RENDERED: SEPTEMBER 30, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001962-ME

K.J., NATURAL MOTHER — APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE PAMELA ADDINGTON, JUDGE
ACTION NO. 12-J-00350-002

HARDIN COUNTY ATTORNEY;
COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; J.H. (NATURAL
FATHER); K.H. (A MINOR CHILD);
T.H. (GRANDFATHER OF CHILD);
AND THE SAULT STE. MARIE
TRIBE OF CHIPPEWA INDIANS — APPELLEES

AND NO. 2015-CA-001963-ME

K.J., NATURAL MOTHER — APPELLANT

v.

APPEAL FROM HARDIN CIRCUIT COURT
HONORABLE PAMELA ADDINGTON, JUDGE
ACTION NO. 12-J-00422-001

HARDIN COUNTY ATTORNEY;
COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; K.J. (A MINOR CHILD);
M.J. (GRANDMOTHER OF CHILD);
AND THE SAULT STE. MARIE
TRIBE OF CHIPPEWA INDIANS — APPELLEES

AND NO. 2015-CA-001964-ME

K.J., NATURAL MOTHER APPELLANT

APPEAL FROM HARDIN CIRCUIT COURT
v. HONORABLE PAMELA ADDINGTON, JUDGE
ACTION NO. 12-J-00424-001

HARDIN COUNTY ATTORNEY;
COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; A.S. (A MINOR CHILD);
A.S. (NATURAL FATHER);
D.S. (GRANDFATHER OF CHILD);
AND THE SAULT STE. MARIE
TRIBE OF CHIPPEWA INDIANS APPELLEES

AND NO. 2015-CA-001965-ME

K.J., NATURAL MOTHER APPELLANT

APPEAL FROM HARDIN CIRCUIT COURT
v. HONORABLE PAMELA ADDINGTON, JUDGE
ACTION NO. 12-J-00426-001

HARDIN COUNTY ATTORNEY;
COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; K.W. (A MINOR CHILD);
C.W. (NATURAL FATHER);
F.W. (GRANDFATHER OF CHILD);
AND THE SAULT STE. MARIE
TRIBE OF CHIPPEWA INDIANS APPELLEES

AND NO. 2015-CA-001969-ME

K.J., NATURAL MOTHER APPELLANT

APPEAL FROM HARDIN CIRCUIT COURT
v. HONORABLE PAMELA ADDINGTON, JUDGE
ACTION NO. 12-J-00350-003

HARDIN COUNTY ATTORNEY;
COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; K.H. (A MINOR CHILD);
J.H. (NATURAL FATHER);
T.H. (GRANDFATHER OF CHILD);
AND THE SAULT STE. MARIE
TRIBE OF CHIPPEWA INDIANS APPELLEES

AND NO. 2015-CA-001970-ME

K.J., NATURAL MOTHER APPELLANT

APPEAL FROM HARDIN CIRCUIT COURT
v. HONORABLE PAMELA ADDINGTON, JUDGE
ACTION NO. 12-J-00424-002

HARDIN COUNTY ATTORNEY;
COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; A.S. (A MINOR CHILD);
A.S. (NATURAL FATHER);
D.S. (GRANDFATHER OF CHILD);
AND THE SAULT STE. MARIE
TRIBE OF CHIPPEWA INDIANS APPELLEES
AND NO. 2015-CA-001971-ME

K.J., NATURAL MOTHER APPELLANT

APPEAL FROM HARDIN CIRCUIT COURT
v. HONORABLE PAMELA ADDINGTON, JUDGE
ACTION NO. 12-J-00426-002

HARDIN COUNTY ATTORNEY;
COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; K.W. (A MINOR CHILD);
C.W. (NATURAL FATHER);
F.W. (GRANDFATHER OF CHILD);
AND THE SAULT STE. MARIE
TRIBE OF CHIPPEWA INDIANS APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KRAMER, CHIEF JUDGE; NICKELL AND THOMPSON, JUDGES.

