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# Commonwealth of Kentucky

# Court of Appeals

NO. 2018-CA-001840-ME
AND
NO. 2019-CA-000080-ME

S.T. AND J.T.[1] APPELLANTS

APPEALS FROM JEFFERSON CIRCUIT COURT
v. HONORABLE HUGH SMITH HAYNIE, JUDGE
ACTION NOS. 15-J-504243-002 AND 17-J-501572-002

CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY; HON. HUGH SMITH HAYNIE; S.J.; D.J.; A.C.; D.M.; OFFICE OF THE JEFFERSON COUNTY ATTORNEY; ELIZABETH PEPA; K.C., A CHILD; and K.M., A CHILD APPELLEES

OPINION
AFFIRMING

** ** ** ** **

[1] Pursuant to Court policy, individuals in juvenile cases are identified by initials to protect identity of the children.

BEFORE: GOODWINE, NICKELL, AND SPALDING, JUDGES.

NICKELL, JUDGE: In Case No. 2019-CA-000080-ME, S.T., and her husband, J.T. (jointly, "the T's"), challenge denial of their motion to intervene in a custody matter pertaining to K.M., S.T.'s great-niece. The Jefferson Circuit Court heard the petition before ruling the T's could not invoke KRS[2] 620.110[3] because neither petitioner was K.M.'s natural parent as the court believed was required by *C.K. v. Cabinet for Health and Family Services*, 529 S.W.3d 786 (Ky. App. 2017). The T's did not move the court to reconsider denial of their petition. The same order addressed a second child, K.C.—K.M.'s half-sister—to whom neither of the T's is related. Case No. 2018-CA-001840-ME echoes the argument as it pertains to K.C., acknowledging no blood relation but urging the court to keep the half-siblings together. In this appeal, the T's challenge the award of temporary custody, and ultimately permanent custody, of both girls to family friends rather than blood relatives. We ordered the two appeals to be heard together. Having reviewed the record, briefs and law, we affirm.

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[2] Kentucky Revised Statutes.

[3] In its entirety, KRS 620.110 reads:

> 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.

## FACTS AND PROCEDURAL BACKGROUND

A.C. (mother) and D.M. (father) are the unmarried natural parents of K.M., a daughter born December 5, 2016. S.T. is father's aunt and K.M's great-aunt. K.C. is a girl born to mother on November 22, 2015, by a different man. Mother and father have significant histories of domestic violence and substance abuse; father has anger issues. An ongoing Child Protective Services ("CPS") case involving mother and father was closed in September 2017. Neglect was substantiated against mother when K.C. tested positive for opiates at birth.

Following a physical altercation between mother and father on November 3, 2017, the Cabinet for Health and Family Services ("CHFS") filed juvenile petitions naming both parents and alleging K.C. and K.M. were neglected or abused by being present during the altercation. Mother said the girls were awake; father maintained they were asleep.

On November 14, 2017, a domestic violence order ("DVO") was entered directing parents to have no contact with one another. On December 5, 2017, father told CPS worker Katy Coleman he and mother had used drugs together in violation of the no contact order. At the time of the temporary removal hearing on December 20, 2017, mother had fled Kentucky with both children. She claimed she was in New York, but the children were located in Florida. Father was at work. Neither parent attended the removal hearing and neither identified any

relative for potential family placement. Temporary custody of both girls was given to CHFS which placed them in foster care.

Mother eventually named as a potential placement S.J. and D.J. (jointly, "the J's")—a married couple mother had met through a ministry and considered to be family friends. Father named no one. During a pretrial hearing in February 2018, temporary custody of the girls was given to the J's.

At trial on May 9, 2018, the trial court found "domestic violence placed the children at risk of harm" and ordered the girls to remain with the J's. At a disposition hearing on July 18, 2018, the trial court found reasonable efforts had been made to prevent removal of the children from the parental home. All prior, consistent orders were continued.

A post-disposition review was conducted on September 12, 2018. Reiterating the matter had already been adjudicated, the court considered father's motion for custody. Proof was heard about two incidents of father's aggressive behavior while exchanging the children with the J's. The trial court found father was "not credible," was accusing all of "corruption," and had "zero accountability, and zero appreciation for what the [J's] have done for him and his children." Terming father's behavior "too troubling," his custody motion was overruled as not being in the best interests of the girls. The next day, father sought dismissal of

the DVO between he and mother. CPS worker Parker Hall urged the court to hold mother and father in contempt of court orders entered December 20, 2017.

