

RENDERED: JANUARY 18, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001488-ME

A.S.

APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE KATHY STEIN, JUDGE
ACTION NO. 16-CI-04391

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY; M.S.; K.S.; B.S.;
S.S.; AND G.S., MINOR CHILDREN

APPELLEES

AND

NO. 2018-CA-000534-ME

A.S.

APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE KATHY STEIN, JUDGE
ACTION NOS. 16-J-01196 AND 16-J-01196-001

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY; AND K.S., A MINOR CHILD

APPELLEES

AND

NO. 2018-CA-000535-ME

A.S.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE KATHY STEIN, JUDGE
ACTION NOS. 16-J-01197 AND 16-J-01197-001

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY; AND M.S., A MINOR CHILD

APPELLEES

AND

NO. 2018-CA-000536-ME

A.S.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE KATHY STEIN, JUDGE
ACTION NOS. 16-J-01198 AND 16-J-01198-001

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

APPELLEES

AND

NO. 2018-CA-000537-ME

A.S.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE KATHY STEIN, JUDGE
ACTION NOS. 16-J-01199 AND 16-J-01199-001

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY; AND S.S., A MINOR CHILD

APPELLEES

AND

NO. 2018-CA-000538-ME

A.S.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE KATHY STEIN, JUDGE
ACTION NO. 16-J-01200 AND 16-J-01200-001

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY; AND B.S., A MINOR CHILD

APPELLEES

OPINION
AND ORDER
DISMISSING APPEAL NO. 2017-CA-001488-ME

** ** * * * * *

BEFORE: COMBS, TAYLOR, AND L. THOMPSON, JUDGES.

TAYLOR, JUDGE: A.S. brings Appeal No. 2017-CA-001488-ME from an August 2, 2017, order dismissing A.S.'s Petition for Immediate Entitlement to Custody of her five biological children. For the reasons stated, we dismiss Appeal No. 2017-CA-001488-ME as moot.

The procedural facts relevant to Appeal No. 2017-CA-001488-ME are somewhat complex. A.S. is the mother of five children: K.S. (D.O.B. July 27, 2005), M.S. (D.O.B. March 28, 2007), G.S. (D.O.B. January 14, 2010), B.S. (D.O.B. December 3, 2012), and S.S. (D.O.B. May 12, 2014). On August 25, 2016, the Cabinet for Health and Family Services, Commonwealth of Kentucky (Cabinet) filed five separate dependency, neglect, or abuse (DNA) petitions as to each of A.S.'s children in the Fayette Circuit Court, Family Court Division (Action Nos. 16-J-01196, 16-J-01197, 16-J-01198, 16-J-01199, and 16-J-01200). In these five DNA actions, the Cabinet alleged A.S.'s children had been neglected based upon referrals it received on August 15, 2016, and August 16, 2016.

A temporary removal hearing was conducted by the family court, and by orders entered August 31, 2016, the children were removed from A.S.'s custody

and temporary custody of the children was placed with the Cabinet. The family court thereafter held an adjudication hearing. And, by orders entered December 14, 2016, the family court ordered the children to remain in the custody of the Cabinet. (Action Nos. 16-J-01196, 16-J-01197, 16-J-01198, 16-J-01199, and 16-J-01200.)¹

In this action, A.S. filed a Petition for Immediate Entitlement to Custody below (16-CI-04391), pursuant to Kentucky Revised Statute (KRS) 620.110 on December 22, 2016.² Therein, A.S. sought immediate custody of the five children. Meanwhile, in the five DNA actions (Action Nos. 16-J-01196, 16-J-01197, 16-J-01198, 16-J-01199, and 16-J-01200), the family court rendered disposition orders on February 14, 2017, and ordered the children to remain committed to the custody of the Cabinet.

Subsequently, in Action No. 16-CI-04391, the family court conducted a hearing on A.S.'s Petition for Immediate Entitlement to Custody. And, by order entered August 2, 2017, the family court dismissed A.S.'s Petition for Immediate

¹ The first adjudication orders regarding the five children's cases were entered on December 12, 2016, and appealed to this Court. In Appeal No. 2017-CA-000248-ME on January 5, 2018, another panel of this Court vacated and remanded the orders for additional findings. The subsequent orders now on appeal were entered March 5, 2018 (Appeal Nos. 2018-CA-000534-ME, 2018-CA-000535-ME, 2018-CA-000536-ME, 2018-CA-000537-ME, and 2018-CA-000538-ME).

² A.S. tendered the Petition for Immediate Entitlement to Custody and Motion to Proceed *in forma pauperis* on December 1, 2016. The family court granted the motion, and the petition was filed on December 22, 2016.

Entitlement to Custody. A.S. timely filed a notice of appeal (Appeal No. 2017-CA-001488-ME) in this Court from the August 2, 2017, order.

A Petition for Immediate Entitlement to Custody is a statutory creature found in KRS 620.110, which provides:

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.

Our Court has interpreted KRS 620.110 as providing an avenue of relief for “[a]ny person aggrieved by the issuance of a *temporary* removal order.” *B.D. v. Commonwealth, Cabinet for Health and Family Servs.*, 426 S.W.3d 621, 622 (Ky. App. 2014) (emphasis added). This statutory mechanism is necessary because a temporary custody order by its very terms is nonfinal and interlocutory, so under KRS 620.110, an aggrieved person may file an original action in circuit court to regain child custody. *Id.* It must be emphasized that a petition filed under KRS 620.110 may only challenge a temporary child custody order. *Id.*

In this case, the record reflects that the family court’s temporary orders removing the five children and giving the Cabinet temporary custody was superseded by subsequent final and appealable orders of the family court. Particularly, the family court ordered the five children to remain in the custody of

the Cabinet by disposition orders entered February 14, 2017. Consequently, we believe this appeal has been rendered moot as the temporary orders were supplanted by subsequent final and appealable orders of the family court ordering the five children to remain in the custody of the Cabinet.

Now, therefore, be it ORDERED that Appeal No. 2017-CA-001488-ME taken from the family court's order dismissing A.S.'s Petition for Immediate Entitlement to Custody is DISMISSED as moot.

ALL CONCUR.

ENTERED: January 18, 2019

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

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