KRAMER, CHIEF JUDGE: K.J. ("Mother") has filed this consolidated appeal of seven orders[1] of the Hardin Family Court relating to the permanent custody of her

[1] The family court entered separate orders against K.J. and the three living fathers of her children. Because minor child K.J.'s father passed away prior to this matter, this led to a total of seven orders. Four of these orders were directed at K.J. with respect to her custodial rights of K.H. (entered in 12-J-00350-002), K.J. (entered in 12-J-00422-001), A.S. (entered in 12-J-00424-001), and K.W. (entered in 12-J-00426-001), respectively. Each determined: (1) it was not in the relevant child's best interests for K.J. to have custody; and (2) it was in the child's best interests for the paternal grandparents to have custody. As to the remaining three orders, one was directed at J.H. with respect to his custodial rights of K.H. (entered in 12-J-00350-003); one was directed at A.S. with respect to his custodial rights of minor child A.S. (entered in 12-J-00424-002); and one was directed at C.W. with respect to his custodial rights of K.W. (entered in 12-J-00426-002). In each of these latter three orders, the family court similarly determined: (1) it was not in the relevant child's best interests for the father to have custody; and (2) it was in the child's best interests for the paternal grandparents to have custody.

With this in mind, K.J.'s decision to appeal the circuit court's custody orders entered in 12-J-00350-003, 12-J-00424-002, and 12-J-00426-002 is somewhat confusing. We will not adjudicate, *sua sponte*, K.J.'s standing to appeal from those three orders. *See Harrison v. Leach*, 323 S.W.3d 702, 706 (Ky. 2010). But, those orders adjudicated the custodial rights of the fathers of her children, and neither K.J., nor any of the fathers, argue the family court committed any error with respect to the fathers' custodial rights. Indeed, none of the children's fathers appealed or filed briefs.

four minor children: K.H.; K.J.; A.S.; and K.W. In sum, her children had separate fathers; were adjudged dependent; and the orders at issue, entered January 14, 2016, awarded permanent custody of each child to each child's respective set of paternal grandparents. The family court's decisions with respect to the permanent custody of each child were based upon K.J.'s recurring difficulties with substance abuse which, prior to January 14, 2016, had already necessitated placing each of her children in the custody of their respective paternal grandparents for a period of approximately three years. Following a careful review of the record, we affirm.

The event that triggered these proceedings appears to have been K.J.'s approximately one month of incarceration in the Meade County Detention Center during September 2012, after she pled guilty to a charge of driving under the influence. During that time, and in light of her incarceration, K.J. stipulated at a temporary removal hearing in Hardin Family Court that her children were dependent and that each child should be in the custody of his or her respective paternal grandparents. When K.J. was eventually released, she sought to regain custody. At that point, however, the Cabinet for Health and Family Services ("Cabinet") and K.H.'s paternal grandfather had raised questions regarding whether K.J. had substance abuse issues interfering with her ability to adequately care for the children. The family court ordered K.J. to complete a hair follicle drug screen, which it scheduled for October 10, 2012. In the interim, it was agreed by all parties the paternal grandparents would retain custody.

On October 24, 2012, the Cabinet filed petitions alleging each of K.J.'s four children were neglected within the meaning of Kentucky Revised Statutes (KRS) 620.070. Following a hearing, the family court entered temporary removal orders on November 13, 2012, with respect to each of K.J.'s four children, finding reasonable grounds for neglect. The family court's orders noted K.J. had yet to complete the drug testing that had been mandated the previous month; and the results of the Cabinet's further investigation (including its discovery of additional charges against K.J. pending in Jefferson County for cocaine possession) gave reason to suspect K.J. had ongoing substance abuse issues. The family court's orders noted all reasonable efforts had been made to prevent the children's removal from K.J.'s custody; directed the paternal grandparents to continue maintaining custody consistently with the children's best interests; awarded K.J. supervised visitation; and directed K.J. to undergo drug screening and otherwise cooperate with the Cabinet. K.J. raised no objection.

On December 3, 2012, K.J. completed her hair follicle drug screen and tested positive for methamphetamine. On December 7, 2012, the family court granted the Cabinet's motion to amend its findings of neglect with respect to each of K.J.'s children to findings of dependency. On December 27, K.J. designed a case plan with the Cabinet which included a directive for her to undergo additional drug screening the following day. But, K.J. failed to attend the drug screening the following day and was consequently deemed to have tested positive.