On September 26, 2018, the J's, at the request of CHFS, moved for permanent custody of K.C. and K.M. At a hearing on October 10, 2018, the county attorney and CHFS endorsed the J's motion for permanent custody. That same day, father's attorney moved to withdraw, and father declined appointment of new counsel. The trial court warned father the permanent custody hearing scheduled for November 14, 2018, would not be delayed due to lack of counsel.

On October 19, 2018, the T's made themselves known to the trial court for the first time,[4] moving to intervene and seek custody of both girls. Their succinct motion recited:

> [t]he Cabinet was aware that family members were available and willing to take the children as early as August 2018. The Cabinet failed to investigate to discover their suitability as custodians. The [T's] requested visitation, but the request was denied.
>
> Pursuant to KRS 620.090, the Cabinet is to use the least restrictive placement possible, and preference is to be given to available and qualified relatives. Further, pursuant to KRS 620.110, any person aggrieved by the issuance of a temporary custody order may file a petition for immediate entitlement to custody, and a hearing shall be expeditiously held.

[4] In their reply brief, the T's say father's two sisters, in addition to themselves, were possible family placements known to CHFS. Neither of the sisters moved to intervene and seek custody. Father named none of these individuals as potential placements.

The motion bore the case numbers for each girl, but was filed only in K.C.'s case, the child to which neither of the T's is related. Accompanying the petition was an affidavit signed by the T's saying:

> 1. [S.T.] is the great-aunt of the child, [K.M.] (she is the aunt of [father]).
>
> 2. [The T's] state that the temporary custodians, [the J's], are not related to either of the children.
>
> 3. [The T's] state that they were never told that this case was pending.
>
> 4. [The T's] state that they were never told that the children had been removed. [The T's] state that they have only just found out about this.
>
> 5. [The T's] state that they had not seen the children and had asked [father] about seeing the children, but he lied to [them] about the status of the children. [Father] told [them] that the children were doing great, but [the T's] became suspicious because they were not seeing the children.
>
> 6. [The T's] state that their suspicions were confirmed when they investigated further and found out about this case.
>
> 7. [The T's] state that they immediately tried to get involved, but they were denied any information.
>
> 8. [The T's] state that they found out the social worker's name and contacted her, but she did not cooperate in seeing if we were a proper placement, even though we are family. The social worker kept telling the parents that the children would be returned to them. Now, however, there is a pending motion for permanent

custody to the [J's]. [The T's] state that the Cabinet was aware that family members were available as early as August 2018. [The T's] requested visitation, but it was denied by the social worker. [S.T.'s brother] was able to investigate and find out what was happening with the children. He brought it to the Cabinet's attention that family was available for custody, and still nothing happened.

9. [The T's] state that [S.T.] is a teacher with Bardstown City Schools, and [J.T.] works at a warehouse. They have two adult children of their own. They have an excellent home, and good, stable jobs.

10. [The T's] state that they are the fit and proper persons to have the care, custody, and control of the children, and it is in the children's best interest that they are granted custody.

11. [The T's] state that, although they are not blood-related to the child, [K.C.], it is in that child's best interest to be kept with her sibling, [K.M.] and the [T's] believe it is in both children's interest to be placed with [the T's].

12. [The T's] state that they believe that the temporary custodians, [the J's], are in agreement with [the T's] having custody of the children, as they were unaware that there were relatives of the children with whom they could be placed when they filed their motion for permanent custody.

13. Wherefore, [the T's] respectfully request this Court to order that they be granted the permanent care, custody, and control of the children.

According to the record, the motion to intervene was heard October 31, 2018—a fact the T's admit in their brief. No recording or transcript of this hearing has been

provided to this Court and no designation of record was filed to ensure it was included in the appellate record. Without the hearing, this Court cannot independently determine what was argued to the trial court and the briefs do not reveal the content of any arguments made.

