

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-002149-ME

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT, FAMILY DIVISION ONE
v. HONORABLE JOAN L. BYER, JUDGE
ACTION NO. 07-J-501410

HON. JOAN L. BYER, JUDGE,
JEFFERSON CIRCUIT COURT, FAMILY DIVISION
ONE; HON. MICHAEL J. O'CONNELL, JEFFERSON
COUNTY ATTORNEY; AND K.B., A CHILD

APPELLEES

OPINION
VACATING AND REMANDING

** ** * ** * ** *

BEFORE: ACREE, COMBS, AND WINE, JUDGES.

COMBS, JUDGE: The Commonwealth of Kentucky, Cabinet for Health and
Family Services appeals from an order of the Jefferson Family Court ordering the

Cabinet to file an adoption petition for the minor child, K.B. After our review, we vacate the order and remand this matter to the Jefferson Family Court.

K.B. is a minor child in custody of the Cabinet for Health and Family Services (the Cabinet). His sister is also in custody of the Cabinet. Both children have been placed with the same foster family, but the sister is also involved in a residential treatment program. The children are extremely attached to one another. Their relationship is best described by the following excerpt from the Cabinet's brief:

The children's bond to one another is undisputed and has been, at times, the only constant they've had in their short lives. (Appellant's Brief at p. 7.)

Adoption is the Cabinet's goal for both children, and the foster family intends to adopt them. The Cabinet believes that K.B. is ready for adoption but that his sister should complete treatment first. However, the Cabinet also believes that it would **not** be in the children's best interest to separate them in order for K.B. to be adopted prior to his sister's adoption.

On September 8, 2009, the Jefferson Family Court ordered the Cabinet to file a petition for K.B.'s adoption. The Cabinet filed a motion to alter, amend, or vacate. The Family Court denied the motion, and this appeal followed.

The Cabinet argues that the Family Court acted without legal authority. As this is a question of law, our review is *de novo*. *Grange Mut. Ins. v. Trude*, 151 S.W.3d 803, 810 (Ky. 2004).

Kentucky Revised Statute[s] (KRS) 199.470(1) authorizes “any *person* who is eighteen (18) years of age and who is a resident of this state or who has resided in this state for twelve (12) months next before filing may file a petition for leave to adopt a child[.]” (emphasis added). In Kentucky, statutes are to be “written in nontechnical language and in a clear and coherent manner using words with common and everyday meanings.” KRS 446.015. Furthermore, the General Assembly has charged the courts to interpret statutes with the same usage while applying liberal construction that comports with legislative intent. KRS 446.080. “A statute should be construed, if possible, so as to effectuate the plain meaning and unambiguous intent expressed in the law.” *Bob Hook Chevrolet Isuzu, Inc. v. Commonwealth of Kentucky, Transp. Cab.*, 983 S.W.2d 488, 492 (Ky. 1998) (citations omitted).

There is no ambiguity in KRS 199.470(1). **Persons** alone may file adoption petitions. The Cabinet is not a person; it is an agency. It is governed both by statutes and by administrative regulations promulgated by the Cabinet’s Secretary. KRS 199.420. There are no administrative regulations that authorize the Cabinet to file adoption petitions. The concept has not been contemplated, addressed, or implemented either by the General Assembly or by the Secretary.

We note that our Supreme Court has emphasized that the prerequisites for filing an adoption petition must be interpreted with utmost scrupulousness:

[A]doption only exists as a right bestowed by statute and, furthermore, that there must be strict compliance with the adoption statutes. . . . Nothing can be assumed,

presumed, or inferred and what is not found in the statute is a matter for the legislature to supply and not the courts.

Day v. Day, 937 S.W.2d 717, 719 (Ky. 1997) (quoting *Coonradt v. Sailors*, 209 S.W.2d 859 (Tenn. 1948)).

The Jefferson Family Court had no legal authority to enter the order before us on appeal. Therefore, we vacate the order and remand this matter to the Jefferson Family Court for additional action as may be required by this case.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEFS FOR APPELLEES

Erika Saylor
Louisville, Kentucky