

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001552-ME

CRYSTAL JACKSON

APPELLANT

v. APPEAL FROM OWEN CIRCUIT COURT
HONORABLE REBECCA LESLIE KNIGHT, JUDGE
ACTION NO. 15-CI-00066

PATSY FITZGERALD

APPELLEE

OPINION
DISMISSING

** ** * * * * *

BEFORE: CLAYTON, DIXON AND THOMPSON, JUDGES.

THOMPSON, JUDGE: Crystal Jackson (mother) appeals from an order of the Owen Circuit Court issued on September 14, 2016, confirming a recommended order of the Domestic Relations Commissioner (DRC) as to temporary grandparent visitation. We dismiss mother's appeal because she appealed from an interlocutory order.

In 2006, L.A.F. (child) was born to Nathan Wayne Fitzgerald (father) and mother. On July 20, 2015, paternal grandmother Patsy Fitzgerald (grandmother) filed a petition seeking visitation with child.

On August 6, 2015, after holding a hearing at which mother appeared *pro se*, the DRC recommended grandmother be granted temporary monthly weekend visitation with child, with the matter to be reviewed the following month. On September 8, 2015, the circuit court issued a written order in accordance with this recommendation.

On September 10, 2015, after a hearing for which mother did not appear, the DRC recommended grandmother be granted temporary bi-monthly weekend visitation and father's holiday visitation per the 15th Judicial Circuit's Domestic Relations Practice Rule (DR) 10.00. On October 13, 2015, the circuit court issued a written order in accordance with this recommendation.

On December 9, 2015, January 8, 2016, and February 3, 2016, grandmother filed motions for contempt, alleging mother refused to deliver child for Christmas visitation and regularly scheduled visitation. Following hearings before the DRC, on January 21, 2016 and February 12, 2016, the DRC recommended mother be found in contempt, incarcerated for a total of thirteen days and ordered to pay grandmother's attorney fees totaling \$1,430. On February 16, 2016, the circuit court issued orders confirming the DRC's recommendations. At the show cause hearing held on February 23, 2016, the circuit court found

mother in contempt, ordered mother committed to thirteen days in jail and for grandmother to have immediate possession of child.

Mother retained counsel who entered an appearance on March 3, 2016. On July 6, 2016, mother filed a motion requesting the court revisit the issue of grandmother's visitation schedule considering that father was to have supervised visitation of child pursuant to a custody case.

On July 18, 2016, after a hearing before the DRC, the DRC recommended entry of another temporary order clarifying the previous temporary order. The DRC recommended grandmother have all visitation specified under DR 10.00, a guardian ad litem be appointed, child be delivered to her midweek visitation with grandmother by the school bus, the parties not disparage each other to child or discuss the case with her, and the parties limit their communication with each other to issues regarding child and visitation.

On July 28, 2016, mother filed objections to the recommended order, arguing it was not appropriate for a grandparent to be granted visitation equivalent to parental visitation under DR 10.00 when father's parenting time was never terminated, the domestic relations commissioner never made a formal finding that grandparent visitation was in the best interest of child, and requesting that a formal hearing be held to determine whether the recommended order of July 18, 2016, and previous orders should be overruled, and what if any visitation by grandmother was in the best interest of child.

Following a hearing, on September 14, 2016, the circuit court issued an order overruling mother's objections and adopting and confirming the DRC's July 18, 2016 recommended order as the judgment of the court. Mother appealed from this order.

Mother argues that Kentucky Revised Statutes (KRS) 405.021 in providing for grandparent visitation was not intended to effectively grant joint custody to a grandparent without the entry of any findings that such visitation is in the best interest of the child.

We are not able to reach the merits of mother's argument because the September 14, 2016 order mother is appealing from is not a final and appealable order and we are without jurisdiction to review such an order. Pursuant to Kentucky Rules of Civil Procedure (CR) 54.01 "[a] final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under Rule 54.02." By its nature, a temporary order is interlocutory or non-final because it is entered pending a final adjudication.

Frances v. Frances, 266 S.W.3d 754, 757 (Ky. 2008).

Because there is only one claim before the circuit court presented in this action, that grandmother should be granted visitation, and the order appealed from does not finally adjudicate the issue of grandmother's visitation, this order could not be made final under CR 54.02. *Hale v. Deaton*, 528 S.W.2d 719, 722 (Ky. 1975); *Hook v. Hook*, 563 S.W.2d 716, 717 (Ky. 1978). The only orders regarding

visitation entered in this matter have all been temporary orders. An appeal will not be proper until a final order is entered as to grandmother's request for visitation.

Accordingly, we dismiss mother's appeal without prejudice to her right to later appeal from a final, appealable order on visitation. _

ALL CONCUR

BRIEF FOR APPELLANT:

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Florence, Kentucky

BRIEF FOR APPELLEE:

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