According to the trial court's notes about the hearing: the guardian *ad litem* (GAL) objected; father was unavailable and asked for the matter to be passed to another date; a permanent custody hearing was scheduled for November 14, 2018 (two weeks hence); all consistent orders were continued; the county attorney took no position on the motion; CHFS was permitted to file a response; and, counsel for the T's and the GAL orally argued the motion. Again, the court's notes do not reflect the specific arguments raised nor do the briefs filed in this Court.

On November 13, 2018—one day before the permanent custody hearing was to occur—the trial court entered an order stating the motion to intervene and seek custody had been heard and denying same on the belief only parents may avail themselves of KRS 620.110. The trial court wrote in part:

> [i]n their October 19, 2018 Motions, [the T's] argued that they have standing[5] to intervene and seek custody under KRS § 620.110, which states that "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

[5] The trial court addressed statutory standing as discussed in *Harrison v. Leach*, 323 S.W.3d 702, 705 (Ky. 2010), finding the T's lacked standing to receive immediate custody. We agree with the trial court's result, albeit for different reasons as explained later in this Opinion.

according to the Rules of Civil Procedure." Although they have no biological relationship to [K.C.], they have requested custody of both children, so as not to separate the siblings.

The Court recognizes that KRS § 620.110, at first glance, appears to literally grant **anyone** the right to intervene in a DNA action to seek custody. However, [the T's] have unfortunately failed to appreciate subsequent case law which significantly restricts those persons who may properly intervene using KRS § 620.110. In *C.K. v. Cabinet for Health and Family Services*, 529 S.W.3d 786, 789 (Ky. App. 2017), the Kentucky Court of Appeals stated that

> a petition for immediate entitlement to custody is an under-utilized tool that KRS 620.110 provides to **parents** who are unhappy with a district or family court's decision regarding temporary custody following a temporary removal hearing. The clear object of the statute is to permit **parents** to seek relief from a temporary order. (emphasis added).

In summary, this case explicitly states that the purpose of KRS § 620.110 is to provide an immediate remedy for natural parents who disagree with a Court's ruling following a temporary removal hearing. As neither [of the T's] are the natural parents of either [K.C. or K.M.], they cannot utilize KRS § 620.110 to intervene in this matter. Consequently, their Motions to Intervene and for Custody are respectfully Denied.

Before concluding, the Court must note the judicial nightmare that would inevitably ensue if KRS § 620.110 did actually permit literally **anyone** to intervene in a DNA case to seek custody. During any given DNA docket, the Court hears approximately forty (40) cases, and in each of those cases, up to ten (10) different

> relatives and fictive kin request that the child(ren) be placed with them. The Court shudders to think of the procedural chaos that would certainly occur if any person who disagreed with the Court's decision regarding placement were permitted to intervene as a party in a DNA action.[6]

Thus, the T's apparently argued they had standing—because the trial court references "standing" in its order—but the argument was rejected. The T's did not ask the trial court to alter, amend or vacate its ruling or otherwise reconsider denial of the petition to intervene.

The joint contempt/permanent custody hearing did not occur as scheduled. Over the GAL's objection, father's request for a continuance was granted and new counsel was appointed to represent him. The hearing finally convened on December 5, 2018—K.M.'s second birthday. Both mother and father stipulated to contempt, each admitting having had contact with the other in violation of the no contact order. Each was given thirty days, conditionally discharged for two years.

Attention then shifted to the question of permanent custody. Hall testified on behalf of CHFS. She said the children were doing "wonderful" in

[6] KRS 620.110 was enacted in 1987. Only one case in the intervening thirty-two years has dealt with a petition filed by a non-parent under KRS 620.110. *P.B. v. Cabinet for Health and Family Services*, 2017-SC-000360-DGE, 2018 WL 5732480, (Nov. 1, 2018) ("not to be published" opinion not cited as binding precedent under CR 76.28(4)(c)). The trial court's fear of thousands of petitions being filed and needlessly clogging court dockets has not come to pass.

daycare and there were no concerns with the temporary custodians. In Hall's words, the girls were "happy, safe and healthy" in the J's care.

S.J. testified it was her husband's idea to take the girls into their home and CHFS approached her about seeking permanent custody. She testified she had known mother about two years and was willing to be named K.C. and K.M.'s permanent custodian for their protection. S.J. said she has reared two adult children and works five hours a day while K.C. and K.M. are in daycare.

