

RENDERED: NOVEMBER 3, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001634-ME

KELLY SHARP

APPELLANT

APPEAL FROM WARREN CIRCUIT COURT
FAMILY COURT DIVISION III
v. HONORABLE DAVID A. LANPHEAR, JUDGE
ACTION NO. 15-CI-01267

MATTHEW KEITH

APPELLEE

OPINION AND ORDER
DISMISSING

** **

BEFORE: MAZE, STUMBO, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Kelly Sharp (formerly Cundiff) brings this appeal from a September 30, 2016, order of the Warren Circuit Court, Family Court Division, (family court) designating Matthew Keith the *de facto* custodian of J.A.C. For the

following reasons, we dismiss this appeal as being taken from an interlocutory order.

J.A.C. was born to Kelly R. Sharp on October 23, 2002.¹ Kelly became romantically involved with Matthew Keith. When J.A.C. was very young, Kelly and J.A.C. moved in with Matthew. Kelly and Matthew then had one child together, a daughter. In 2014, Kelly and Matthew's relationship ended.

On May 15, 2014, Matthew filed a petition for dependency, neglect, and abuse in the family court as to J.A.C. and the parties' biological daughter.² Matthew then sought and obtained an order of emergency custody based upon allegations that Kelly neglected the children. By order entered May 15, 2014, Matthew was then granted temporary custody of J.A.C. (Action No. 14-J-00375-001).

On May 19, 2014, Kelly filed a response to the dependency, abuse, and neglect petition. In her response, Kelly sought to have J.A.C. returned to her custody. Following a hearing, by order entered May 23, 2014, temporary custody of J.A.C. was ordered to remain with Matthew.

¹ J.A.C.'s biological father is Charles Wimpee. By Agreed Order entered February 2, 2011, in the Warren Circuit Court, Family Court Division (Action No. 11-CI-00178), Kelly Sharp was awarded sole custody of J.A.C. in an action she initiated against Wimpee.

² The only issues raised in this appeal are related to the designation of Matthew Keith as J.A.C.'s *de facto* custodian. There are no issues raised related to the custody of the parties' daughter.

Relevant to this appeal, on October 19, 2015, Matthew filed a Petition for Child Custody and *De Facto* Custody. Matthew also filed a Supplementary Verified Motion to be Designated De Facto Custodian. A hearing was conducted on Matthew's petition on March 30, 2016. By order entered September 30, 2016, Matthew was designated the *de facto* custodian of J.A.C.; however, custody of J.A.C. was not decided. In particular, the family court ordered:

[T]he trial to determine the custodial arrangements for J.A.C. and A.R.K. scheduled for October 5, 2016[,] shall be and hereby is **CONTINUED**, and this matter is hereby set for a **Scheduling Conference on October 5, 2016[,] at 1:15 p.m. . . .**

September 30, 2016, Order at 10. Kelly filed a notice of appeal from the September 30, 2016, Order.

Kelly contends that the family court erred by designating Matthew as the *de facto* custodian of J.A.C. In response, Matthew asserts that the September 30, 2016, order is interlocutory as it did not determine all the rights of all the parties nor did it include the finality language pursuant to Kentucky Rules of Civil Procedure (CR) 54.02.

As a general rule, an appeal may only be taken from a final judgment or order. Pursuant to CR 54.01, a final and appealable judgment adjudicates all the rights of all the parties or is made final by inclusion of finality language in limited circumstances under CR 54.02. *King Coal Co. v. King*, 940 S.W.2d 510 (Ky. App.

1997). It is well-settled that “[a]n interlocutory order is not appealable unless it divests a party of a right in such a manner as to remove from the court the power to return the parties to their original condition.” *Druen v. Miller*, 357 S.W.3d 547, 549 (Ky. App. 2011) (citation omitted). And, a determination of a party’s status as a *de facto* custodian does not divest a party of such a right; thus, an order designating a party as a *de facto* custodian is interlocutory and non-appealable. *Cherry v. Carroll*, 507 S.W.3d 23 (Ky. App. 2016).

In the case *sub judice*, the family court determined that Matthew qualified as the *de facto* custodian of J.A.C. in the September 30, 2016, order. Although the family court designated Matthew as the *de facto* custodian, the ultimate issue of J.A.C.’s custody remained adjudicated. In the September 30, 2016, order, the family court continued the hearing to determine “custodial arrangements” and set a scheduling conference for October 5, 2016. As such, the appeal was taken from an interlocutory order and shall be dismissed.

Now, therefore, be it ORDERED that Appeal No. 2016-CA-001634-ME is DISMISSED as being taken from an interlocutory order.

ALL CONCUR.

ENTERED: November 3, 2017

/s/ Jeff S. Taylor
JUDGE, COURT OF APPEALS

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