

RENDERED: APRIL 5, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000673-ME

A.S.

APPELLANT

APPEAL FROM FRANKLIN CIRCUIT COURT
FAMILY DIVISION

v.

HONORABLE SQUIRE N. WILLIAMS, JUDGE
ACTION NOS. 14-J-00228-002, 14-J-00228-003, 14-J-00228-004

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

APPELLEES

AND

NO. 2018-CA-000680-ME

J.S.

APPELLANT

APPEAL FROM FRANKLIN CIRCUIT COURT
FAMILY DIVISION

v.

HONORABLE SQUIRE N. WILLIAMS, JUDGE
ACTION NOS. 14-J-00228-002, 14-J-00228-004

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

APPELLEES

OPINION AND ORDER¹
DISMISSING

** ** * * * * *

BEFORE: GOODWINE, JONES, NICKELL, JUDGES.

GOODWINE, JUDGE: A.S. and J.S. are the biological parents of B.S. and filed appeals challenging the Franklin Family Court’s orders changing the permanency goal from reunification to adoption. The permanency goal change orders do not alter their parental rights; thus, are not final and appealable orders. Consequently, we dismiss these appeals.²

The family has an extensive history with the Cabinet for Health and Family Services (“Cabinet”) dating back to 2006. B.S. was born March 15, 2014, and is the youngest child of A.S. and J.S. On July 20, 2016, the Cabinet filed a non-emergency, non-removal, petition on behalf of B.S. alleging dependency,

¹ When final disposition of an appeal is made by an “Opinion and Order,” the party adversely affected may move for reconsideration as provided by Kentucky Rules of Civil Procedure (CR) 76.38(2) within ten days of entry, but a petition for rehearing is unauthorized. CR 76.32(1).

² A.S. has seven minor children who are in foster care and who were the subject of 17 separate appeals. J.S. is the biological father of the three youngest children. On October 10, 2018, a Court of Appeals’ motion panel dismissed 15 of the appeals as untimely. The two “surviving” appeals regarding B.S. were assigned to this merits panel November 21, 2018.

neglect or abuse due to drug abuse, sexual misconduct, and unstable housing.³ The sexual abuse allegation was dismissed.

At a non-removal hearing on July 22, 2016, the Cabinet alleged A.S. failed to utilize services provided by the Cabinet and argued B.S. was at risk of future neglect. A.S. and J.S. stipulated B.S. was “at risk of future neglect.” The Cabinet formulated a case plan and the family court appointed a CASA⁴ volunteer. On December 2, 2016, the family court found B.S. was neglected but ordered she remain in the home.⁵ A.S. and J.S. made very little progress on their case plan.

On July 12, 2017, the Cabinet filed a new petition on behalf of B.S.⁶ alleging A.S. and J.S. (1) did not provide adequate care, supervision, food, clothing, shelter, education or medical care for B.S.; and (2) did not utilize services offered by the Cabinet. The Cabinet sought removal of B.S. from A.S.’s custody after a visit revealed no running water or electricity even though B.S. was living at another address. Thereafter, the CASA volunteer lost touch with the family because they moved from their last known address.

³ Similar petitions were also filed on behalf of three other children.

⁴ Court Appointed Special Advocate.

⁵ A.S.’s three oldest children were already in foster care.

⁶ The petition, 14-J-00228-003, was subsequently dismissed and the allegations heard in 14-J-00228-004 on February 16, 2018.

On September 5, 2017, the Cabinet filed a third petition on behalf of B.S. alleging ongoing dependency, neglect or abuse. Specifically, the Cabinet alleged environmental abuse due to: (1) piles of feces located in the living room and kitchen; (2) no running water or electricity in the home; and (3) B.S. had bug bites and was sunburned. Additionally, J.S. failed a hair follicle drug test. The CASA volunteer recommended B.S. be removed from her current environment due to a “continued risk of neglect.” A.S. completed her court-ordered CATS⁷ assessment. J.S. did not. The assessors also recommended removal. The family court found B.S. was neglected and committed her to the Cabinet on October 20, 2017.⁸

The family court held a dispositional hearing on February 16, 2018, for all seven children.⁹ The family court found A.S. and J.S. made very little effort to work their case plan and had made no progress toward the original goal of reunification. The family court also found B.S. was doing well in foster care. The family court: (1) continued B.S.’s commitment to the Cabinet; (2) waived reasonable efforts at reunification; and (3) changed the permanency goal to

⁷ Comprehensive Assessment and Training Services.

