

RENDERED: APRIL 26, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001313-ME

S.G.

APPELLANT

v. APPEAL FROM SIMPSON CIRCUIT COURT
HONORABLE G. SIDNOR BRODERSON, JUDGE
ACTION NO. 14-J-00196

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
A.C., A MINOR CHILD; AND
G.C., NATURAL FATHER

APPELLEES

AND

NO. 2017-CA-001314-ME

S.G.

APPELLANT

v. APPEAL FROM SIMPSON CIRCUIT COURT
HONORABLE G. SIDNOR BRODERSON, JUDGE
ACTION NO. 14-J-00197

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
M.C., A MINOR CHILD; AND
G.C., NATURAL FATHER

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * ** * ** *

BEFORE: ACREE, KRAMER AND L. THOMPSON, JUDGES.

L. THOMPSON, JUDGE: S.G. (hereinafter referred to as Mother) appeals from two orders of the Simpson Circuit Court which denied her motions to place her children with the children's maternal grandparents. We believe we are without authority to review this case because Mother is appealing from temporary orders, not final and appealable orders. Because we do not have jurisdiction to hear the merits of this case, it should be DISMISSED.¹

A.C. (hereinafter referred to as Daughter) is the daughter of Mother and G.C. (hereinafter referred to as Father) and was born in November of 2010. M.C. (hereinafter referred to as Son) is the son of Mother and Father and was born in July of 2012. Both children were removed from Mother and Father's residence

¹ When final disposition of an appeal is made by an "Opinion and Order," as in this case, the party adversely affected may move for reconsideration as provided by Kentucky Rule of Civil Procedure (CR) 76.38(2) within ten days of entry. A petition for rehearing is unauthorized. CR 76.32(1).

on December 17, 2014, because of a petition for neglect filed by the Cabinet. An emergency custody order was entered the same day and the children were placed in the custody of the Cabinet. After a hearing, a temporary removal order was then entered on January 14, 2015, and the child was ordered to remain in the custody of the Cabinet.

Almost immediately, the maternal grandparents, who live in Tennessee, sought to have the children placed with them. Unfortunately, the grandparents were erroneously told by the Cabinet and social workers in Tennessee that they would have to become foster parents before the children could be placed with them.² The grandparents attempted to become foster parents in Tennessee. However, due to the grandfather having a drug-related criminal conviction 28 years ago, they were unable to complete the process.

The grandparents had a strong relationship with the children and desired to visit with them while they were in foster care. The grandparents would accompany Mother and Father when they visited the children. The scheduling of those visits conflicted with the employment of the grandmother, so the visits were sporadic. According to testimony, the grandparents asked for additional visits with

² The grandparents were given this information even though they were already approved to care for another grandchild by Tennessee's version of the Cabinet.

the children; this request was denied by the Cabinet. They were informed that they had to visit the children during the time Mother and Father visited.

In May of 2017, Mother and Father separated and Mother began living with the grandparents. The grandmother then began regular visits with the children. In June of 2017, the grandparents became aware that they were misinformed about the need for them to become foster parents. Mother then filed the underlying motion for relative placement. A hearing was held over two days on the matter. The trial court ultimately denied the motion. The court found that the children had been in the same foster home since 2014 and are well adjusted to the home and foster parents. The court also found that, based on the testimony of the children's therapist, it would be emotionally harmful if the children were placed with the grandparents. Finally, the court also mentioned the grandparents' sporadic visitation as being a reason for the denial of the motion. This appeal followed.

Although Mother states that she is appealing the orders denying her motion for relative placement entered in July of 2017, her response to the Court's show cause order makes it appear that she is in fact appealing the temporary removal order entered in December of 2014. Mother's motion for relative placement essentially asked the trial court to vacate its orders placing the children with the Cabinet and enter new orders placing the children with the grandparents.

Regardless of which order Mother is appealing, there has been no final or appealable orders entered.

“It is axiomatic that an appeal may only be taken from a decision that is final and appealable with no just reason for delay, or it is interlocutory. Kentucky Rules of Civil Procedure (CR) 54.02.” *B.D. v. Commonwealth, Cabinet for Health & Family Servs.*, 426 S.W.3d 621, 622 (Ky. App. 2014). Orders regarding the temporary removal of a child from a parent’s custody are interlocutory and not ripe for appeal. *Id.* Mother should have filed an original action pursuant to Kentucky Revised Statute (KRS) 620.110 which states:

Any person aggrieved by the issuance of a temporary removal order may file a petition in Circuit Court for immediate entitlement to custody and a hearing shall be expeditiously held according to the Rules of Civil Procedure. During the pendency of the petition for immediate entitlement the orders of the District Court shall remain in effect.

No parties to the appeal raised this issue; however, jurisdiction issues can be raised at any time, even *sua sponte* by this Court. *Doe v. Golden & Walters, PLLC*, 173 S.W.3d 260, 270 (Ky. App. 2005). We are without jurisdiction to rule on the merits of this appeal; therefore, we ORDER that the appeal be, and is hereby, DISMISSED.³

³ We note that a previous panel of this Court did entertain an appeal on the merits regarding a temporary removal order in the case of *P.W. v. Cabinet for Health and Family Servs.*, 417 S.W.3d 758 (Ky. App. 2013). The jurisdiction issue was not raised by the parties or the Court in

ALL CONCUR.

ENTERED: April 26, 2019

/s/ Larry Thompson
JUDGE, COURT OF APPEALS

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that case; therefore, we are not bound by it as to this jurisdiction issue. We question the precedential value of *P.W.* in the absence of a jurisdictional analysis in it.