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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2004-CA-000450-MR

DAVID STIFFEY AND DIANE STIFFEY

APPELLANTS

v. APPEAL FROM WARREN FAMILY COURT
HONORABLE MARGARET R. HUDDLESTON, JUDGE
ACTION NO. 03-CI-01688

CHARLOTTE CURTIS AND E. C.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE, KNOPF, AND MINTON, JUDGES.

KNOPF, JUDGE: David and Diane Stiffey appeal from an order of the Warren Family Court, entered January 30, 2004, which dismissed their petition for permanent custody of E.C. The Stiffeys contend that the family court misconstrued KRS 403.270 when it determined that they had not cared for E.C. long enough to be deemed her de facto custodians. Agreeing with the family court's construction of the statute, we affirm.

In September 2002, when Charlotte Curtis was incarcerated for misdemeanors including driving under the influence, the Warren Family Court determined that her daughter, E.C., was dependent and neglected for the purposes of KRS Chapters 610 and 620 and awarded temporary custody of her to the Stiffeys. The Stiffeys are acquaintances of Curtis and relatives of Curtis's roommate, who had left E.C. with them. In October 2003, after they had cared for E.C. for more than a year, the Stiffeys petitioned the family court for permanent custody.

The Stiffeys based their petition on KRS 403.270, which provides that non-parents who supply a child's primary care and support for a year¹ may petition the court as de facto custodians for legal custody of the child. The statute also provides, however, that

[a]ny period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person [petitioner] for the required minimum period.²

Because Curtis had three times (twice prior to the Stiffeys' petition and once while the petition was pending) moved the

¹ The statutory period is six months if the child is under three years of age.

² KRS 403.270(1)(a).

family court in her dependency action to terminate the temporary custody order and return E.C. to her care, the trial court ruled that she had, for the purposes of KRS 403.270, commenced legal proceedings seeking to regain custody, and thus had tolled the period of the Stiffeys' care. When the duration of those tollings was taken into account, the Stiffeys had not cared for E.C. for the required minimum period.

Appealing from that ruling, the Stiffeys contend that "a legal proceeding," under the statute means the same thing as "a civil action" under the rules of procedure,³ and thus may be commenced only by the filing of a complaint and the issuance of a summons.⁴ Because Curtis's motions in the dependency case did not commence a proceeding in this sense, the motions, the Stiffeys argue, should not be deemed to have tolled the period during which they provided primary care to E.C.

As the parties note, in construing statutes this Court strives to ascertain and give effect to the intent of the General Assembly.⁵ We find that intent in the plain language of the statute if possible.⁶ We agree with the trial court that most plainly understood the phrase "legal proceedings" has a

³ CR 2.

⁴ CR 3.

⁵ Sherfey v. Sherfey, Ky. App., 74 S.W.3d 777 (2002).

⁶ *Id.*

broader meaning than the technical one the Stiffeys urge.

According to *Black's Law Dictionary*, "proceeding"

is a word much used to express the business done in courts. A proceeding in court is an act done by the authority or direction of the court, express or implied. It is more comprehensive than the word "action," but it may include in its general sense all the steps taken or measures adopted in the prosecution or defense of an action, including . . . all motions made in the action.⁷

To invoke the tolling provision of KRS 403.270, therefore, Curtis was required to commence a proceeding--an action or a step within an action--to regain custody of E.C. This she did.

KRS 610.010(13) provides that the family court retains jurisdiction over a dependency action and has authority to terminate a temporary custody order and return the child to her parent. By means of her motions, Curtis commenced proceedings under this section to regain custody of her daughter.

Sherfey v. Sherfey,⁸ upon which the Stiffeys rely, is not to the contrary. In Sherfey this Court held that the parents' defense of a juvenile petition and of a subsequent domestic violence petition could be deemed neither the commencement of a proceeding nor an attempt to regain custody and thus did not invoke KRS 403.270(1)'s tolling provision.

⁷ Garner, ed., *Black's Law Dictionary* 1221 (7th ed. 1999) (citation and internal quotation marks omitted).

⁸ *Supra*.

This case is clearly distinguishable. Curtis's motions were not merely defensive but actively sought new custody determinations in hopes of regaining custody. Under the rationale of Sherfey, therefore, as well as the plain language of KRS 403.270(1), Curtis's motions did invoke the statute's tolling provision and precluded the Stiffeys' custody claim. The trial court did not err by so ruling.

Nor are we persuaded that the definition of "commencement" included in the newly adopted Uniform Child Custody Jurisdiction and Enforcement Act⁹ alters this result. Even if the new definition would have retrospective force, the plainest reading of it limits its application to the uniform act. If the General Assembly intended the definition to apply more generally to KRS Chapter 403, it would have made that intention clear by including it among the chapter's general provisions.

In sum, by filing motions to terminate the Stiffeys' temporary custody of her daughter, Curtis commenced proceedings to regain custody and thus invoked the tolling provision of KRS 403.270(1). Because absent the tolled periods the Stiffeys did not have custody for the statutory minimum of one year, the family court properly dismissed their petition for permanent

⁹ Kentucky Acts 2004 Chapter 133 Sections 1 to 41. *Cf.* KRS 403.400 *et seq.* Under the new uniform act, "'commencement' means the filing of the first pleading in a proceeding."

custody. Accordingly, we affirm the January 4, 2004, order of the Warren Family Court.

ALL CONCUR.

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