

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001901-ME

S.J.S. AND G.L.S.

APPELLANTS

v. APPEAL FROM WEBSTER CIRCUIT COURT
HONORABLE WILLIAM E. MITCHELL, JUDGE
ACTION NO. 12-AD-00011

T.D.L.; B.M.L.; AND
D.O.L.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, DIXON, AND KRAMER, JUDGES.

DIXON, JUDGE: S.J.S. and G.L.S. (collectively “Appellants”) appeal from an order of the Webster Circuit Court dismissing their petition to adopt their nephew, D.O.L. (“Child”), without the consent of the biological father, J.D.L. (“Father”).

We affirm.

In December 2008, Child was born to Father and B.M.L. (“Mother”).¹ Child was removed from Father’s custody in August 2009, when Father’s parole was revoked; thereafter, G.L.S., Father’s niece, was approved as a custodian for Child. Child remained in the custody of Appellants, as Father was in and out of jail for various periods of time after August 2009.

In November 2012, Appellants filed a petition for adoption along with consent forms signed by Mother and Father. In April 2013, Father wrote a letter to the court wherein he revoked his consent to the adoption. The court concluded Father’s revocation was timely, noting the Cabinet had not filed its written approval placing Child for adoption by Appellants. In February 2014, the Cabinet filed its investigation report and written approval placing Child for adoption. Four months later, Appellants filed a motion for leave to amend their petition. The record reflects the Appellants tendered an amended petition with their motion; however, they never actually filed the amended petition with the circuit court clerk.

The court held a final hearing on August 15, 2014, and ultimately dismissed Appellants’ petition for adoption because it did not comply with the statutory procedures.² This appeal followed.

¹ Mother has not participated in this appeal.

² The trial court also made alternative findings on the merits of the petition, concluding that Appellants failed to establish grounds for granting the petition for adoption without Father’s consent. We decline to review the merits since dismissal of the petition was required due to Appellants’ failure to comply with the adoption statutes. *See R.M. v. R.B.*, 281 S.W.3d 293, 298 (Ky. App. 2009).

The trial court's findings of fact are entitled to great deference on appeal; accordingly, this Court applies the clearly erroneous standard of review. CR 52.01; *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998). Where the record contains substantial evidence to support the trial court's findings, we will not disturb them on appeal. *Id.*

In *Day v. Day*, 937 S.W.2d 717 (Ky. 1997), the Kentucky Supreme Court addressed the statutory prerequisites for filing a valid adoption petition pursuant to KRS 199.470. The Court explained that the statutory procedures for adoption require strict compliance:

Since adoption is a statutory right which severs forever the parental relationship, Kentucky courts have required strict compliance with the procedures provided in order to protect the rights of the natural parents. . . . [A]doption only exists as a right bestowed by statute and, furthermore, . . . there must be strict compliance with the adoption statutes. The law of adoption is in derogation of the common law. Nothing can be assumed, presumed, or inferred and what is not found in the statute is a matter for the legislature to supply and not the courts.

Id. at 719 (internal citations omitted). In *Day*, the Court ultimately concluded dismissal of the petition was proper because the petitioners had failed to comply with KRS 199.470(3), which required the child to reside with the adoptive parents for at least ninety days prior to filing the petition. *Id.* at 719-20.

In the case at bar, we must consider the statutory requirements set forth in KRS 199.470(4), which states, in relevant part:

No petition for adoption shall be filed unless prior to the filing of the petition the child sought to be adopted

has been placed for adoption by a child-placing institution or agency, or by the cabinet, or the child has been placed with written approval of the secretary; but no approval shall be necessary in the case of:

- (a) A child sought to be adopted by a stepparent, grandparent, sister, brother, aunt, uncle, great grandparent, great aunt, or great uncle . . . ;

KRS 199.490(3) further explains, “If the petitioner was not excepted by KRS 199.470(4) or (5), a copy of the written approval of the secretary of the Cabinet for Health and Family Services or the secretary's designee shall be filed with the petition.”

Here, G.L.S. is Child’s cousin, a family relationship that is not exempted from the approval requirement found in KRS 199.470(4)(a); consequently, Appellants were required to obtain written approval for the adoption placement from the Cabinet prior to filing their petition. KRS 199.470(4). When Appellants filed their adoption petition on November 28, 2012, they failed to file a copy of the Cabinet’s written approval with their petition. The record reflects the Cabinet did not provide Appellants with written approval until October 2013; further, the approval was not provided to the court until February 2014. Since the Appellants failed to file their petition in strict compliance with KRS 199.470(4), dismissal of the petition was required. *Day*, 937 S.W.2d at 720.

For the reasons stated herein, we affirm the order of the Webster Circuit Court.

ALL CONCUR.

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