The Cabinet thereafter filed a report making several recommendations, which the family court adopted in a January 31, 2013 order following a dispositional hearing. The Cabinet's recommendations were to the following effect: the children's custody arrangements would remain the same; K.J.'s visitation rights would remain the same until she tested negative on at least three random drug screens; K.J. would comply fully with her case plan; and the matter would be reviewed on May 8, 2013, for further action. K.J. raised no objection.

On March 21 and March 28, 2013, K.J. submitted to random drug screens, the results of which were listed as "negative and diluted." When the family court reviewed this matter again and entered a subsequent order on May 8, 2013, it directed K.J. to undergo hair follicle and urine drug screening later that day and directed her to continue complying with her case plan and undergoing random drug screens. The family court did not modify the children's custody arrangements. K.J.'s May 8, 2013 drug screening was positive for methamphetamine, and the family court did not modify K.J.'s visitation rights.

K.J.'s drug screening results were negative following additional drug screens on July 15, 2013; August 8, 2013; September 26, 2013, and October 22, 2013. The next placement review hearing was held November 6, 2013, at which time the Cabinet offered roughly the same recommendations as before. The family court entered orders on November 12, 2013, adopting the Cabinet's recommendations in each custody matter. K.J. raised no objection.

On November 26, 2013, K.J. tested negative after submitting to another random drug screen. She tested positive for buprenorphine on January 14, 2014. She then tested negative on random drug screens conducted on January 27; February 14; March 19; April 8; April 30; May 28; and June 26, 2014. On July 9, 2014, the date of the next placement review hearing, the Cabinet offered most of its prior recommendations, but further recommended provisionally modifying K.J.'s visitation rights to allow her custody of her children from Thursday through Monday of each week. The family court entered orders on July 14, 2014, adopting the Cabinet's recommendations in each custody matter. K.J. raised no objection.

On July 29, 2014, K.J. tested negative after submitting to another random drug screen. On September 17, 2014, the date of the following placement review hearing, the Cabinet made the same recommendations as before. The family court adopted the Cabinet's recommendations in a September 19, 2014 order. K.J. raised no objection.

On January 13, 2015, K.J. filed a motion to regain custody of her children based upon her satisfactory completion of her case plan with the Cabinet and the resolution of the issue that had originally necessitated the temporary removal of her children (*i.e.*, her one month of incarceration, which had concluded in October, 2012). Her motion was opposed by the Cabinet. On March 10, 2015, the Cabinet also moved for each of K.J.'s children to be placed in the permanent custody of their respective paternal grandparents. The bases of the Cabinet's opposition and motion were: (1) the paternal grandparents regularly facilitated

visitations between the children and K.J.; (2) at this time, K.J.'s children had been placed with their paternal grandparents for over two years, were doing well, and needed permanency; and (3) K.J. remained unfit to regain custody because, on February 3, 2015, K.J. had failed another random drug screening by testing positive for methamphetamine. During the subsequent October 28, 2015 hearing on the Cabinet's motion, the Cabinet's social worker further testified that K.J.'s positive results had caused the Cabinet to file another temporary removal petition against K.J. regarding another child born to K.J. during the pendency of these proceedings (who is not a party); and when informed of that fact, K.J. admitted she "had relapsed and was using again" and told the Cabinet's social worker that her newly born child could not stay with her.

On February 18 and March 31, 2015, K.J. completed two more drug screens and tested negative on both.

On May 12, 2015, K.J. was given a drug screen which resulted in what was described as an "extremely high" positive for alcohol. On May 30, 2015, K.J. was arrested and charged with criminal trespassing and public intoxication. She pled guilty to trespassing and her public intoxication charge was dismissed, but she acknowledged during a September 17, 2015 substance abuse assessment that she had been intoxicated during the incident that had given rise to her charges. The counselor who conducted K.J.'s substance abuse assessment recommended in the conclusion of his report that "[K.J.] stated that she has the right to drink alcohol and does not see any harm in this activity. In this case when the welfare and safety

of her children is being compromised, alcohol consumption (binging) should be addressed at this time."