⁸ B.S.’s siblings were also committed to the Cabinet and placed in foster care.

⁹ On February 19, 2018, an annual permanency review hearing was held for A.S.’s three oldest children.

adoption.¹⁰ A.S. and J.S. filed motions to alter, amend or vacate the permanency goal change orders which the family court denied. These appeals followed. Counsel for A.S. and J.S. filed *Anders*¹¹ briefs; and, thereafter, filed motions to withdraw as counsel. A.S. and J.S. filed supplemental briefs *pro se*.

Permanency review proceedings do not sever parental rights. Severing parental rights can be accomplished only with the full panoply of due process rights afforded under Kentucky law. Under KRS¹² 610.125(1), when a child has been removed from a home and placed in the custody of the Cabinet, the court shall conduct a permanency hearing no later than 12 months after placement and every 12 months thereafter if custody and out-of-home placement continues.

At these future hearings, the Cabinet must “present evidence to the court concerning the care and progress of the child since the last permanency hearing[.]” KRS 610.125(4). The purpose of such hearings is to determine the further status of the child. To further that purpose, the court must address whether the child should be placed for adoption or with a permanent custodian.

¹⁰ Permanency change orders were entered in 14-J-00228-002 and 14-J-00228-004.

¹⁰ See *Anders v. State of California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed. 493 (1967) and *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012).

¹² Kentucky Revised Statutes.

The orders A.S. and J.S. appeal from do not permanently adjudicate their parental rights to B.S. Although the family court wrote “case closed” on the orders, it did not write “final and appealable.” See *J.H. v. Cabinet for Health and Family Services*, 2009-CA-000629-ME, 2010 WL 1628494 (Ky. App. Apr. 23, 2010). Under Kentucky law, the cases must be re-docketed for further review toward implementation of the permanency plan established at the permanency hearing. KRS 610.125(7).

The Kentucky Rules of Civil Procedure (“CR”) 54.01 provide: “[a] final or appealable judgment is a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under [CR] 54.02.” Under CR 54.02: “The judgment shall recite such determination and shall recite that the judgment is final.” Here, the orders do not adjudicate the parents’ rights regarding permanent custody. The permanency plan goals are subject to change upon review of the family court.

A.S. and J.S. filed supplemental briefs. Their supplemental arguments are without merit. They cite cases which do not support their arguments that the permanency goal change orders are final and appealable because said cases deal with final orders terminating parental rights. A termination of parental rights order and/or a judgment of adoption, severs the rights of a parent, thus, it is final and appealable.

Here, the Cabinet did not file a petition to terminate parental rights nor did anyone file a petition for adoption. Rather, the Cabinet filed a new permanency plan changing the goal from family reunification to adoption, continuing B.S.'s commitment to the Cabinet. The family court agreed and entered orders accordingly. Said orders are not final and appealable. Thus, we must dismiss these appeals.

ORDER

On August 21, 2018, this Court passed to the merits panel Moira A. Mulligan's and Jack B. Bates's motions to withdraw as counsel for A. S. and J.S., respectively, filed pursuant to *Anders v. State of California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967) and *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012). Having considered the tendered *Anders* briefs, the merits of the case and in all ways being sufficiently informed, the Court ORDERS the motions to withdraw be and hereby are denied as **MOOT**. Based on the foregoing analysis, these appeals are hereby **DISMISSED**.

ALL CONCUR.

ENTERED: April 5, 2019

/s/ Pamela R. Goodwine
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANTS:

NO BRIEF FILED FOR APPELLEE

Jack B. Bates
Frankfort, Kentucky

Moira A. Mulligan
Lexington, Kentucky

SUPPLEMENTAL BRIEFS FOR
APPELLANTS:

A.S. and J.S., *pro se*
Frankfort, Kentucky