Mother also testified. She said she works about fifty hours a week at Cheddars and UPS. When asked about her support team, she identified her father and friends in AA. Father did not testify but counsel spoke on his behalf. Relative placement was not mentioned. When proof concluded, the trial court granted permanent custody to S.J. noting "it would not be safe" to send the children home.

Trial court notes about the permanent custody hearing—written on the dependency calendar—reflect the J's received temporary custody of both girls on February 28, 2018, and the girls are doing well. Father was recovering from a recent heroin overdose; parents were still having contact with one another—despite the no contact order—which was placing the children at risk; and, mother and father had only recently complied with CHFS recommendations despite three years of court involvement beginning December 6, 2015. The trial court stated the final hearing had not captured the true flavor of this lengthy case marked by severe

domestic violence, substance abuse, untruthful testimony and numerous instances of parental misbehavior. The court concluded naming S.J. permanent custodian was in the children's best interest. We now consider whether the T's received due process in their quest to intervene and receive custody of both girls.

**ANALYSIS**

At the outset we hold the trial court misinterpreted *C.K.*, 529 S.W.3d 786, a case rendered by a separate panel of this Court dealing with a petition *filed by an unwed father*. Contrary to the trial court's reading of *C.K.*, we do not read it as rewriting KRS 620.110 to allow *any parent aggrieved* by entry of a temporary removal order to seek "immediate entitlement to custody[.]" In enacting KRS 620.110, the legislature wrote, "[a]ny person aggrieved by the issuance of a temporary removal order" may petition "for immediate entitlement to custody[.]" We take the legislature at its word. *See* KRS 446.080. We are simply not at liberty to read words into a statute that are not there. *Commonwealth, Finance and Administration Cabinet, Dep't of Revenue v. Saint Joseph Health System, Inc*., 398 S.W.3d 446, 453 (Ky. App. 2013) (citing *Bohannon v. City of Louisville*, 193 Ky. 276, 235 S.W. 750, 752 (1921)).

The trial court accurately quoted *C.K.* but misconstrued the context of the quoted passages. *C.K.* focuses exclusively on parents because the panel was considering a petition filed by a parent. Addressing non-parents would have been

surplusage and *dicta*. Importantly, nowhere does *C.K.* say only parents may invoke KRS 620.110 to seek relief from a temporary removal order. That is the flaw in the trial court's analysis. While *C.K.* does not address non-parents, it does not exclude them from operation of KRS 620.110. Having held the trial court erred in its restricted application of KRS 620.110, we now explain why the trial court's error is not fatal and does not require reversal.

The T's have made three significant errors which severely hamper our consideration of this appeal. First, there is no statement of preservation—a clear violation of CR[7] 76.12(4)(c)(v) which mandates the argument portion of an appellant's brief contain "at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner." Knowing whether the precise argument raised in the T's brief was made to the trial court is critical to whether we may review the claim and the nature of any review we may undertake. "A basic general principle of the Rules of Civil Procedure is that a party is not entitled to raise an error on appeal if he has not called the error to the attention of the trial court and given that court an opportunity to correct it." *Little v. Whitehouse*, 384 S.W.2d 503, 504 (Ky. 1964) (citations omitted). Requiring a statement of preservation saves this Court

[7] Kentucky Rules of Civil Procedure.

"the time of canvassing the record in order to determine if the claimed error was properly preserved for appeal." *Elwell v. Stone*, 799 S.W.2d 46, 47 (Ky. App. 1990) (citing 7 Bertelsman and Phillips, *Kentucky Practice*, CR 76.12(4)(c)(iv), Comment 4 (4th ed. 1989)).

Compliance with CR 76.12 is mandatory. *Curty v. Norton Healthcare, Inc*., 561 S.W.3d 374, 378 (Ky. App. 2018) (citing *Hallis v. Hallis*, 328 S.W.3d 694, 696 (Ky. App. 2010)). Noncompliance is an unnecessary risk carrying harsh consequences. An appeal may be dismissed, or a brief stricken for failure to comply with "any substantial requirement" of the rule. *Hallis*, 328 S.W.3d at 696. As recognized in *Oakley v. Oakley*, 391 S.W.3d 377, 381 (Ky. App. 2012), the client suffers when counsel ignores the rules.