On June 29, 2015, another of K.J.'s drug screens indicated her specimen had been diluted. Following drug screens on August 25 and September 21, 2015, her results were negative.

The Cabinet's social worker filed another progress report with the family court on October 28, 2015, which outlined the previously described details of this matter and recommended K.J.'s children remain in the permanent custody of their parental grandparents. The Cabinet's report, its prior motion, and K.J.'s competing motion for custody were then considered during a hearing on October 28, 2015, at which time the Cabinet reasserted its arguments regarding permanent custody; and the family court took additional evidence and testimony, including evidence and testimony regarding K.J.'s screening results relating to her alcohol use, and the recommendations relating to her alcohol use per the September 17, 2015 substance abuse assessment. It was also acknowledged K.J.'s two eldest children whose custody was at issue in this matter had been previously removed from K.J.'s custody on a temporary basis in 2006 and 2007 while K.J. resided in Larue County, due to her difficulties with substance abuse.

For her part, K.J. argued for permanent custody and against the Cabinet's motion. In support, she noted that prior to February 2015, she had demonstrated enough compliance with her case plan to persuade the Cabinet to allow her unsupervised visitation with her children for extended overnight periods

of three or four days per week. She noted that prior to February 2015, the Cabinet had stated it was in a position to begin transitioning the children back into her custody. She had completed parenting classes. She attended drug screenings when told to do so and had not tested positive for methamphetamine since February 3, 2015. She also asserted that her "extremely high" positive for alcohol use in May 2015 was irrelevant and that she was entitled to drink because the case plan she was required to follow in order to regain custody of her children, as designed by the Cabinet, did not specifically prohibit alcohol.

At the conclusion of the hearing, the family court made its decision and related its findings as follows:

> It's kind of tragic that the mother came so close to having custody restored and I understand [K.J.'s] position that it's trying to make it sound like she just messed up on one hair follicle test that showed methamphetamines, or usage of methamphetamines, and that she's being somehow unjustly, or over-aggressively perhaps, penalized in some fashion as a result of that, but it's really not that simplistic. This started out, as pointed out by the testimony, in another jurisdiction as far back I believe as 2005, 2006, 2007, somewhere in that vicinity, and it's gone on through today's date. And through that time the mother has displayed—and I'm focusing on the mother because the fathers are not disputing or are not opposing the recommendation or what the [Cabinet] is seeking to do—I believe that it would be in the best interests of the children to have the permanent custody as requested by [the Cabinet]. If I look at the various statutory requirements under both KRS 620.023 and 620.027, KRS 610.010(8), and utilizing KRS 403.270, all of the statutory factors in trying to determine what is in the best interests of the children, and the fact that this has been such an ongoing and long process, and the mother, albeit showed tremendous and substantial progress,

> unfortunately has not demonstrated that she could maintain that progress. And I think the children need stability and I think it would be in their best interests to sustain the motion. So as it relates to all the children, except for [K.J.'s youngest child], we have not had the adjudication yet on her, I will sustain the motion.

The family court entered an order consistent with its findings on November 23, 2015. As an aside, the family court did not place any further limitations regarding K.J.'s visitation rights. This appeal followed.

As explained in *B.C. v. B.T.*, 182 S.W.3d 213, 219-20 (Ky. App. 2005),

> In reviewing a child-custody award, the appellate standard of review includes a determination of whether the factual findings of the family court are clearly erroneous. A finding of fact is clearly erroneous if it is not supported by substantial evidence, which is evidence sufficient to induce conviction in the mind of a reasonable person. Since the family court is in the best position to evaluate the testimony and to weigh the evidence, an appellate court should not substitute its own opinion for that of the family court. If the findings of fact are supported by substantial evidence and if the correct law is applied, a family court's ultimate decision regarding custody will not be disturbed, absent an abuse of discretion. Abuse of discretion implies that the family court's decision is unreasonable or unfair. Thus, in reviewing the decision of the family court, the test is not whether the appellate court would have decided it differently, but whether the findings of the family court are clearly erroneous, whether it applied the correct law, or whether it abused its discretion.

(Internal footnotes and citations omitted.)

