

RENDERED: OCTOBER 26, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001863-ME

K.H.

APPELLANT

APPEAL FROM ANDERSON CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE S. MARIE HELLARD, JUDGE
ACTION NO. 17-J-00076-001

COMMONWEALTH OF KENTUCKY;
AND T.H., A CHILD

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * ** * **

BEFORE: ACREE, KRAMER, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: K.H. brings this appeal from an October 20, 2017, order of the Anderson Circuit Court, Family Court Division, ordering that temporary custody of K.H.'s daughter, T.H., would remain with her paternal aunt. After a

careful review of the record, we dismiss this appeal for K.H.'s failure to name an indispensable party.

On May 16, 2017, the Cabinet for Health and Family Services, (Cabinet) received an anonymous referral alleging that T.H.'s mother, K.H., had a substance abuse issue. After receiving the referral, a social worker for the Cabinet visited K.H.'s home. Pursuant to a safety plan implemented by the Cabinet, T.H. was placed with her paternal aunt, E.H. On May 26, 2017, the Cabinet, through its Department for Community Based Services, filed a juvenile dependency, neglect, or abuse (DNA) petition, and the family court subsequently conducted a temporary removal hearing. By order entered May 31, 2017, the family court found that K.H. had abused drugs and placed temporary custody of T.H. with her paternal aunt. Thereafter, a disposition hearing was conducted, and by order entered October 20, 2017, the family court ordered that T.H. would remain in the custody of her aunt.

On November 16, 2017, K.H. filed a notice of appeal from the October 20, 2017, order. In the body and in the caption of the notice of appeal, K.H. named herself as appellant and named the "Commonwealth of Kentucky" as appellee. K.H. also named T.H. in the caption of the notice of appeal. For the following reasons, we believe K.H. failed to name an indispensable party in her notice of appeal – the Cabinet.

Pursuant to Kentucky Rules of Civil Procedure (CR) 73.03(1), a notice of appeal shall specifically identify all appellants and all appellees. The failure to name an indispensable party in the notice of appeal is a jurisdictional defect resulting in dismissal of the appeal. *Slone v. Casey*, 194 S.W.3d 336, 337 (Ky. App. 2006) (citing CR 19.02; *City of Devondale v. Stallings*, 795 S.W.2d 954 (Ky. 1990)). And, when the Cabinet files a DNA petition, the Cabinet is an indispensable party to an appeal therefrom. *See Commonwealth v. Byer*, 173 S.W.3d 247, 249 (Ky. App. 2005).

In the case *sub judice*, K.H. named the “Commonwealth of Kentucky” as an appellee in the body and caption of the notice of appeal. K.H. also named T.H. in the caption of the notice of appeal.¹ However, upon review of the notice of appeal, it is clear that K.H. failed to name the Cabinet as a party in this appeal.² As the Commonwealth consists of hundreds of agencies, departments, boards, and commissions, the mere naming of the Commonwealth of Kentucky rather than the

¹ K.H. specifically named T.H. in the caption of the notice of appeal and served her guardian ad litem. Under our case law, the inclusion of a child in the caption of the notice of appeal and service upon the child’s guardian ad litem is sufficient to invoke the jurisdiction of the Court. *See R.C.R. v. Commonwealth, Cabinet for Human Resources*, 988 S.W.2d 36, 40 (Ky. App. 1998); *Morris v. Cabinet for Families and Children*, 69 S.W.3d 73, 75 (Ky. 2002).

² The notice of appeal reflects that a copy was served on an employee of the Cabinet’s Department for Community Based Services. However, this does not satisfy the requirement of Kentucky Rules of Civil Procedure (CR) 73.03 for naming the Cabinet for Health and Family Services as a party to the appeal.

Cabinet is insufficient as a matter of law.³ Our case law clearly holds that where the Cabinet was the initiating party in a DNA action, it is an indispensable party to the appeal. *See Byer*, 173 S.W.3d at 249. As the Cabinet initiated the DNA action herein, the Cabinet is an indispensable party to this appeal, and K.H.'s failure to name the Cabinet is fatal to the appeal.⁴

Now, therefore, be it ORDERED that Appeal No. 2017-CA-001863-ME is DISMISSED for failure to name an indispensable party.

ALL CONCUR.

ENTERED: October 26, 2018

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

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEES.

Whitney True Lawson
Frankfort, Kentucky

³ Although the Commonwealth of Kentucky is routinely the initiating party in criminal actions filed in Kentucky courts and would be the named party on appeal, this broad designation is insufficient in a civil case such as a dependency, neglect and abuse action. *See Commonwealth v. Byer*, 173 S.W.3d 247, 249 (Ky. App. 2005).

⁴ We also note that the Cabinet for Health and Family Services failed to file a brief in this appeal which ordinarily would be in contravention of CR 76.02. However, given the Cabinet was not properly named as a party to the appeal, there was no requirement to file a brief.