RENDERED: APRIL 23, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000629-ME

J.H., MOTHER AND
E.J.H., FATHER — APPELLANTS

APPEAL FROM MARTIN FAMILY COURT
v. HONORABLE JANIE MCKENZIE-WELLS, JUDGE
ACTION NO. 07-J-00165 AND 07-J-00165-001

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF PROTECTION AND
PERMANENCY; AND B.H., A CHILD — APPELLEES

AND NO. 2009-CA-000630-ME

E.J.H., FATHER AND
J.H., MOTHER — APPELLANTS

APPEAL FROM MARTIN FAMILY COURT
v. HONORABLE JANIE MCKENZIE-WELLS, JUDGE
ACTION NO. 07-J-00164 AND 07-J-00164-001

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF PROTECTION AND
PERMANENCY; AND E.H., A CHILD APPELLEES

OPINION AND ORDER
DISMISSING

** ** ** ** **

BEFORE: MOORE, TAYLOR, AND THOMPSON, JUDGES.

THOMPSON, JUDGE: J.H. (mother) and E.J.H. (father) appeal from an order of the Martin Family Court stating that the permanency plan of the Cabinet for Health and Family Services should be amended to reflect a goal of adoption for their minor children, B.H. and E.H. Because we conclude that the orders from which the parents appeal are not final and appealable, we dismiss the appeals.

We will not prolong our discussion by a complete reiteration of the facts surrounding the family and the Cabinet's involvement. Only a brief procedural history needs discussion.

The Cabinet became involved with the family in October 2007 when it received a report regarding allegations of sexual and physical abuse of the children by the father and mother.[1] An emergency removal hearing was held on October 24, 2007, placing the children in the Cabinet's custody. The children were placed in foster care and the Cabinet continued its investigation and devised plans

[1] The court found that a third child was abused by the father and neglected by the mother. However, the parents have not appealed the order in regard to that child.

for family reunification. A dispositional hearing was held and, on January 16, 2008, the Court found the children to be neglected.

In January 2009, a permanency hearing was held at which time the Cabinet sought to change its goal from family reunification to permanent placement leading to adoption. Following a hearing and review of the record, the family court entered orders directing that the permanency plan for each child be amended to adoption. The case was redocketed for January 6, 2010, for further review of the progress of the permanency plan.

Although not addressed by either party, "the appellate court should determine for itself whether it is authorized to review the order appealed from." *Hook v. Hook,* 563 S.W.2d 716, 717 (Ky. 1978). We have made such a review and conclude that the orders appealed from in this case are not final and appealable pursuant to our statutory law and civil rules.

Kentucky Revised Statutes (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." *Id*. To further that purpose, the court must address whether the child should be placed for adoption or with a permanent custodian. Thus, proceedings pursuant to KRS 610.125 are not permanent in the sense that parental rights are severed from their children. Such a drastic action can be accomplished only with the full panoply of due process rights afforded and

pursuant to KRS 620 *et seq*. In fact, KRS 610.125 provides for further hearings to be conducted yearly and that the Cabinet "present evidence to the court concerning the care and progress of the child since the last permanency hearing." KRS 610.125(4).

It is apparent that the orders appealed from by the father and mother did not permanently adjudicate their parental rights. Kentucky Rules of Civil Procedure (CR) 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 of a judgment made final under CR 54.02." Although an order may be final as to fewer than all of the parties and appealable, it must recite that it is final and appealable and "that there is no just reason for delay." CR 54.02.

The orders appealed do not contain the mandatory language and do not dispose of any of the rights of the parents. The orders only state that the Cabinet's plan has changed from family reunification to adoption and continues the commitment of the children to the Cabinet. Furthermore, the orders are not

designated as final and appealable and do not recite that "there is no just reason for delay." Therefore, the orders from which the father and mother appeal do not finally adjudicate their rights and are not final and appealable.

Because the orders from which the father and mother appealed are not final and appealable, it is hereby ORDERED, that Appeal Nos. 2009-CA-000629-ME and 2009-CA-000630-ME are DISMISSED as interlocutory.

ALL CONCUR.

ENTERED: April 23, 2010

/s/ Kelly Thompson
JUDGE, COURT OF APPEALS

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