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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000134-ME

S.H.

APPELLANT

v.

APPEAL FROM CLAY CIRCUIT COURT
HONORABLE GENE CLARK, JUDGE
ACTION NO. 13-AD-00004

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY AND
V.N.M.J.R.N., A CHILD

APPELLEES

AND

NO. 2014-CA-000135-ME

S.H.

APPELLANT

v.

APPEAL FROM CLAY CIRCUIT COURT
HONORABLE GENE CLARK, JUDGE
ACTION NO. 13-AD-00005

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY AND
B.N.N., A CHILD

APPELLEES

AND

NO. 2014-CA-000136-ME

S.H.

APPELLANT

v.

APPEAL FROM CLAY CIRCUIT COURT
HONORABLE GENE CLARK, JUDGE
ACTION NO. 13-AD-00006

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

APPELLEES

AND

NO. 2014-CA-000137-ME

S.H.

APPELLANT

v.

APPEAL FROM CLAY CIRCUIT COURT
HONORABLE GENE CLARK, JUDGE
ACTION NO. 13-AD-00007

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY AND
W.R.D.N., A CHILD

APPELLEES

OPINION
VACATING AND REMANDING

BEFORE: DIXON, STUMBO AND VANMETER, JUDGES.

STUMBO, JUDGE: S.H. (hereinafter referred to as Mother) appeals the involuntary termination of her parental rights to four children.¹ Mother's argument on appeal revolves around the interpretation of Family Court Rules of Procedure and Practice (FCRPP) 7(1). She claims the Cabinet for Health and Family Services (Cabinet) violated FCRPP 7(1), which would entitle her to a new termination hearing. We agree; therefore, we vacate the orders terminating Mother's parental rights to all four children and remand for further proceedings.

Because this case revolves around the interpretation of FCRPP 7(1), few facts are necessary for our analysis. At the termination of parental rights hearing, the only person set to testify was the social services worker, Sherry Shepherd. When the Cabinet called the witness to testify, Mother, through her guardian ad litem (GAL), objected. Mother's GAL argued the Cabinet violated FCRPP 7(1) and that the social worker's testimony was inadmissible.

FCRPP 7(1) states:

Unless otherwise ordered by the court, in any action in which the permanent custody or time-sharing of the child(ren) is in issue, each party shall, not less than 14 days prior to the day set for hearing, provide the other party(ies) with a list of the names and addresses of every person and a short statement of the subject of their testimony, other than a parent or the child(ren) of the parents, expected to be called as a witness, as well as a list of exhibits to be entered.

¹ This case involves minor children; therefore, we will not use the names of the parents or minor children.

Mother's GAL argued that he was not given the 14 days advanced notice of the social worker's testimony, or the exhibits to be used, in contravention of rule 7(1). The Cabinet argued that rule 7 was not found within the termination of parental rights section of the FCRPP. The trial court overruled the objection. It held that rule 7 did not apply to a termination hearing. The court then stated that it would schedule another date in which it would determine who gets ultimate custody of the children. The hearing then proceeded and Mother's parental rights to her four children were terminated. This appeal followed.

Mother argues on appeal that the trial court should have sustained the GAL's objection and precluded the social worker's testimony. We agree because we believe that FCRPP 7(1) does apply to termination of parental rights cases. Even though the trial court set another date to determine who would obtain permanent custody of the children, Mother's rights as to the permanent custody of the children were at issue during the termination proceedings. In other words, once Mother's parental rights were terminated, she could no longer have custody of the children.

The Cabinet argues that rule 7 does not apply to termination proceedings because that rule is found in a section not dedicated to termination proceedings. Rule 7 is found under the FCRPP section heading "III. Custody, Shared Parenting, Visitation and Support." There is a different section of the FCRPP with specific rules relating to termination of parental rights. That section heading is "VII.

Adoption and Termination of Parental Rights.” We do not believe the different section headings have any bearing on the issue at hand. Rule 7(1) uses the phrase “in *any* action.” (Emphasis added). The termination of parental rights is an action which determines permanent custody. Furthermore, “[t]itle heads, chapter heads, section and subsection heads or titles, and explanatory notes and cross references, in the Kentucky Revised Statutes, do not constitute any part of the law[.]” KRS 446.140; *see also Shewmaker v. Commonwealth*, 30 S.W.3d 807 (Ky. App. 2000). We see no reason why this reasoning should not apply to the FCRPP.

The Cabinet also argues that if rule 7 does apply to termination of parental rights proceedings, then its violation would have been harmless error. We disagree. “When considering a claim of harmless error . . . the court determines whether the result probably would have been the same absent the error or whether the error was so prejudicial as to merit a new trial.” *CSX Transp., Inc. v. Begley*, 313 S.W.3d 52, 69 (Ky. 2010) (footnotes and citations omitted). Here, the only witness to testify at the termination hearing was the social worker. Had the trial court sustained the objection and excluded the social worker’s testimony, there would have been no evidence introduced to support terminating Mother’s parental rights; therefore, the result of the hearing would not have been the same.

FCRPP 7(1) applies to termination of parental rights proceedings. Because the Cabinet did not give Mother or her GAL the information required by rule 7(1) 14 days in advance of the hearing, we must vacate the orders terminating Mother’s parental rights to all four children and remand for further proceedings.

DIXON, JUDGE, CONCURS.

VANMETER, JUDGE, DISSENTS AND FILES SEPARATE

OPINION.

VANMETER, J., DISSENTING: I respectfully dissent for the simple reason that, in my view, FCRPP 7(1) does not apply to termination proceedings. I would affirm the Clay Family Court's decisions.

BRIEFS FOR APPELLANT:

James Wooton, II
Hyden, Kentucky

BRIEF FOR APPELLEE CABINET
FOR HEALTH AND FAMILY
SERVICES:

Stephen D. Spurlock
London, Kentucky