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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000288-ME

G.A.A., SR.

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JEFF MOSS, SPECIAL JUDGE
ACTION NO. 16-AD-00267

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; H.M.A., A MINOR CHILD;
AND T.K.F.

APPELLEES

AND

NO. 2018-CA-000293-ME

G.A.A., SR.

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JEFF MOSS, SPECIAL JUDGE
ACTION NO. 16-AD-00268

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; G.A.A., JR., A MINOR CHILD;
AND T.K.F.

APPELLEES

AND

NO. 2018-CA-000320-ME

G.A.A., SR.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JEFF MOSS, SPECIAL JUDGE
ACTION NO. 13-J-00826-02

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; G.A.A., II, A MINOR CHILD;
AND T.K.F.

APPELLEES

AND

NO. 2018-CA-000321-ME

G.A.A., SR.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JEFF MOSS, SPECIAL JUDGE
ACTION NO. 13-J-00827-02

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; H.M.A., A MINOR CHILD;
AND T.K.F.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, KRAMER, AND MAZE, JUDGES.

MAZE, JUDGE: G.A.A., Sr. (Father) appeals the orders of the Fayette Circuit Court denying his motion for immediate entitlement to custody and his motion to withdraw his stipulation to neglect of his children. After careful review, we find no grounds to disturb the trial court's orders and affirm.

I. Facts and Procedural History

Father and T.K.F. (Mother) are the parents of H.M.A. and G.A.A., Jr. They have been the subject of three dependency, neglect, and abuse (DNA) petitions by the Commonwealth of Kentucky Cabinet for Health and Family Services (the Cabinet). The first DNA petition involved allegations the children were living in unsanitary conditions. The second DNA petition, filed as a non-removal petition, alleged that domestic violence was occurring at Father and Mother's house. The third DNA petition involved alleged sexual abuse by Father. The first and third petitions were resolved without any action against Father or Mother.

On February 16, 2015, a hearing was held on the second DNA petition. Father stipulated to probable cause and Mother was granted temporary custody. After Mother and Father left the courtroom, the guardian *ad litem* (GAL), the Cabinet's attorney, and Father's attorney engaged in a conversation at the bench where the GAL requested the non-removal petition be converted to a removal petition. The trial court sustained this "motion," and H.M.A. and G.A.A., Jr. were removed to foster care without a hearing. For reasons unknown, no party made a timely objection or appeal of this procedural irregularity. Nonetheless, the order would eventually come to the Judicial Conduct Commission's attention while it was investigating an unrelated complaint.

Meanwhile, the disposition required by KRS¹ 620.090(5) was continued several times. Father eventually stipulated to committing neglect by exposing the children to domestic violence on June 1, 2015. That same day, the trial court reinstated Mother's visitation. On August 24, 2015, a disposition hearing was finally held, and the trial court ordered the children remain in the Cabinet's custody for an indefinite period.

The case then proceeded to multiple reviews. What occurred during these reviews is largely missing from the record, but a docket notation dated August 8, 2016, states the goal for H.M.A. and G.A.A., Jr. was changed to

¹ Kentucky Revised Statutes.

adoption. On September 14, 2016, the Cabinet filed petitions for termination of parental rights (TPR) against Mother and Father. On March 21, 2017, the Judicial Conduct Commission entered an agreed order suspending the presiding judge, based in part on her actions at the February 16, 2015, hearing. The termination cases and underlying juvenile cases were then transferred to a special judge.

On October 13, 2017, Mother and Father filed “petitions” for immediate entitlement to custody of H.M.A. and G.A.A., Jr., arguing the trial court’s failure to provide due process at the February 2015 hearing entitled them to the immediate return of their children. These petitions were filed as motions in the TPR case, not as original actions. Nonetheless, the Cabinet responded that the trial court’s findings and conclusions of law at the dispositional hearing superseded those at the temporary removal hearing. Because there were no allegations the dispositional hearing was procedurally improper, the Commonwealth contended it cured any previous irregularities.

