

RENDERED: OCTOBER 22, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001757-MR

GREGORY D. VINCENT

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE DOLLY W. BERRY, JUDGE
ACTION NO. 05-CI-501410

CARMEN SKAGGS

APPELLEE

OPINION AND ORDER
DISMISSING APPEAL

** ** * ** * **

BEFORE: KELLER, MOORE, AND STUMBO, JUDGES.

MOORE, JUDGE: Gregory D. Vincent appeals the Jefferson Family Court's order finding him in contempt of the court's prior child support order and directing him to pay \$400.00 in attorney's fees that Carmen Skaggs incurred in bringing her motion for contempt. After a careful review of the record, we dismiss this appeal because Vincent failed to name an indispensable party in his notice of appeal.

Following the divorce of Vincent and Skaggs, Vincent was ordered to pay child support. Vincent moved to modify the amount of child support he had to pay. The Cabinet for Health and Family Services filed a motion to intervene as a petitioner in the action, and the family court granted that motion. The Cabinet subsequently moved to hold Vincent in contempt due to his failure to pay child support as ordered and due to his failure to pay certain expenses that had been previously specified by the court. Vincent was found to be in contempt, and a warrant was issued for his arrest. The warrant was later recalled upon Vincent's motion, and he was ordered to be released to Interlink Counseling Services, Inc. for treatment.

Subsequently, Skaggs, through her attorney, filed a motion to find Vincent in contempt of court due to his failure to pay child support, and Skaggs also asked the court to order Vincent to pay her attorney's fees for having to file such a motion. In her motion, Skaggs failed to name the Cabinet in the caption as an intervening petitioner, and she also failed to serve notice on the Cabinet of the filing of her motion. Vincent then moved for CR¹ 11 sanctions against Skaggs, arguing that Skaggs's motion for contempt failed to name the Cabinet, which Vincent claimed was a real party in interest in the case. Vincent also contended that sanctions were appropriate because Skaggs's motion for contempt was filed as a means of harassing Vincent.

¹ Kentucky Rule of Civil Procedure.

The family court did not address Vincent's motion for sanctions or his allegation that Skaggs's motion for contempt failed to name a real party in interest. Rather, the family court entered an order finding Vincent in contempt and ordering him to pay his child support by the fifth day of each month. The court's order also directed Vincent to pay \$400.00 in attorney's fees to Skaggs's attorney to cover the costs associated with filing the motion for contempt.

Vincent now appeals, contending that the family court abused its discretion in ordering him to pay Skaggs's attorney's fees. However, we do not need to address the merits of this appeal because the appeal should be dismissed on procedural grounds.

Pursuant to CR 73.03(1),

The notice of appeal shall specify by name all appellants and all appellees ("et al." and "etc." are not proper designation of parties) and shall identify the judgment, order or part thereof appealed from. It shall contain a certificate that a copy of the notice has been served upon all opposing counsel, or parties, if unrepresented, at their last known address.

In the present case, the Cabinet was an intervening petitioner in the family court and, thus, the Cabinet and Skaggs were the petitioners. However, in his notice of appeal, Vincent only named Skaggs in the caption, and he did not name the Cabinet in the body of the notice of appeal. The certificate of service at the bottom of his notice of appeal states that a copy of the notice of appeal was sent to the Assistant Commonwealth Attorney who was representing the Cabinet, but the Cabinet was not named as a party in the notice of appeal.

Because the Cabinet was an intervening petitioner in the child support proceedings before the family court, it is an indispensable party to this appeal. However, the Cabinet was not made a party to this appeal because it was not named in the caption of the notice of appeal or listed in the body of the notice of appeal as a party. *See Clark Equipment Co. v. Bowman*, 762 S.W.2d 417, 419 (Ky. App. 1988). The failure to name an indispensable party in the notice of appeal is grounds for dismissing the appeal. *See R.L.W. v. Cabinet for Human Resources*, 756 S.W.2d 148, 149 (Ky. App. 1988).

Accordingly, this appeal is dismissed.

ALL CONCUR.

ENTERED: October 22, 2010

/s/ Joy A. Moore
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

George R. Carter
Louisville, Kentucky

BRIEF FOR APPELLEE:

Kimberly M. Maraman
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J. Gregory Joyner
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