On appeal, K.J.'s arguments do not address the family court's directives regarding her visitation rights. She contends the family court erred in

awarding permanent custody of her children to their respective paternal grandparents. As to why, she first notes the family court's permanent custody award was based upon a finding that her children were dependent. Without citation to authority, she asserts that dependency—as opposed to abuse or neglect—cannot legally serve as a basis for such an award.

K.J. is incorrect. A "dependent child" is any child who is under improper care, custody, control, or guardianship that is not due to an intentional act of the parent, guardian, or person exercising custodial control or supervision of the child. KRS 600.020(19). If a court has reasonable grounds to believe the child is dependent as defined by KRS 600.020(19), a court is justified in entering an order for the child's temporary removal and the child's temporary custody with either the Cabinet or other appropriate person or agency. KRS 620.090. Similarly, a finding of dependency provides a basis for a permanent award of custody. As explained in *N.L. v. W.F.*, 368 S.W.3d 136, 148 (Ky. App. 2012),

> In order to grant permanent custody via a custody decree in a *dependency* action arising under KRS Chapter 620, the court must comply with the standards set out by the General Assembly in KRS 403.270(2):
>
> > (2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. The court shall consider all relevant factors including:
> >
> > > (a) The wishes of the child's parent or parents, and any de

facto custodian, as to his custody;

(b) The wishes of the child as to his custodian;

(c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;

(d) The child's adjustment to his home, school, and community;

(e) The mental and physical health of all individuals involved;

(f) Information, records, and evidence of domestic violence as defined in KRS 403.720;

(g) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;

(h) The intent of the parent or parents in placing the child with a de facto custodian; and

(i) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS

> 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school.

(Emphasis added.)

Next, K.J. contends the family court's findings were not supported by substantial evidence.

We disagree. In ascertaining the best interests of the children regarding their permanent custody, the family court considered the relevant factors and recognized the children's need for stability; the stability their current respective caregivers had been continuously providing for them over the prior three years; and K.J.'s repeated inability to provide stability due to her substance abuse. As the family court's findings observed, and as the evidence (discussed above) supported, K.J. had incidents of substance abuse during the three years she attempted to comply with the reunification plan designed for her by the Cabinet. She had been arrested and imprisoned due to her substance abuse. Additionally, K.J.'s difficulties with substance abuse were recurring; had caused the Cabinet to intervene and remove her children on earlier occasions predating these matters; and had caused the Cabinet to remove another of her children (who was not a party to these proceedings) as recently as February 2015.

In a similar vein, K.J. contends the fact that she received an "extremely high" positive result for alcohol following her May 12, 2015 drug

screening should not have been considered by the family court in making its permanent custody award. This, K.J. argues, is because alcohol was not prohibited on her reunification case plan.

Regardless of whether *alcohol* was specifically banned on her case plan, however, the overall basis of the family court's decision was that substance abuse *in general* would continue to prevent K.J. from providing a stable environment for her children. And, K.J.'s September 17, 2015 substance abuse assessment—the recommendations of which K.J.'s case plan required her to follow—specifically noted alcohol caused K.J. to act extremely irresponsibly (*i.e.*, as K.J. had admitted, it had caused her to be arrested for public intoxication and trespassing); and specifically recommended addressing her alcohol consumption "in this case where the welfare and safety of her children is being compromised[.]" With this in mind, K.J.'s "extremely high" positive result for alcohol at a time when she was vying for permanent custody of her children, along with her insistence that her use of alcohol was irrelevant and (as discussed in her abuse assessment) that she "has the right to drink alcohol and does not see any harm in this activity" are not irrelevant details. They support an inference that K.J.'s substance abuse would continue to prevent K.J. from providing stability for her children.

Next, K.J. contests the reliability and admissibility of certain evidence of record, including the results of several of her drug screens, testimony given at various dispositional hearings, and several status reports filed by the social worker

the Cabinet assigned to her cases. K.J. argues it was particularly inappropriate for the Cabinet's social worker, during a September 23, 2015 hearing regarding K.J's visitation rights with respect to K.H., to produce a Federal Express package given to the social worker by K.J.'s boyfriend, bearing K.J.'s name and mailing address, which contained bottles of a shampoo designed to mislead hair follicle drug screens.

