Katie Parisean, filed a petition to intervene in the custody proceeding on December 7, 2004, seeking visitation rights. Before her petition was set for trial, the father executed an act of voluntary surrender of parental rights on January 27, 2005, and the mother executed an authentic act of consent to her child's adoption. On March 15, 2005, the child's maternal grandparents, Calvin J. Parfait, Jr. and Cheryl E. Parfait, filed a petition for intrafamily adoption of the minor child.

The judgment granting the final decree of adoption was signed on April 29, 2005. On June 28, 2005, after the judgment granting the final decree of adoption was signed, Ms. Parisean filed a "petition to intervene" in the adoption proceeding, requesting "reasonable visitation" with the child.² The request for visitation rights was heard on August 15, 2005. On October

¹ On October 18, 2006, this court issued a Show Cause Order on the grounds that the appeal appeared to be premature, given the filing of a petition to annul or amend the judgment on October 14, 2005. As the parties have conceded the finality of the judgment at issue, our prior order is moot.

² Louisiana Children's Code article 1254 provides that intervention in intrafamily adoption proceedings is limited to "persons having a substantial caretaking relationship with the child for one year or longer" or any other "party in interest." Intervention is predicated upon a showing of "good cause," and is "for the limited purpose of presenting evidence as to the best interests of the child" at the hearing on the petition for intrafamily adoption. *See* La. Ch.C. arts. 1253, 1254, 1255. A motion to intervene in an intrafamily adoption proceeding should therefore be filed prior to the hearing. *See* La.Ch.C. art.

11, 2005, the trial court signed a judgment awarding Ms. Parisean visitation rights with the minor child. Mr. and Ms. Parfait appeal.

ISSUE PRESENTED

Did the trial court commit legal error in awarding visitation rights to the minor child's former paternal grandmother after the child's parents voluntarily surrendered their parental rights for purposes of adoption and after the child was adopted?

REASONS

In addition to terminating the parental rights of parents whose rights have not been previously terminated, a judgment granting a final decree of intrafamily adoption also operates to divest all nonparent blood relatives "of all of their legal rights with regard to the adopted child." La. Ch.C. art. 1256. A party to adoption proceedings or a "party in interest" may appeal a judgment granting a final decree of adoption within thirty days of its rendition. La. Ch.C. art. 1259(A). If no appeal is perfected within that time period, the judgment is final. La. Ch.C. art. 1259(B). Here, the judgment granting the final decree of adoption was not appealed; it is therefore final. Thus, at the time of the hearing of Ms. Parisean's request for visitation, any prior visitation rights she may have attempted to secure by virtue of La. C.C. art. 136(B) or La. R.S. 9:344 were extinguished. The only avenue by which she could conceivably secure visitation would be La. Ch.C. art. 1264, which provides that "the parents of a party who has *forfeited* the right to object to the adoption of his child pursuant to Article 1245 may have limited visitation rights to the minor child so adopted."

1253(B)(1). In this case, the trial court properly treated the "petition to intervene" as the procedural equivalent of a motion for post-adoption visitation rights under La. C.Ch. art. 1265, given the substance of its allegations and the relief sought.

A parent's right to object to an intrafamily adoption is forfeited upon proof that the parent has refused or failed over a period of at least six months, without just cause, to either comply with a court order of support or to visit, communicate, or attempt to communicate with the child. La.Ch.C. art. 1245. A parent's voluntary surrender of parental rights also operates to extinguish those parental rights, and is "irrevocable upon execution[,]" subject to the time limitations set forth in article 1130. La. Ch. C. art. 1123. Here, the child's father did not legally forfeit his right to object to the adoption; he voluntarily surrendered it. Thus, Ms. Parisean is not entitled to limited visitation rights under La.Ch.C. art. 1264.

DECREE

The trial court's judgment is reversed. The costs of this appeal are assessed to the intervenor-appellee, Katie Parisean. This memorandum opinion is issued in accordance with Rule 2-16.1(B) of the Uniform Rules of the Louisiana Courts of Appeal.

REVERSED.