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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001341-ME
AND
NO. 2004-CA-001474-ME

BRANDON COLLINS

APPELLANT/CROSS-APPELLEE

APPEAL FROM MARTIN FAMILY COURT
v. HONORABLE STEPHEN N. FRAZIER, JUDGE
ACTION NO. 04-CI-00047

TANGENA MARIE BLEVINS

APPELLEE/CROSS-APPELLANT

OPINION
AFFIRMING
* * * * *

BEFORE: MINTON AND SCHRODER, JUDGES; EMBERTON, SENIOR JUDGE.¹

EMBERTON, SENIOR JUDGE: This is an appeal from an order of the Martin Family Court dismissing a motion filed by Brandon Collins seeking custody of E.C., born on February 14, 2002. We agree with the court that Brandon failed to establish his status as a

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

de facto custodian and lacks standing to bring the custody action.²

Tangena Blevins is E.C.'s natural mother. After numerous acts of physical and emotional violence by her former husband, Ray Collins, E.C. was removed from the home by the Department for Community Based Services. A juvenile dependency, abuse and neglect action was initiated, and on June 25, 2003, E.C. was placed with Brandon who is also the son of Ray Collins.

Tangena attended all required parenting classes, obtained a domestic violence awareness certificate, and completed counseling and supportive services with the University of Kentucky's Targeted Assessment Program, Mountain Comprehensive Care, and the Layne House. As a result of her progress, the department recommended that E.C. be returned to Tangena at a review hearing scheduled for February 9, 2004. On February 16, 2004, less than eight months after receiving placement of E.C., Brandon filed a petition for custody.

The de facto custodian statute states in relevant part as follows:

(1)(a) As used in this chapter and KRS 405.020, unless the context requires otherwise, "de facto custodian" means a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the person for a

² Tangena filed a cross-appeal but has not raised any issue on appeal requesting reversal of the court's order.

period of six (6) months or more if the child is under three (3) years of age and for a period of one(1) year or more if the child is three (3) years of age or older or has been placed by the Department for Community Based Services. Any 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 for the required minimum period.³

At the time the petition for custody was filed, E.C. resided with Brandon for less than one year; Brandon contends, however, that there is no required time the child must reside with a non-parent asserting de facto custodian status if the child is placed by the department.

When construing any statute, the court is bound to use several rules of construction as a guide to ascertain the legislature's intent.

The best way in most cases to ascertain such intent or to determine the meaning of a statute is to look to the language used, but no intention must be read into the statute not justified by the language. The primary rule is to ascertain the intention from the words employed in enacting the statute and not to guess what the Legislature may have intended but did not express. Resort must be had first to the words, which are decisive if they are clear. The words of the statute are to be given their usual, ordinary, and everyday meaning.⁴

³ KRS 403.270(1)(a).

⁴ Gateway Construction Company v. Wallbaum, 356 S.W.2d 247, 249 (Ky. 1962) (citations omitted).

The plain language of the de facto custodian statute is contrary to the position taken by Brandon. It requires that if the child has been placed by the department, the person seeking de facto custodian status must be the primary caregiver and the primary financial supporter of the child for a period of more than one year.⁵ It was the obvious intent of the legislature to allow the department time to resolve the family issues with the ultimate goal of reunification before permitting a non-parent to seek custody of a placed child.

The order dismissing the petition for custody is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Brian Cumbo
Inez, Kentucky

BRIEF FOR APPELLEE:

Sherry Bruckner
Lana Gresham
Appalachian Research & Defense
Fund of Kentucky, Inc.
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⁵ See Swiss v. Cabinet for Families and Children, 43 S.W.3d 796 (Ky.App. 2001).