RENDERED: NOVEMBER 24, 2004; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001129-MR

A.A.W.S.L. APPELLANT

APPEAL FROM FRANKLIN CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE REED RHORER, JUDGE
ACTION NO. 03-AD-00014

CABINET FOR FAMILIES
AND CHILDREN APPELLEE

OPINION AND ORDER
DISMISSING

** ** ** ** **

BEFORE: BUCKINGHAM, DYCHE AND GUIDUGLI, JUDGES.

GUIDUGLI, JUDGE: A.A.W.S.L.[1] has appealed from the Franklin Circuit Court, Family Court Division's Findings of Fact, Conclusions of Law and Order of Judgment entered May 13, 2004, terminating her parental rights to her two minor children, D.R.L. and T.M.B. Because A.A.W.S.L. failed to name the

[1] Because this case concerns the termination of parental rights, we shall use initials in place of names to protect the identities of the parents and children involved. Administrative Order No. 98-1.

children in her notice of appeal to this Court, we must dismiss her appeal.

In April 2003, the Cabinet for Families and Children filed a petition to involuntarily terminate A.A.W.S.L.'s parental rights to two of her three daughters.[2] D.R.L., born June 13, 1992, was committed to the Cabinet as a neglected child in 1998, while T.M.B., born September 14, 1999, was committed as a dependent child in 2000. In its petition, the Cabinet also sought to terminate the parental rights of D.C.L., who is A.A.W.S.L.'s husband and D.R.L.'s natural father; and L.A.P., who A.A.W.S.L. named as T.M.B.'s natural father. L.A.P., however, denied paternity and signed a disclaimer to this effect. Although a warning order attorney was appointed to notify D.C.L. of the petition, he never filed an answer or otherwise contested the Cabinet's claims. After appointing a guardian ad litem to the children and holding a hearing, the circuit court entered its findings of fact and conclusions of law, declaring the children to be abused and neglected and that it would be in their best interest to terminate A.A.W.S.L.'s parental rights. Accordingly, the circuit court entered orders terminating her parental rights. This appeal followed.

In her brief, A.A.W.S.L. argues that the circuit court erred in terminating her parental rights to T.M.B. because there

[2] A.A.W.S.L. had previously given up custody of her eldest daughter, who is not involved in the present case.

had been no prior adjudication that she was abused or neglected and there was not substantial evidence for a finding of abuse or neglect in the present proceeding. Furthermore, she argues that the Cabinet did not make reasonable efforts for reunification with either child. On the other hand, the Cabinet simply argues that the circuit court's findings of fact were supported by substantial evidence and were not clearly erroneous. However, we cannot reach the merits of this appeal because we have determined that A.A.W.S.L.'s failure to name all of the indispensable parties in her notice of appeal is fatal.

CR 73.03 provides that a notice of appeal, which when filed transfers jurisdiction of a case from the circuit to the appellate level,[3] "shall specify by name all appellants and all appellees ('et al.' and 'etc.' are not proper designation of parties)." If the notice of appeal fails to name all of the indispensable parties, the appeal must be dismissed.[4] In R.L.W. v. Cabinet for Human Resources,[5] this Court held that "children shall be necessary parties to any appeal from an action terminating, or failing to terminate their parents' parental rights." The Court then dismissed the appeal for the failure to name the children. Several years later in R.C.R. v. Cabinet for

[3] City of Devondale v. Stallings, Ky., 795 S.W.2d 954 (1990).
[4] Id.
[5] Ky.App., 756 S.W.2d 148, 149 (1988).

Human Resources,[6] this Court again addressed this issue. Citing R.L.W., the Court agreed that the child is an indispensable party in appeals from termination cases and that the failure to name the child would be grounds for dismissal. However, the R.C.R. court distinguished the situation presented to it because, unlike in R.L.W., the children in R.C.R. were named in the caption of the notice of appeal and their guardian ad litem had been served with all relevant documents. Finally, the Supreme Court of Kentucky recently addressed this issue in Morris v. Cabinet for Families and Children,[7] and held that "the inclusion of the child's name in the caption, coupled with the child's guardian having been served with the relevant pleadings, is more than sufficient to provide the parties with notice and to satisfy CR 73.03."

In the present matter, the only two parties listed in the caption of the notice of appeal are the Cabinet, as the appellee, and A.A.W.S.L. herself, as the appellant. The children are not listed either in the caption or in the body of the notice of appeal. Although the notice of appeal was served on Brian Logan, the children's guardian ad litem, this is not sufficient to satisfy the requirements of CR 73.03. In Morris and in R.C.R., although the children were not listed in the bodies of the notices of appeal, they were listed in the

[6] Ky.App., 988 S.W.2d 36 (1999).
[7] Ky., 69 S.W.3d 73, 74 (2002).

captions and their respective guardians ad litem were provided with the necessary pleadings. In this case, although their guardian ad litem was listed in the certificate of service, neither D.R.L. nor T.M.B. was listed either in the caption or in the body of the notice of appeal. Additionally, there is no indication that the guardian ad litem ever attempted to participate in the appeal. Service on the guardian ad litem, alone, is simply not enough to confer jurisdiction over D.R.L. or T.M.B. to this Court. Because D.R.L. and T.M.B. are necessary parties to the appeal and were not named in the notice of appeal, we have no option but to dismiss this appeal.[8]

For the foregoing reasons, the above-styled appeal is ORDERED DISMISSED.

ALL CONCUR.

ENTERED: November 24, 2004

/s/ Daniel T. Guidugli
JUDGE, COURT OF APPEALS

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[8] R.L.W., 756 S.W.2d at 149.