

RENDERED: SEPTEMBER 26, 2014; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-002106-ME

K.S.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE JUDITH BARTHOLOMEW, JUDGE  
ACTION NO. 13-AD-500263 AND 13-AD-500264

R.D.S., SR.; S.H.S.; A.D.D., A MINOR CHILD;  
AND B.A.D., JR., A MINOR CHILD

APPELLEES

OPINION  
REVERSING AND REMANDING

\*\* \*\* \* \*\* \* \*\* \*

BEFORE: CLAYTON, COMBS, AND STUMBO, JUDGES.

CLAYTON, JUDGE: This is an appeal from a private adoption in the Jefferson Circuit Court, Family Division. Based upon the following, we reverse the decision of the trial court and remand for further proceedings.

## BACKGROUND INFORMATION

The Appellees, great-grandparents of two minor children, sought to terminate the parental rights of the Appellant, K.S., and adopt her children. Both children had been in the custody of the Appellees since April 27 of 2011. On July 15, 2013, the Appellees filed two private adoption actions to adopt the children, seeking to terminate the rights of K.S. and the natural father, B.A.D., Sr.

The natural father of the children was personally served on August 13, 2013, at the Louisville Metro Corrections Center, and the Appellant was served via certified mail by Warning Order Attorney. Both natural parents were personally served.

A trial was scheduled for October 2, 2013, pursuant to Kentucky Revised Statutes (KRS) 625.080(5). On this date, neither of the natural parents appeared and the trial court appointed attorneys to represent them. The trial was rescheduled for November 6, 2013.

While counsel was appointed for each of the parents, no response was filed to the termination petitions. On November 6, 2013, the Appellant appeared before the court prior to the beginning of the trial. The natural father did not appear. Due to scheduling, the trial court informed the parties they would need to return at 2:30 p.m. that same day for the trial. The Appellant did not return; however, the trial continued.

The trial court found that both B.A.D., Jr. and A.D.D. were neglected minors as defined in KRS 600.201. The trial court also found that the natural

parents were properly before the court having been served and the Appellant actually appeared prior to trial. Finally, the trial court found that the children were abandoned minors and granted the adoptions. The Appellant then brought this appeal.

### STANDARD OF REVIEW

Kentucky Rules of Civil Procedure (CR) 52.01 provides that “[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” A judgment is not “clearly erroneous” if it is “supported by substantial evidence.” *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998). Substantial evidence is “evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men.” *Id. Kentucky State Racing Comm’n v. Fuller*, 481 S.W. 2d 298, 308 (Ky. 1972). Questions of law are reviewed *de novo*.

### DISCUSSION

To begin, we must set forth that the natural father is not before us as he has not filed an appeal. Thus, we examine the merits of the Appellant’s argument in relation to her rights only.

KRS 625.080(3) provides that in involuntary termination actions:

The parents have the right to legal representation in involuntary termination actions. The Circuit Court shall determine if the parent is indigent and, therefore, entitled to counsel pursuant to KRS Chapter 31. If the Circuit Court so finds, the Circuit Court shall inform the parent;

and, upon request, if it appears reasonably necessary in the interest of justice, the Circuit Court shall appoint an attorney to represent the parent pursuant to KRS Chapter 31 to be provided or paid for by the Finance and Administration Cabinet a fee to be set by the court and not to exceed five hundred dollars (\$500);

The Appellant contends that she was entitled to representation throughout all stages of the termination proceedings, and we agree.

The Appellant appeared before the trial court at the time of the trial and informed the trial court that she did not have counsel. The trial court did not inquire whether she was indigent and did not appoint counsel. While a guardian *ad litem* had been appointed, the trial court did not inquire as to why a response was not filed. In fact, the trial court rescinded the guardian *ad litem* prior to trial on November 4, 2013, when the court learned that the mother was no longer in custody.

*A.C. v. Cabinet for Health and Family Services*, 362 S.W. 3d 361, 366 (Ky. App. 2012), provides that there is no absolute right for a natural parent to have counsel in an involuntary termination proceeding, but that they should be appointed on a case-by-case basis. In this case, the Appellant appeared before the trial court and objected to the termination. The trial court was obligated under KRS 625.080(3) to appoint counsel and erred in failing to do so. Also, pursuant to CR 17.04(1), the trial court erred in rescinding the guardian *ad litem* originally appointed. The trial court had no ability to rescind where the appointment was valid when made, as it was in this case. At most, the trial court could have

entertained a motion to withdraw. Thus, we reverse the decision of the trial court and remand this action with instructions to appoint counsel for the Appellant.

ALL CONCUR.

BRIEF FOR APPELLANT:

Bethanni E. Forbush-Moss  
Louisville, Kentucky

BRIEF FOR APPELLEES:

Kimberly Withers Daleure  
Louisville, Kentucky