

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002936-MR

BOBBY LANG

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE CYNTHIA E. SANDERSON, JUDGE
ACTION NO. 99-AD-00027

COMMONWEALTH OF KENTUCKY,
CABINET FOR FAMILIES AND CHILDREN;
CANDACE GURLEY;
AN UNKNOWN MINOR AND UNKNOWN PERSONS

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: McANULTY, MILLER, AND TACKETT, JUDGES.

MILLER, JUDGE: Bobby Lang brings this appeal from a November 1, 1999, order of the McCracken Circuit Court. We affirm.

On September 15, 1999, Lang filed a complaint in the McCracken Circuit Court. Therein, he alleged to be the possible biological father of an infant born January 28, 1999, at Lourdes Hospital in Paducah, McCracken County, Kentucky. Apparently, the infant was placed for adoption by the mother, Candace Gurley, with the Kentucky Cabinet for Families and Children. Lang and Gurley were both residents of Illinois.

Lang also requested the court enter a restraining order preventing the adoption, or if the adoption had been completed, to release all information in regard thereto. Lang further sought genetic testing to determine his paternity, and in the event paternity was proved, custody of the infant. The circuit court dismissed his complaint on November 1, 1999, thus precipitating this appeal.

Upon review of the record, we observe that a videotaped hearing upon this matter was conducted on October 13, 1999. The videotaped hearing contains no sound. As an appellate court, our review is based upon the record; absent a complete record, we are unable to adequately review a circuit court's decision.

It is well established that Lang carries the burden of providing this Court with a complete record. In Ventors v. Watts, Ky. App., 686 S.W.2d 833, 835 (1985), the Court observed:

Certifying the untranscribed tapes made at hearings is an effective method of keeping expenses down for an appellant and producing a record for review, however, those tapes so used must be clearly audible and as accessible to the reviewing judges as a typed transcript. Substitution of the tapes of the hearing in lieu of a transcript does not lessen the appellant's burden in providing us a record to review.

In the case at hand, appellant was unable to refer this Court to specific tape and digital counter numbers on the taped recording to support his statement of the case pursuant to Ky. R. Civ. P. (CR) 76.12(4)(c)(iii). A complete record is necessary for an adequate review of this matter.

We also observe CR 75.13 provides that appellant may submit a narrative statement of an inaudible tape to supplement

the record or in lieu of a transcript. National Dairy Products Corp. v. Rittle, Ky. App., 487 S.W.2d 894 (1972), established appellant's duty to provide a narrative which has been settled and approved by the trial court pursuant to CR 75.13(1). In National Dairy Products, the trial court forced appellant to go to trial with no court reporter. We held that "[e]ven though it is an error to force a litigant to trial without a court reporter, he must follow out the procedure of supplying the deficiency with a narrative statement in order for the reviewing court to determine whether he has been prejudiced." Id. at 896. Lang, by neglecting to submit a narrative statement, failed to provide us with a record to review. Therefore, CR 75.13 affords Lang no relief.

For the foregoing reasons, the order of the McCracken Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:
Brenda G. Bryant
Metropolis, Illinois

BRIEF FOR APPELLEE,
COMMONWEALTH OF KENTUCKY,
CABINET FOR FAMILIES AND
CHILDREN:

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