It is not this Court's function to search the record to support a party's argument. *Milby v. Mears*, 580 S.W.2d 724, 727 (Ky. App. 1979). That being said, our review of the entire record[8] yielded no proof the argument advanced on appeal was made below. If the T's argued to the trial court it was misreading *C.K.* and misapplying KRS 620.110, it was incumbent upon them to cite to the point they made their position known. Their brief is devoid of any such statement.

[8] The record contains 88 pages of written record and eleven hearings. However, the T's did not file their petition until October 19, 2018. Only one two-part hearing occurred after the T's filed their petition. The T's were not mentioned during the hearing held on December 5, 2018.

Preservation—or lack thereof—bears on whether we use the recognized standard of review, or whether palpable error review is requested and available. *Oakley*, 391 S.W.3d at 380. The T's have not requested palpable error review.

Second, the parties and the trial court agree the petition to intervene and seek custody was heard on October 31, 2018. Based on that admission, we conclude the T's received the expeditious hearing required by KRS 620.110. Unfortunately, no recording or transcript of that hearing is included in our record. If none was available due to equipment malfunction, the parties could have, and indeed should have, created a narrative statement as outlined in CR 75.13. They did not. Absence of the hearing is problematic. No one has told us—and without a complete record we cannot verify for ourselves—whether or how the issues raised on appeal may have been preserved.

> It is the responsibility of the appellant to present a complete record to this Court for review. *Chestnut v. Commonwealth*, 250 S.W.3d 288, 303 (Ky. 2008). When the record is incomplete, we assume the omitted record supports the trial court's decision. *Commonwealth v. Thompson*, 697 S.W.2d 143, 145 (Ky. 1985) (citing *Commonwealth, Dept. of Highways v. Richardson*, 424 S.W.2d 601, 604 (Ky. 1968)).

*Graves v. Commonwealth*, 283 S.W.3d 252, 255 (Ky. App. 2009). Thus, we assume whatever happened on October 31, 2018, supports the trial court's denial

of the T's petition to intervene and seek custody, its subsequent grant of temporary custody to the J's, and its ultimate grant of permanent custody to S.J.

At page 4 of their brief, the T's admit their petition was heard, but go on to argue they were denied an opportunity to be fully heard and were thereby denied due process. "The fundamental requirement of procedural due process is simply that all affected parties be given 'the opportunity to be heard at a meaningful time and in a meaningful manner.'" *Hilltop Basic Resources, Inc. v. County of Boone*, 180 S.W.3d 464, 469 (Ky. 2005) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976) (internal citation and quotation omitted)). The two positions advanced by the T's are wholly inconsistent. Either their petition was heard, or it was not. Based on their admission and *Graves*, 283 S.W.3d at 255, we assume it was.

Third, if denied a full airing of their claim, the T's do not say they offered an avowal or their attempt to do so was rebuffed. They cite only to their unsupported affidavit, failing to identify the proof and witnesses they would have introduced to support their petition to intervene. "The purpose of an avowal is to permit a reviewing court to have the information needed to consider the ruling of the trial court. When there is sufficient evidence before the reviewing court regarding the issue, an avowal is unnecessary." *Underhill v. Stephenson*, 756 S.W.2d 459, 461 (Ky. 1988). On the record certified to us, without an avowal, we

cannot say the trial court clearly erred in making its factual findings, applied the wrong law, or abused its discretion. *B.C. v. B.T.*, 182 S.W.3d 213, 219-20 (Ky. App. 2005).

We stand at an uneasy juncture. We are convinced the trial court erroneously restricted the reach of *C.K.* and KRS 620.110, but the errors made by the T's are too great to ignore. We are further convinced the T's have not shown themselves to be "aggrieved," the trial court reached the right result in placing the girls with the J's, and more proof would not have changed the outcome.

The T's have not specifically alleged nor demonstrated they were "aggrieved" by the J's receiving temporary, and now permanent, custody. They quote KRS 620.110 in their petition, but they do not apply the statute to themselves. The most they assert in their accompanying affidavit is they are "the fit and proper persons to have the care, custody, and control of the children, and it is in the children's best interest that they are granted custody." The T's also state they believe the J's agree with the T's position. Without more, we are unpersuaded the T's were "aggrieved."

