

RENDERED: AUGUST 1, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-001483-ME

S.S. AND D.W.

APPELLANTS

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ELEANORE GARBER, JUDGE
ACTION NOS. 13-J-501706 AND 13-J-501707

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
D.W., A CHILD; AND D.W., A CHILD

APPELLEES

OPINION
DISMISSING

** ** * ** * ** *

BEFORE: CAPERTON, COMBS, AND VANMETER, JUDGES.

CAPERTON, JUDGE: The Appellants, D.W. and S.S., appeal the July 29, 2013, disposition order of the Jefferson Family Court, finding that the children of S.S. were abused and neglected by S.S. D.W. appeals that order in an apparent attempt to assert the legal rights of S.S. The Commonwealth argues that D.W. has no legal

basis upon which to do so. Upon review of the record, the arguments of the parties, and the applicable law, we hereby dismiss the appeal filed by D.W.

The two dependency, neglect and abuse proceedings which gave rise to this appeal were commenced on or about February 1, 2013. Those petitions were filed concerning two young children in this case – a male child, D.W. (hereinafter referred to as “D.W. 1”), born on January 7, 2008, and a female child also with the initials D.W. (hereinafter referred to as “D.W. 2”), born on January 25, 2013.

The petitions filed with the Jefferson Family Court alleged that D.W. 2 tested positive for “opiates and benzos” following her birth. The child’s mother, S.S., also tested positive for “opiates and benzos.” The petitions also alleged that S.S. was positive for opiates during a January 7, 2013, checkup, that S.S. was bipolar, and that she had not taken any medication for her condition since early 2011. The petitions alleged that D.W. was the “natural father and lived in Chicago.”

Thereafter, on March 20, 2013, an amended dependency, neglect, and abuse petition was filed in the Jefferson Family Court on or about March 20, 2013. The amended petition was filed “due to concerns regarding the child’s father,” D.W. The amended petition stated that D.W. had a substantial criminal history in Arizona, Nevada, California, Massachusetts, New Jersey, New York, and Illinois. Further, it alleged that D.W. was listed under three different social security numbers and no fewer than ten different dates of birth. The petition stated that

D.W. had pending felony charges in Illinois and was under indictment for identity theft, attempting to elude or evade officers, and for soliciting prostitution. He also had prior convictions for forgery and theft, for which he was sentenced to 40 months in prison. It further stated that D.W. had received a ten-year sentence in Nevada for larceny, a 3.5-year sentence in Arizona for receiving stolen property, and 18 months in prison in New Jersey for multiple offenses, in addition to having multiple criminal charges in California, Massachusetts, and New York.

In addition to providing this information concerning the criminal history of D.W., the petition stated that he had not been forthcoming with Kentucky officials regarding his residential status nor the status of his pending felony charges in Illinois. Kentucky child support officials reported that D.W. had not paid any support for the care of D.W. 1. The petition also indicated that D.W. traveled often to various states and did not appear to have stable housing or residency.

An adjudication hearing was conducted before the Jefferson Family Court on July 10, 2013, and the court entered the aforementioned order on July 29, 2013. Therein, the court indicated that S.S. acknowledged that both she and her young child, D.W. 2, had drugs in their systems at the time of the child's birth and that S.S. used "benzos"¹ at least two times per week. The family court indicated that S.S.'s own father, or D.W., cared for D.W. 1, and that S.S. had no idea how often D.W. 1 was in the care of other persons. The court noted that S.S.

¹ "Benzos" is short for benzodiazepines, which are drugs used to have a sedative effect on the central nervous system.

acknowledged that her drug use was risky behavior with respect to D.W. 2, though she would not acknowledge the same with respect to D.W. 1. S.S. explained to the court that she does not work and that her father and D.W. pay for her expenses.

In its order, the court indicated that the adjudication trial in this case was conducted only with respect to S.S., and that a trial as to D.W. was “held in abeyance” because of an original action seeking a writ of prohibition against the Jefferson Family Court on jurisdictional grounds. The court went on to recite that because of S.S.’s acknowledgement that she had used drugs and because of the hospital report that S.S. and D.W. 2 had tested positive for opiates, further intervention was warranted. The court further found that testimony determined that D.W. 1 was in the custody of S.S. when she used drugs, and that D.W. 1 was left with other persons. Accordingly, the court found that both children were abused and neglected by S.S.

It is from that order that appellant, D.W., attempts to take his *pro se* appeal. The Commonwealth asserts that this appeal should be dismissed because D.W. has no authority to assert the legal rights of S.S. in this proceeding. Upon review of the record, the arguments of the parties, and the applicable law, we agree.

Upon review of the record, we find no final order or disposition from which D.W. may properly appeal. As previously noted herein, the Jefferson Family Court, in its July 29, 2013, order, specifically noted that its disposition did not address the allegations raised against D.W. in the dependency, neglect, or

abuse proceedings. Indeed, the court noted that D.W. had initiated an original action in the Court of Appeals, contesting the jurisdiction of the Jefferson Family Court.²

As this Court has previously explained, when an underlying action originates in the family court, any appeal is to be taken pursuant to Kentucky Revised Statutes (KRS) 22A.020. *Thorn v. Commonwealth*, 181 S.W.3d 560 (Ky. App. 2005). KRS 22A.020(1) provides as follows:

Except as provided in Section 110 of the Constitution, an appeal may be taken as a matter of right to the Court of Appeals from any conviction, final judgment, order, or decree in any case in Circuit Court, including a family court division of Circuit Court, unless such conviction, final judgment, order, or decree was rendered on an appeal from a court inferior to Circuit Court.

Sub judice, the disposition from which D.W. attempts to take his *pro se* appeal is not final concerning issues relevant to him. The family court, in fact, specifically held in abeyance any adjudication of the dependency, neglect, or abuse action as it pertained to D.W. D.W. is not entitled to assert the rights of S.S. in making this appeal. Accordingly, we are in agreement with the Commonwealth that his appeal should be dismissed, and we so order.

Wherefore, we hereby order the appeal filed by D.W. from the July 29, 2013, dispositional order of the Jefferson Family Court to be summarily dismissed.

² See *Darrin Wright v. Honorable Eleanor Garber, Judge, Jefferson Family Court*, No. 2013-CA-001165.

ALL CONCUR.

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