

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2017-CA-001573-ME

O.T.

APPELLANT

v. APPEAL FROM SHELBY FAMILY COURT  
HONORABLE S. MARIE HELLARD, JUDGE  
ACTION NO. 16-J-00219-001

CABINET FOR HEALTH & FAMILY SERVICES,  
DEPARTMENT FOR COMMUNITY BASED  
SERVICES; L.T., A MINOR CHILD; AND E.R.,  
TEMPORARY CUSTODIAN OF THE MINOR CHILD

APPELLEES

OPINION AND ORDER  
DISMISSING

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BEFORE: DIXON, KRAMER, AND J. LAMBERT, JUDGES.

LAMBERT, J., JUDGE: O.T. (the Mother) has appealed from orders of the Shelby Family Court denying her motion for L.T. (the Child) to be returned to her custody and her motion to alter, amend, or vacate the order denying her motion.

We must dismiss the appeal as interlocutory.

The underlying action began with the filing of a Juvenile Dependency/Neglect or Abuse (DNA) Petition on October 12, 2016, by Samiyra Shabazz, the Child's on-going caseworker with the Cabinet for Health and Family Services (the Cabinet), Department for Community Based Services (DCBS). In the petition, Ms. Shabazz alleged that the Child, born in March 2014, had been neglected or abused by the Mother.<sup>1</sup> Included with the petition was a detailed narrative of the allegations:

On 6/19/2016 the Cabinet received a report alleging that [the Mother] was passed out in her vehicle along with her 2 year old daughter [the Child] with the window up for over an hour. The report alleges that when police responded [the Mother] was observed to be lethargic and slow responding. [The Mother and the Child] were both taken to the hospital due to their extreme temperatures. [The Mother] has a history of prescription drug use. Police released [the Child] into the care of her grandmother [the Grandmother].

On 6/20/2016 the [C]abinet completed a prevention plan with [the Mother and the Grandmother]. Both parties agreed that [the Grandmother] would care for [the Child's] physical, educational and medical needs. Both parties also signed and agreed that [the Mother's] contact would be supervised with [the Child], [the Mother] not to be under the influence of any drugs or substances, not prescribed to [the Mother] while or during visits with [the Child].

On 9/16/2016 [the Mother, the Grandmother, and the Child met] with FSOS Allison Paul and SSW Shabazz for a case planning meeting. [The Mother] agreed,

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<sup>1</sup> The identity of the Child's father is unknown.

signed and was provided a copy of her case plan on this date.

On 9/27/2016 SSW Shabazz completed a home visit with [the Child, the Mother, and the Grandmother] in Shelbyville, KY. [The Mother] reported that her primary care physician [was] Robert Sasser. During the investigation [the Mother] reported that her PCP was Dr. Fugate. [The Mother] said that her recent stroke on Saturday October 17<sup>th</sup> has affected the right side of her body by making it weaker than the right side [sic]. [The Mother] also said that the stroke affected her speech and that Dr. Sasser has suggested speech and physical therapy. [The Grandmother] now lives with [the Mother] to help take care of [the Child]. SSW Shabazz asked [the Mother] to see her Medication's [sic]. [The Mother] seemed hesitant and said the investigative SSW already had a list of her medications in her file. SSW Shabazz explained that it was normal routine for all home visits. [The Mother] went into the kitchen and grabbed a draw string backpack out of her pantry. The back pack was full of various medications. [The Mother] also had more medication in her purse. SSW Shabazz observed 35 medications that day and wrote down all of the names and doses and the prescribing doctor. [The Mother's] prescriptions were prescribed by eight different doctors. [The Mother] also has a cabinet of medicine for [the Child] which is all over the counter medications.

On 9/29/2016 [t]he Cabinet received an anonymous report. The reporter expressed concern for the safety of [the Child] while still in the home with [the Mother]. The reporter referred [The Mother] to rehab because she is currently taking seven psychotropic medications that are affecting her daily functioning ability. The reporter is concerned that [the Child] is not attended to properly and that [the Mother] has taken [the Child] out on a car ride in the middle of the night without the supervision and permission of [the Child's] care provider [the Grandmother].

The Cabinet investigated the anonymous report on 9/30/2016[.] [The Grandmother and the Mother] came into the Shelby DCBS office to be interviewed. Both admitted that [the Mother] did take [the Child] out of her home without the supervision of [the Grandmother]. [The Mother] also took [the Grandmother's] car keys without permission this night.

[The Mother] is not cooperating with the Cabinet and has not adhered to the prevention plan that is in place. [The Mother] is not cooperating with the Shelby County Drug Screen Protocol which she signed and agreed to on 9/16/2016 during the case planning meeting. [The Mother] has become verbally aggressive with [the Grandmother]. The Cabinet has received concerns from [the Mother's] family about her abusing her prescription medications. [The Mother] has been observed by FSOS Allison Paul and SSW Shabazz to be lethargic and slothful in her movements and conversations.

