RENDERED: NOVEMBER 2, 2007; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002100-ME
AND
NO. 2006-CA-002138-ME

J.O. APPELLANT

v.

APPEALS FROM FAYETTE FAMILY COURT
HONORABLE KIMBERLY N. BUNNELL, JUDGE
ACTION NOS. 05-J-00233, 05-J-00233-01, O5-J-00234, AND 05-J-00234-00

COMMONWEALTH OF KENTUCKY; APPELLEES
CABINET FOR HEALTH AND FAMILY SERVICES;
D'A.O., A CHILD;
D.O., A CHILD

OPINION AND ORDER
DISMISSING

** ** ** ** **

BEFORE: KELLER, LAMBERT, AND STUMBO, JUDGES.

KELLER, JUDGE: J.O. appeals from the August 29, 2006, order of the Fayette Family Court (the family court) stating that the permanency plan of the Cabinet for Health and Family Services (the Cabinet) should be amended to reflect a goal of adoption for two of J.O.'s minor children. J.O. appears before this Court *pro se* and her brief is somewhat

confusing. However, it appears that J.O. is complaining that she did not receive adequate representation nor a fair hearing before the family court entered the preceding order. In its brief, the Cabinet argues, in pertinent part, that the order from which J.O. appeals is not final and appealable and that this appeal should be dismissed as premature. For the reasons set forth below, we agree with the Cabinet that the appeal must be dismissed.

FACTS

Because we agree with the Cabinet that J.O.'s appeal is premature, we will only briefly summarize the procedural history herein. J.O. is the natural mother of D'A.O., born August 11, 2002, and D.O., born December 27, 2003. On February 15, 2006, the family court entered an emergency custody order placing D'A.O. and D.O. with the Cabinet. The court entered this order, in large part, because J.O. had contacted her case worker and stated that she no longer wanted her children. On February 17, 2005, the family court transferred the children to the Cabinet and appointed counsel for J.O. and the children's father and a guardian ad litem for the children. Thereafter the children were placed in foster care and the Cabinet devised plans for family reunification. J.O., who has been diagnosed as suffering from bipolar disorder, followed through with some of the provisions of her plan; however, she exhibited erratic behavior, as evidenced by numerous references in reports from the Cabinet and the CASA workers. The children, who exhibited some developmental deficits and behavior disorders, improved while in foster care.

In the fall of 2005, the Cabinet sought to change the goal from family re-unification to permanent placement leading to adoption. The family court, after reviewing the record, stated that the Cabinet should continue to work with the family toward the goal of reunification. However, on August 29, 2006, after receiving notification from J.O. that she wanted to voluntarily terminate her parental rights, the family court conducted a permanency hearing and entered an order indicating that the permanency plan be amended to reflect a goal of adoption. It is from this order that J.O. appeals.

ANALYSIS

KRS 610.125(1) provides that, when a child has been removed from his home and placed in the custody of the Cabinet, the court shall conduct a permanency hearing no later than twelve months after placement and every twelve months thereafter. The purpose of such hearings is "to determine the future status of the child" and the court is to address whether parental rights should be terminated, whether the child should be placed for adoption or with a permanent custodian, and "whether the cabinet has documented a compelling reason that it is in the best interest of the child to be placed in . . . [a] living arrangement other than those listed in [the statute]." KRS 610.125(4) provides that the Cabinet "shall present evidence to the court concerning the care and progress of the child since the last permanency hearing." Civil Rule 54.01 provides that "[a] final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding." An order may be final as to fewer than all of the

parties and appealable; however, the order must recite that it is final and "that there is no just reason for delay." CR 54.02

The order from which J.O. appeals does not dispose of any of the rights of either J.O. or the children's father. It only states that the Cabinet plan has changed from "Return to Parent" to "Adoption" and continues the commitment of the children to the Cabinet. The order did not terminate J.O.'s parental rights nor did it terminate the parental rights of the children's father. Furthermore, the order is not designated as final and it does not recite that there is no just reason for delay. Therefore, the order from which J.O. appeals did not finally adjudicate J.O.'s rights and it is not final and appealable. Finally, we note that, after she filed her notice of appeal, J.O. asked the family court to permit her to withdraw her statement that she wanted to voluntarily terminate her parental rights. The family court granted that request. Therefore, not only has there been no final adjudication of J.O.'s rights, there has been essentially no change in J.O.'s position since the children were removed from her care in February of 2006.

CONCLUSION

Because the order from which J.O. appealed is not final and appealable, it is hereby ORDERED, that Appeal Nos. 2006-CA-002100 and 2006-CA-002138 are DISMISSED as interlocutory.

ALL CONCUR.

ENTERED: November 2, 2007

/s/ Michelle M. Keller
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

J.O., *pro se*
Lexington, Kentucky

BRIEF FOR APPELLEE:

Terry L. Morrison
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