

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000992-MR

E.H.

APPELLANT

v.

APPEAL FROM LESLIE CIRCUIT COURT
HONORABLE GENE CLARK, JUDGE
ACTION NO. 08-J-00057

S.C.

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON AND MOORE, JUDGES; ISAAC,¹ SENIOR JUDGE.

ISAAC, SENIOR JUDGE: E.H. appeals from an order awarding custody of his minor child to S.C. The sole issue on appeal is whether the trial court erred by failing to make a final disposition of the case within 45 days as required by Kentucky Revised Statute (KRS) 620.090(5). We affirm.

¹ Senior Judge Sheila R. Isaac sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

A juvenile dependency, neglect, and abuse petition was filed on November 5, 2008. After a temporary removal hearing on November 6, 2008, the trial court placed the child with S.C., the child's maternal grandmother. The trial court scheduled an adjudication hearing for November 24, 2008, which was rescheduled for December 8, 2008. On December 11, 2008, the trial court entered an adjudication hearing order and scheduled a disposition hearing for January 12, 2009, which was rescheduled for January 26, 2009. On February 19, 2009, the trial court entered an order passing the disposition of the case pending further orders. On December 9, 2009, E.H. filed a motion seeking entitlement to immediate custody of the child. The trial court denied the motion and entered findings of fact, conclusions of law, and an order of disposition awarding custody of the child to S.C. Subsequently, E.H. filed a motion to alter, amend, or vacate the order, which the trial court denied.

The sole issue on appeal is whether the trial court erred by failing to make a final disposition of the case within 45 days of removal as required by KRS 620.090(5).

KRS 620.090(5) states:

The child shall remain in temporary custody with the cabinet for a period of time not to exceed forty-five (45) days from the date of the removal from his home. The court shall conduct the adjudicatory hearing and shall make a final disposition within forty-five (45) days of the removal of the child. The court may extend such time after making written findings establishing the need for

the extension and after finding that the extension is in the child's best interest.

The child was removed on November 6, 2008. Therefore, the trial court should have made a final disposition of the case or made written findings justifying an extension before December 21, 2008. However, E.H. failed to object to any continuance of the disposition hearing beyond the 45-day limitation. In fact, E.H. first brought this issue to the attention of the trial court on the eve of the disposition hearing almost a year after the case had been continued. Appellate courts in Kentucky will not review alleged errors unless the issue was presented to the trial court. *Skaggs v. Assad*, 712 S.W.2d 947, 950 (Ky. 1986). E.H. cannot be permitted to remain silent in the face of a known error, agree to a course of proceeding, and then claim error upon an unfavorable result. Moreover, once the issue was belatedly brought to the attention of the trial court, it made sufficient findings regarding the necessity of extending the 45-day period because of the complexity of the underlying facts and unusual procedural posture of this case.

Accordingly, the order of the Leslie Circuit Court is affirmed.

DIXON, JUDGE, CONCURS.

MOORE, JUDGE, CONCURS IN RESULT ONLY.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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