After the Mother stipulated that reasonable grounds for removal existed, the family court placed the Child in the temporary custody of the maternal uncle (the Uncle).

The Mother and the Cabinet agreed upon a case plan in April 2017.

The plan included that the Mother “will work to overcome personal barriers to provide a safe, drug free environment” for the Child and follow the drug screening protocol. The Mother was to continue with her mental health treatment at Creative Spirits, where she had also taken parenting classes. At the adjudication hearing on April 19, 2017, the Mother stipulated to the risk of neglecting the Child related to the incident on June 19, 2016, when she and the Child “were found in an automobile NOT awake and police called for [an] ambulance to take to [the]

hospital.” Accordingly, the family court found that the Child was neglected pursuant to KRS 600.020(1) and ordered that she continue to live with the Uncle.

The Cabinet filed an annual permanency review with the family court in May 2017 ahead of the disposition hearing scheduled that month. The report detailed the results of a visit to the Mother’s home earlier that month, including that she was missing approximately 30 prescribed hydrocodone pills. During the visit, the Mother reported “multiple times . . . that she has not been taking her medication correctly or even at all.” The Mother also expressed concerns during the home visit about the Child’s placement with the Uncle. The Cabinet recommended that visitation remain supervised based upon her medication usage and that the Child’s custody remain with the Uncle.

The court held a disposition hearing in June 2017 and entered its order on June 22, 2017. In the order, it found that reasonable efforts had been made to prevent the Child’s removal and that there were no less restrictive alternatives to removal. It specifically found as follows: “Mother found passed out in car, with child, Mother has history of prescription drug usage; blames doctor for her addiction. Mother not taking her medication correctly; Father’s whereabouts unknown.” The court ultimately placed custody with the Uncle and set up a review in three months.

On July 3, 2017, the Mother moved the family court to return the Child to her custody, stating that she had completed her case plan and that her drug screens had been negative. She did not include any attachments with her motion to establish these claims. The family court denied the motion by docket order entered July 13, 2017.

The Mother moved the court to alter, amend, or vacate its July 13, 2017, ruling, stating that the court had not permitted her to submit evidence that would allow the court to properly evaluate whether the Child should be returned to her custody. During the hearing on the motion, the Mother filed a memorandum in support of her motion along with supporting documents, in which she discussed the medication count and drug screening issues, and the court heard testimony from Madeline Botkins from KAP regarding drug screening. The court later permitted a representative from Creative Spirits to testify about the Mother's supervision with the child and threats the Mother had made against various individuals, including the court. The court indicated that the evidence the Mother presented should appropriately have been submitted during the disposition hearing. The court denied the motion to alter, amend, or vacate by docket order entered August 17, 2017, in which the court indicated that if the Mother "desires to modify, appropriate motions should be made." This expedited appeal now follows.

While the appeal was pending, the Court ordered the Mother to show cause why the appeal should not be dismissed as interlocutory because it did not appear that a final order adjudicating her parental rights had been entered. *See* Kentucky Rules of Civil Procedure (CR) 54.01. Based upon the Mother's response, a three-judge panel of this Court passed the issue to the merits panel, which we shall now address.

In her response, the Mother argued that her appeal was not interlocutory and pointed out that the issue decided below related to custody, not as to whether her parental rights should be terminated as stated in the Court's show cause order. She stated that the June 22, 2017, disposition order, in which the court ordered the Child to remain in the custody of the Uncle and did not increase the Mother's visitation, was a final order and that she filed her motion to alter, amend, or vacate from that ruling. Therefore, her appeal was not interlocutory.

The Mother is correct that the issue the court addressed below was her motion for a return of custody, not whether her parental rights should be terminated. However, we disagree with her assertion that her motion to alter, amend, or vacate sought review of the disposition order. Rather, that motion sought review of her motion to return the child to her custody, which was filed subsequent to the entry of the disposition order. In fact, the notice of appeal does

not list the disposition order at all, but only lists the order ruling on her motion to alter, amend, or vacate.

CR 54.01 defines “judgment” and requires a judgment to be final before it may be appealed:

A judgment is a written order of a court adjudicating a claim or claims in an action or proceeding. 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. Where the context requires, the term “judgment” as used in these rules shall be construed “final judgment” or “final order”.

Our review of the record, including the hearings, compels us to hold that the order from which the Mother appealed is not final or appealable. While the family court ruled that custody would remain with the Uncle in its disposition order, the Mother did not appeal that ruling. The order from which the Mother appealed did not finally adjudicate her rights as to the Child, and the court left the door open for the Mother to seek modification by filing an appropriate motion. The Mother’s rights to substantive due process and equal protection were therefore not violated by the court’s ruling. Accordingly, we must hold that the Mother has not shown sufficient cause for the appeal to continue.

For the foregoing reasons, the above-styled appeal is DISMISSED as interlocutory.

ALL CONCUR.

ENTERED: November 16, 2018

/s/ James H. Lambert  
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEES

Jean Kelley Cunningham  
Shelbyville, Kentucky