

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000127-ME
AND
NO. 2018-CA-000128-ME

S.D.B.

APPELLANT

v.

APPEALS FROM JEFFERSON CIRCUIT COURT
HONORABLE ANGELA J. JOHNSON, JUDGE
ACTION NO. 17-AD-500079 AND 17-AD-500080

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

NO. 2018-CA-000703-ME

A.R.L.

APPELLANT

v.

APPEAL FROM BOYLE CIRCUIT COURT
HONORABLE DOUGLAS BRUCE PETRIE, JUDGE
ACTION NO. 16-AD-00001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

OPINION AND ORDER
DISMISSING

** **

BEFORE: DIXON, GOODWINE, AND MAZE, JUDGES.

DIXON, JUDGE: In each of the captioned termination of parental rights cases, the child was not named in the notice of appeal; however, each child's guardian *ad litem* was served by the circuit court clerk. This Court issued orders to both Appellants to show cause why these appeals should not be dismissed for failure to name an indispensable party. Because the procedural issue is common to all three cases, we will resolve these appeals in a single opinion.

S.D.B. appeals from the orders of the Jefferson Circuit Court terminating her parental rights to her two children, J.M.B. and J.J.B. S.D.B. failed to name the children as parties anywhere in the notices of appeal, although the certificates of service included the children's guardian *ad litem*. In response to the show cause order issued by this Court, S.D.B. filed a motion for leave to file amended notices of appeal and asserted the omission of the children's names in the original notices was an oversight. On March 21, 2018, the Cabinet filed a motion to dismiss the appeals for failure to comply with CR 73.03(1). By order entered June 27, 2018, a motion panel of this Court passed the Cabinet's motion to dismiss the appeals to the panel assigned to determine the merits of the appeal.

In 2018-CA-000703-ME, A.R.L. appeals the order of the Boyle Circuit Court terminating her parental rights to her son, J.J.B. A.R.L.'s notice of appeal failed to name J.J.B. in either the caption or the body, but the *guardian ad litem* was served. In response to this Court's show cause order, A.R.L. asserted the omission was inadvertent. By order entered October 23, 2018, a motion panel of this Court passed the issue of whether the appeal should be dismissed to the panel assigned to determine the merits of the appeal.

CR 73.03(1) states "[t]he notice of appeal shall specify by name all appellants and all appellees." It is well-settled that "[a] notice of appeal, when filed, transfers jurisdiction of the case from the circuit court to the appellate court." *City of Devondale v. Stallings*, 795 S.W.2d 954, 957 (Ky. 1990). "[F]ailure to name an indispensable party in the notice of appeal is 'a jurisdictional defect that cannot be remedied[.]'" *Browning v. Preece*, 392 S.W.3d 388, 391 (Ky. 2013) (quoting *Stallings*, 795 S.W.2d at 957).

In *R.L.W. v. Cabinet for Human Resources*, 756 S.W.2d 148, 149 (Ky. App. 1988), this Court held "that children shall be necessary parties to any appeal from an action terminating, or failing to terminate their parents' parental rights." In *R.L.W.*, the Court ultimately concluded that dismissal of the appeal was required because the children were not named in the notice of appeal. *Id.* In a subsequent case, *R.C.R. v. Commonwealth Cabinet for Human Resources*, 988 S.W.2d 36, 40

(Ky. App. 1998), this Court distinguished the facts of *R.L.W.*, finding that dismissal was not required where the children were named in the caption of the notice of appeal and the guardian *ad litem* was served with the pleadings. The Kentucky Supreme Court later cited *R.C.R.* with approval in *Morris v. Cabinet for Families and Children*, 69 S.W.3d 73, 75 (Ky. 2002), holding, “the inclusion of the child’s name in the caption, coupled with the child’s guardian having been served with the relevant pleadings, is more than sufficient to provide the parties with notice and to satisfy CR 73.03.” In contrast, in *A.M.W. v. Cabinet for Health and Family Services*, 356 S.W.3d 134, 135 (Ky. App. 2011), this Court dismissed an appeal where, although the child was named in the caption, the guardian *ad litem* was not served with a copy of the notice of appeal.

In the case at bar, unlike *R.C.R.* and *Morris*, the notices of appeal did not name the children in either the caption or the body of the document. The notice of appeal “places the named parties in the jurisdiction of the appellate court.” *Stallings*, 795 S.W.2d at 957. Although each child’s guardian *ad litem* was included in the certificate of service, we cannot conclude that serving the guardian *ad litem* was sufficient to transfer jurisdiction over J.M.B., J.J.B., and J.J.B. to this Court. The children were necessary and indispensable parties to these appeals, and the failure to name them in the notices of appeal requires dismissal of these appeals. *See A.M.W.*, 356 S.W.3d at 135.

For the foregoing reasons, in 2018-CA-000127-ME and 2018-CA-000128-ME, the motion to dismiss is GRANTED. The Court ORDERS that 2018-CA-000127-ME, 2018-CA-000128-ME, and 2018-CA-000703-ME be DISMISSED.

ENTERED: April 26, 2019

/s/ Donna Dixon
JUDGE, COURT OF APPEALS

ALL CONCUR.

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