

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000276-ME

T. G. (MOTHER)

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN M. GEORGE, JUDGE
ACTION NO. 05-AD-500119

CABINET FOR HEALTH & FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; and A.J.M. (A CHILD)

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, DIXON, AND LAMBERT, JUDGES.

LAMBERT, JUDGE: T.G., proceeding *pro se*, appeals from the Jefferson Circuit Court's January 11, 2011, order denying her motion for a new trial. After careful review and for the reasons stated herein, we affirm.

This action commenced when the Cabinet for Health and Family Services (the Cabinet) filed a petition for involuntary termination of parental rights

against T.G. on April 8, 2005. A trial was held on December 20, 2005, and on March 14, 2006, the trial court entered an order involuntarily terminating T.G.'s parental rights in and to A.J.M. On May 18, 2007, this Court entered an opinion reversing the trial court's order terminating T.G.'s parental rights. However, on August 21, 2008, the Supreme Court of Kentucky reversed the opinion of this Court and reinstated the trial court's termination of T.G.'s parental rights. T.G. subsequently sought review before the United States Supreme Court, which was denied.

In January 2011, T.G. filed a motion for a new trial, and the trial court denied the motion on January 11, 2011. On January 20, 2011, T.G. filed a motion for the trial court to reconsider her motion for a new trial. That motion was denied on February 3, 2011. T.G. now appeals the denial of her motion for a new trial and the denial of her request for reconsideration of that motion.

We note that T.G. styled her initial January 2011 motion in various ways—calling it a motion to reconsider, a motion to reinstate based on evidence/mistake, and a motion for a new trial. Considering T.G.'s pleadings and arguments before the trial court, it appears that she was in fact requesting a new trial in the involuntary termination of parental rights action based upon what she referred to as “new evidence.” As such, her motion falls within the purview of Kentucky Rules of Civil Procedure (CR) 60.02. We review the denial of a CR 60.02 motion under an abuse of discretion standard. *White v. Commonwealth*, 32 S.W.3d 83, 86 (Ky. App. 2000).

CR 60.02 states in pertinent part:

On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: (a) mistake, inadvertence, surprise or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02 The motion shall be made within a reasonable time, and on grounds (a), (b), and (c) not more than one year after the judgment, order, or proceedings was entered or taken.

T.G. filed her motion for a new trial under CR 60.02(b) on January 10, 2011, almost five years after the trial court entered its judgment terminating her parental rights on March 14, 2006. As such it was clearly beyond the one-year limitation for a CR 60.02(b) motion. T.G. has failed to suggest any good cause for the delay in filing her motion for a new trial. Furthermore, T.G. does not explain how the “new evidence” she argues supports her motion for a new trial was not discoverable at the time of the March 14, 2006, judgment, and in fact the evidence was presented at various times throughout her trial and appellate proceedings. Thus, because her motion was outside the one-year time limitation and because she did not present any new evidence or circumstances justifying relief, the trial court properly denied her motion for a new trial and her motion to reconsider that motion. We find no abuse of discretion.

Based on the foregoing, we affirm the January 11, 2011, order denying T.G.’s motion for a new trial and the February 3, 2011, order denying her motion to reconsider.

ALL CONCUR.

BRIEF FOR APPELLANT:

T. G., Mother, *Pro Se*
Louisville, Kentucky

BRIEF FOR APPELLEE:

Erika L. Saylor
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