

RENDERED: FEBRUARY 18, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2010-CA-000600-ME

JAMES ROBERT OVERBEE;  
AND DONNA OVERBEE

APPELLANTS

v. APPEAL FROM LEE CIRCUIT COURT  
HONORABLE ROBERT OVERSTREET, JUDGE  
ACTION NO. 07-CI-00223

PAUL JOHNSON; AND  
TINA JOHNSON

APPELLEES

OPINION AND ORDER  
DISMISSING

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BEFORE: TAYLOR, CHIEF JUDGE; KELLER, JUDGE; LAMBERT,<sup>1</sup> SENIOR  
JUDGE.

TAYLOR, CHIEF JUDGE: This Court previously rendered a Show Cause Order  
requiring appellants to show good cause why this appeal should not be dismissed

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<sup>1</sup> Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

as having been taken from a nonfinal and interlocutory order. Appellants have timely filed a response thereto, which we have carefully reviewed. We, however, conclude that appellants have failed to show good cause and now set forth our reasoning for such conclusion.

The relevant procedural facts of this case are rather straight forward. Appellees filed a petition for permanent custody of their biological child, S.J., in Lee Circuit Court. The record indicates that appellants were previously granted permanent custody of S.J. by order of the Lee District Court.

On March 22, 2010, the Lee Circuit Court entered an order entitled “Ruling on ‘*de facto*’ Custodian Motion.” Therein, the circuit court solely determined that appellants did not qualify as *de facto* custodians. The March 22, 2010, order did not contain Kentucky Rules of Civil Procedure (CR) 54.02 language. Four days after entry of this order, appellants filed a notice of appeal therefrom.

A final judgment is one that adjudicates all the rights of all the parties in an action. CR 54.01. In this case, it is apparent that the March 22, 2010, order did not adjudicate all the rights of all the parties because the circuit court had yet to adjudicate the ultimate claim of S.J.’s custody. The circuit court’s ruling upon *de*

*facto* custodian status only constitutes an “issue” in the ultimate determination of custody.<sup>2</sup> We also note that a nonparent’s standing against a parent may be acquired through means other than *de facto* status. *See Moore v. Asente*, 110 S.W.3d 336 (Ky. 2003); *Mullins v. Picklesimer*, 317 S.W.3d 569 (Ky. 2010)(holding that a nonparent may obtain standing if such nonparent has physical custody of the child for a specified time period and has been awarded or claims a right to legal custody under Kentucky law).

Accordingly, we hold that the March 22, 2010, order constitutes a nonfinal order because the ultimate claim of S.J.’s custody has yet to be adjudicated by the circuit court.

Now, therefore, be it ORDERED that Appeal No. 2010-CA-000600-ME is hereby DISMISSED as being taken from an interlocutory order.

ALL CONCUR.

ENTERED: February 18, 2011

/s/ Jeff S. Taylor  
Chief Judge, Court of Appeals

BRIEF FOR APPELLANTS:

Melissa C. Howard  
Jackson, Kentucky

BRIEF FOR APPELLEES:

Hershel Branson, Jr.  
Jackson, Kentucky

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<sup>2</sup> Even if the circuit court included Kentucky Rules of Civil Procedure 54.02 recitals, we express grave doubt that the March 22, 2010, order would then be appealable. *See Hook v. Hook*, 563 S.W.2d 716 (Ky. 1978).