The trial court held a hearing on the matter, but a recording of this hearing is not contained in the record. In a subsequent written order, the trial court agreed the disposition hearing cured any deficiencies in the temporary removal hearing. The trial court also found no grounds to disturb the findings in the disposition order; therefore, it denied Mother’s and Father’s “petitions” for immediate custody. The trial court also denied Father’s motion to withdraw his

stipulation to neglect, finding Father had not offered any legal grounds to withdraw his stipulation. Father appealed both orders, which were consolidated by this Court. Mother has not appealed any of the trial court's orders.

II. Analysis

We note that the appellate record does not contain recordings of many of the hearings referenced by the parties' briefs and the trial court's orders. It is the appellant's responsibility to present a complete record before the appellate court. *Ray v. Ashland Oil, Inc.*, 389 S.W.3d 140, 145 (Ky. App. 2012). "It has long been held that, when the complete record is not before the appellate court, that court must assume that the omitted record supports the decision of the trial court." *Commonwealth v. Thompson*, 697 S.W.2d 143, 145 (Ky. 1985). Accordingly, our review of Father's arguments relies on the findings contained in the special judge's orders, which Father does not dispute.

First, Father argues the trial court erred by denying his motion to withdraw his stipulation to neglect. We review a trial court's decision on a party's motion to withdraw a stipulation for an abuse of discretion. *Commonwealth, Dep't of Highways v. Tanner*, 424 S.W.2d 384, 387 (Ky. 1968). Father contends he did not understand the facts he was stipulating to. This conclusory allegation is not supported by any evidence in the record. Moreover, it is a general rule that relief from a stipulation is appropriate only when "on the one hand it appears that such

relief is necessary to prevent manifest injustice to the party seeking it, and on the other hand that the granting of relief will not place the adverse party at any disadvantage by reason of having acted in reliance upon the stipulation entered into.” 161 A.L.R. 1161 (1946). The Commonwealth relied on the stipulation in the disposition and when filing the TPR petition. Permitting Father to withdraw his stipulation would have greatly prejudiced the Commonwealth. Under these circumstances, the trial court did not abuse its discretion when denying Father’s motion to withdraw his stipulation.

Next, Father argues the order denying his petition for immediate entitlement was erroneous because the procedural irregularities at the temporary removal hearing tainted the subsequent proceedings. We hold Father’s motion was procedurally improper and failed to allege grounds compelling the trial court to order the Cabinet to return the children to his custody.

A court may temporarily order a child to be placed in the custody of the Cabinet if the Commonwealth proves by a preponderance of evidence the child would be dependent, neglected, or abused if left in the custody of the parent. KRS 620.080(2). “Any person aggrieved by the issuance of a temporary removal order may file a petition in Circuit Court for immediate entitlement to custody[.]” KRS 620.110. Petitions for immediate entitlement to custody are not appeals of the temporary order of removal but are considered original actions. *C.K. v. Cabinet*

for Health and Family Services, 529 S.W.3d 786, 789 (Ky. App. 2017). After the temporary removal hearing, the court shall conduct an adjudicatory hearing and make a final disposition deciding the action to be taken by the court on behalf of the child. KRS 620.090(5). Among its disposition options, a court may commit the child to the custody of the Cabinet for an indeterminate period of time if it finds that doing so in the child's best interests. KRS 620.140(1)(d).

These statutes do not provide a basis for a parent to regain custody before a TPR case is adjudicated. Rather, they clearly state that petitions for immediate entitlement to custody are original actions that provide a means to challenge the *temporary* custody order, which would otherwise be interlocutory and not appealable. This case is well past the temporary removal stage. A disposition order found it in the children's best interest to remain in the Cabinet's custody, and the Cabinet has moved to terminate Mother's and Father's parental rights. Thus, Father's petition for immediate entitlement to custody was not properly before the trial court.

Even if was, neither Father nor Mother alleged any facts that would have made it in the children's best interest to change custody. If the temporary removal hearing has permanently tainted the Cabinet's efforts to terminate Father's parental rights, the proper forum for addressing that issue is the TPR adjudication. A proceeding in which the Cabinet will bear the burden of proof, and Father will

have the right to appeal. Under the circumstances, the trial court did not err by finding no grounds to order the Cabinet to return custody of the children to Father.

III. **Conclusion**

The orders of the Fayette Circuit Court are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

G.A.A., *pro se*
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BRIEF FOR APPELLEE

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