

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-000517-MR

C.L.T.C AND A.D.C

APPELLANTS

v. APPEAL FROM SHELBY CIRCUIT COURT  
HONORABLE WILLIAM F. STEWART, JUDGE  
ACTION NO. 02-AD-00014

CABINET FOR FAMILIES AND CHILDREN  
AND COMMONWEALTH OF KENTUCKY

APPELLEES

OPINION  
VACATING AND REMANDING

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BEFORE: MINTON, SCHRODER, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: C.L.T.C. and A.D.C. (collectively referred to as appellants) bring this appeal from Findings of Fact and Conclusions of Law and orders terminating parental rights entered in the Shelby Circuit Court on December 11, 2002. We vacate and remand.

Appellants are the parents of three minor children. Following an emergency custody hearing, appellants' children

were committed to the custody of the Cabinet for Families and Children (the Cabinet) in September 2001. It appears A.D.C. was incarcerated on charges of criminal abuse as a result of the incident that led to the emergency petition. Cindy was apparently receiving treatment for psychological problems and had been admitted to the University of Louisville Hospital.

In November 2001, some thirteen months after the children were placed in the custody of the Cabinet, a dispositional review was apparently conducted. On July 10, 2002, the Cabinet filed a Petition for Involuntary Termination of Parental Rights against appellants as to all three children. Counsel was appointed to represent appellants and a hearing was scheduled for November 15, 2002.

On October 23, 2002, some three weeks before the hearing, the circuit court entered the Cabinet's tendered Findings of Fact and Conclusions of Law and orders terminating parental rights. By order entered two days later, the circuit court set aside the October 23<sup>rd</sup> findings and orders. Thereafter, on November 15, 2002, the hearing was conducted as scheduled. On December 11, 2002, the circuit court entered findings and orders substantively identical to those entered on October 23<sup>rd</sup>. On December 23, 2002, appellants filed a Motion to Alter, Amend or Vacate, which was denied. This appeal follows.



opinion on the merits and, thus, gives rise to a question regarding the judge's impartiality.

The law in Kentucky is clear that a party seeking disqualification of a judge must file a motion with the presiding judge pursuant to KRS 26A.015 or an affidavit with the clerk pursuant to KRS 26A.020. Nichols v. Commonwealth, Ky., 839 S.W.2d 263 (1992). Appellants did not file either. Furthermore, recusal based upon bias or impartiality "is appropriate only when the information is derived from an extra-judicial source. Knowledge obtained in the course of earlier participation in the same case does not require that a judge recuse himself." Marlowe v. Commonwealth, Ky., 709 S.W.2d 424, 428 (1986) citing United States v. Winston, 613 F.2d 221, 223 (1980). Thus, the fact that the orders were entered before the hearing does not, standing alone, constitute a basis for recusal. As appellants have not alleged that the judge obtained any knowledge from an extra-judicial source, appellants' contention regarding his recusal is without merit.

Appellants also contend the judgment below was "rendered mechanically" and was not supported by the evidence. Appellants specifically contend the circuit court merely entered the findings and orders tendered by the Cabinet's counsel and

did not engage in any independent fact-finding.<sup>1</sup> Appellants further contend the findings of fact entered by the circuit court contained several inaccuracies which are also indicative of a lack of independent fact-finding.

In a proceeding to terminate parental rights a "fundamental liberty interest" is at issue; thus, the parties have a "constitutional right to fundamental fairness as guaranteed by the Fourteenth Amendment of the U.S. Constitution." G.G.L. v. Cabinet for Human Res., Ky. App., 686 S.W.2d 826, 828 (1985). We also recognize it is acceptable and common practice for attorneys to draft proposed findings of fact and conclusions of law and submit those to the circuit court. Kentucky Milk Mktg. and Anti-Monopoly Comm'n v. Bordon Co., Ky. App., 456 S.W.2d 831 (1969). However, it is an equally well-established principle that "to the extent that the court delegates its power to make findings of fact and draw conclusions this is not good practice." Id. at 834. Moreover, the circuit judge has a duty to make independent finding of facts and conclusions of law that are consistent with the evidence presented.

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<sup>1</sup> The Cabinet for Families and Children (the Cabinet) does not dispute that the findings and orders entered by the judge on December 11, 2003, were substantively identical to those it tendered to the court before the hearing and which were entered on October 23, 2003.

To enter Findings of Fact and Conclusions of Law tendered by the Cabinet, which were entered before the hearing and then set aside, would ordinary not be sufficient to constitute a breach of the court's duty to make independent findings of fact. However, in the case *sub judice* the circuit court's Findings of Fact and Conclusions of Law contain numerous inaccuracies which do not conform to the evidence presented at the hearing.

For example, paragraph 11 of the Findings of Fact and Conclusions of Law states that Syndey Railing, a social worker employed by the Cabinet, testified at the hearing. The record does not reflect that she testified. Additionally, paragraph 9 recites that A.D.C. was convicted of terroristic threatening in Bullitt District Court, but the record is silent on the issue. Appellants point out numerous other erroneous findings of fact. The circuit court's erroneous findings of fact coupled with the court's exclusive use of the Cabinet's tendered findings compels the inescapable conclusion that the circuit court improperly delegated its duty to make independent findings of fact and conclusions of law. We view such delegation as constituting palpable error.

We perceive appellants' remaining contentions of error to be moot or to be without merit.

Accordingly, we vacate the Findings of Fact and Conclusions of Law and orders of the circuit court terminating appellants' parental rights and direct the court to conduct another hearing.<sup>2</sup> In the interim, the children shall remain committed to the custody and care of the Cabinet. Following the hearing, the circuit court is directed to make independent findings of fact and conclusions of law based upon the evidence presented.<sup>3</sup>

For the foregoing reasons, the Findings of Fact and Conclusions of Law and orders terminating appellants' parental rights entered on December 11, 2002, in the Shelby Circuit Court are vacated and the matter is remanded with directions that the circuit court conduct another hearing and make independent findings of fact and conclusions of law consistent with the evidence presented.

ALL CONCUR.

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<sup>2</sup> We note that counsel for the Cabinet conceded at oral argument that this matter should be remanded for the circuit court to correct the errors contained in its Findings of Fact and Conclusions of Law and orders terminating parental rights entered on December 11, 2002.

<sup>3</sup> This opinion should not be construed as holding that the termination of appellants' parental rights was not warranted. Having reviewed the record, this Court is more than concerned about the ability and willingness of appellants to provide adequate care for their children.

BRIEFS FOR APPELLANT:

William Jay Hunter, Jr.  
Kathryn V. Eberle  
Stoll, Keenon & Park, LLP  
Louisville, Kentucky

BRIEF AND ORAL ARGUMENT FOR  
APPELLEE:

Dilissa G. Milburn  
Assistant Counsel  
Cabinet for Health and  
Family Services  
Mayfield, Kentucky

ORAL ARGUMENT FOR  
APPELLANT:

William Jay Hunter, Jr.  
Stoll, Keenon & Park, LLP  
Louisville, Kentucky