The legislature chose not to define the term "aggrieved," but the word must mean more than simple disagreement with the trial court's decision. Were the statute read otherwise, the fear expressed by the trial court—that "literally anyone [could] petition"—as opposed to "any person aggrieved" could invoke

KRS 620.110, could come true. Just as we cannot add words the legislature did not adopt, *Bohannon*, 235 S.W. at 752, neither can we omit words they enacted. We must assume the legislature "meant exactly what it said, and said exactly what it meant[.]" *Stone v. Pryor*, 103 Ky. 645, 45 S.W. 1136, 1142 (1898) (Waddle, S.J., dissenting). Thus, the legislature's decision to include the word "aggrieved" cannot be ignored and it must be construed to mean something more than mere disagreement with a court's decision to remove a child from a parental home.

The only connection the T's have alleged to K.M. is the same blood courses through S.T.'s veins. That bare allegation—without proof of an actual connection between K.M. and the T's is not enough to trigger relief for the T's. The T's may have such a connection, but they have not spread it upon the record certified to us and we cannot say with confidence they made or even attempted to make such a showing in the trial court. Examples of perfectly plausible connections would be previously exercising custody over the girls, having had visitation with them, and being a party to the action below—all indicators the petitioner has been a presence in the children's lives. As recently explained in *Commonwealth, Cabinet for Health and Family Services, Department for Medicaid Services v. Sexton by and through Appalachian Regional Healthcare, Inc.*, 566 S.W.3d 185, 188 (Ky. 2018), *reh'g denied* (Feb. 14, 2019) (citing *Summers v. Earth Island Inst.*, 555 U.S. 488, 497, 129 S.Ct. 1142, 173 L.Ed.2d 1

(2009) (Kennedy, J., concurring in part and concurring in judgment)), to establish constitutional standing, "[t]he party bringing suit must show that the action injures him in a concrete and personal way." Here, we have no allegation and no proof of any concrete and personal connection between the T's and the children to enable us to deem the T's "aggrieved" by the trial court's award of custody to the J's.

According to the T's own affidavit, due to father's lies, for several months the T's were wholly unaware the children had been removed from the parental home. CHFS filed the juvenile petitions on November 3, 2017. The T's did not file their petition seeking custody for nearly a year—October 19, 2018. The record contains no proof the T's ever had possession or custody of K.M. or would qualify as her *de facto* custodian. Moreover, there is no proof K.M. ever spent time with the T's or would recognize them as family rather than strangers.

The T's claim to K.C. is even more tenuous. They claim her only by extension as K.M.'s half-sibling and a desire for the girls not to be separated.

The T's fault the trial court for awarding the J's temporary—and ultimately permanent—custody, but not because the J's are unqualified, only because K.M. and S.T. share blood and the T's believe they are entitled to be the preferred placement for both girls. On the record before us, S.J. has known the girls since February 2018 when they were placed in her custody. At the time of this writing—August 2019—K.C. is forty-four months old and K.M. is thirty-two

months old. The girls have been in S.J.'s custody seventeen months—two months shy of one-half of K.M.'s young life. Much bonding has occurred during that time. KRS 620.090(2) states in part:

> [i]n placing a child under an order of temporary custody, the cabinet or its designee shall use the least restrictive appropriate placement available. Preference shall be given to available and qualified relatives of the child considering the wishes of the parent or other person exercising custodial control or supervision, if known. The child may also be placed in a facility or program operated or approved by the cabinet, including a foster home, or any other appropriate available placement.

The T's state in their affidavit they believe the J's agree the T's are the appropriate placement for the girls, but there is no statement on the record from S.J. indicating she believes the T's should have custody of the girls. When given the opportunity, father—for whatever reason—mentioned no relatives as potential family placements even though the T's maintain he had at least three women from whom to choose.

In conclusion, we are confident the trial court erroneously restricted application of KRS 620.110, but unconvinced the T's are properly before us due to lack of both proof and standing. Believing they should have had preference over non-blood relatives, the T's petitioned for immediate entitlement to custody which triggered an expeditious hearing. That was the extent of due process required in this case. Based on the record provided to us, we cannot say the trial court had to

allow the T's to intervene or had to award them custody. Thus, the trial court's error is not fatal, and the orders entered on November 13, 2018, and December 5, 2018, are affirmed.

ALL CONCUR.

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