With only one exception, however, K.J. (who was represented by counsel at all times) never cross-examined any witnesses, or objected to or attempted to rebut any of the evidence filed of record or adduced at any hearing over the three years these matters remained pending before the family court. The sole instance where K.J. did preserve an objection to evidence of record was also, at most, indicative of harmless error. During the hearing that took place on September 23, 2015, K.J. objected on hearsay grounds to the Cabinet's social worker testifying about the contents of a therapist's report regarding K.H.'s anxiety levels during visitations with K.J. But, K.J. did not object to admitting the therapist's report itself into evidence; and the therapist's report stated exactly what the Cabinet's social worker had indicated during her testimony.

Moreover, even if K.J. had objected to the Cabinet's social worker producing the Federal Express package and shampoo bottle at the September 23, 2015 hearing, nothing of record reflects it had any bearing upon the family court's ultimate custody decision in this matter. The social worker qualified it by stating she did not know if K.J. had used it; K.J. had denied using it; and, at a subsequent

hearing, she informed the family court that K.J.'s boyfriend later told her that he, and not K.J., had been using it. The family court's response was limited to a warning that if it was ever discovered in the future that K.J. had cheated on a drug screening, a contempt citation would issue.

Lastly, K.J. contends that there was noncompliance with the Indian Child Welfare Act of 1978 (ICWA), 25 United States Code (U.S.C.) 1901, *et seq*.

By way of background, on May 1, 2015, the Sault St. Marie Tribe of Chippewa Indians (Tribe) intervened in this matter pursuant to the ICWA. Upon intervention, the Tribe informed the family court that K.J. and her four children qualified as its enrolled members and that it wished to review the record to determine whether active efforts had been taken to prevent the breakup of K.J.'s family and whether it should assume jurisdiction.[2] The hearing regarding the competing custody motions of K.J. and the Cabinet was continued. Shortly thereafter, the Tribe filed a motion requesting the Cabinet to provide "active efforts" to reunite K.J. with her children, per 25 U.S.C. 1911(d), or alternatively

[2] It is uncontested K.J. and her children qualified as enrolled members of the Tribe, and that the Tribe is federally recognized and entitled to the protections of the ICWA. Briefly summarized, the ICWA affords federally recognized Indian tribes an array of rights that include, but are not limited to: the right to intervene at any point in a child custody proceeding (25 U.S.C. 1911(c)); the right to assume jurisdiction in the foster care placement of, or termination of parental rights to, an Indian child not domiciled or residing within the reservation of the Indian child's tribe (25 U.S.C. 1911(b)); and the right to examine all reports or other documents filed with the court upon which any decision with respect to the proceedings may be based (25 U.S.C. 1912(c)). Additionally, and as set forth in 25 U.S.C. 1911(d),

> Any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under State law shall satisfy the court that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful.

return the children to K.J.'s custody. Following a September 23, 2015 hearing, however, the Tribe withdrew its motion; agreed the Cabinet had satisfied the requirements of the federal statute and that the family court should retain jurisdiction; further agreed the best interests of the children would be served by keeping them in the permanent custody of their paternal grandparents; and the Tribe thereafter remained an active participant in the proceedings.

With that said, the only objection K.J. raised in this vein was to the Tribe withdrawing its motion—something the Tribe (as the movant) was entitled to do, and K.J. had no standing to contest. K.J. did not join the Tribe's motion or file her own motion regarding 25 U.S.C 1901 *et seq*.; nor did she request any kind of ruling or findings regarding the federal statute. Absent that, we cannot reverse on the basis of what K.J. now argues on appeal; it was not preserved, nor does the record support some form of palpable error occurred in this regard.

In conclusion, the family court's findings with respect to the permanent custody of the children were not clearly erroneous; K.J.'s arguments on appeal were either unpreserved or provide no basis of error; and we find no instance of palpable error. We therefore AFFIRM.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert C. Bishop
Brandenburg, Kentucky

BRIEF FOR APPELLEE, CABINET FOR HEALTH AND FAMILY SERVICES:

Andy Beshear
Attorney General
Frankfort, Kentucky

Dawn Lonneman Blair
Special Assistant Attorney General
Elizabethtown, Kentucky