

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001812-ME

M.D.

APPELLANT

APPEAL FROM WAYNE CIRCUIT COURT
v. HONORABLE JENNIFER UPCHURCH CLARK, JUDGE
ACTION NO. 08-J-00209

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

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: CLAYTON, LAMBERT, AND VANMETER, JUDGES.

VANMETER, JUDGE: M.D. appeals *pro se* from the Wayne Circuit Court order finding him in contempt of court. Finding this to be an interlocutory appeal and that we are without jurisdiction to hear the appeal, we dismiss M.D.'s appeal and affirm the order.

This matter arose during a disposition hearing pursuant to KRS¹ 610.010, in which the trial court addressed the temporary placement of M.D.'s minor daughter. At the time of the hearing, M.D. was incarcerated and participated via a telephonic conference call. During the course of the hearing, M.D. attempted to raise issues outside of the hearing, despite the trial judge's repeated attempts to inform him of the limited scope of the hearing. The trial judge continually asked M.D. to stop talking, and when M.D. failed to do so, the judge ended the telephone conversation. The trial court found M.D. in contempt of court, and ordered the sentencing to be held in abeyance until his release from incarceration.

At the outset, we must address what we determine to be a fatal jurisdictional flaw in this case. CR² 54.01 defines a final and appealable judgment as "a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02." CR 54.02(1) provides that a "court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay." If it chooses to do so, "[t]he judgment shall recite such determination and shall recite that the judgment is final." *Id.*

The order from which M.D. appeals does not adjudicate all the rights of the parties. To the contrary, the order specifically states the "sentencing on contempt held in abeyance until father's release from custody[.]" *See Commonwealth v.*

¹ Kentucky Revised Statutes.

² Kentucky Rules of Civil Procedure.

Carneal, 274 S.W.3d 420, 427 (Ky. 2008) (holding that the final judgment in a criminal case is the sentencing). Furthermore, M.D. finds no refuge in CR 54.02 because there was no language contained in the order reciting that no just reason for delay existed regarding the order of contempt. Accordingly, this appeal is interlocutory and must be dismissed.

Appeal No. 2010-CA-001812-ME is hereby dismissed.

ALL CONCUR.

ENTERED: April 15, 2011 /s/ Laurance B. VanMeter
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

BRIEF FOR APPELLEE:

M.D., *Pro se*
Central City, Kentucky

No brief for appellee.