

Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-000274-ME

R.W.

APPELLANT

v. APPEAL FROM ALLEN CIRCUIT COURT
HONORABLE G. SIDNOR BRODERSON, JUDGE
ACTION NO. 18-J-00005-002

COMMONWEALTH OF KENTUCKY,
ALLEN COUNTY ATTORNEY'S
OFFICE; AND R.W., A MINOR CHILD

APPELLEES

OPINION AND ORDER
DISMISSING

** ** * ** * ** *

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

COMBS, JUDGE: R.W. (Father) appeals the Allen Family Court's determination that R.W. (the child) be placed with the child's mother because Father was under the influence of methamphetamine while in a caretaking role with the child. We dismiss this appeal for failure to name an indispensable party, the Cabinet for Health and Family Services (the Cabinet).

In September 2018, a social worker from the Allen County Department for Community Based Services (an arm of the Cabinet) filed a juvenile dependency, neglect or abuse petition, alleging among other things that Father had used methamphetamine while caring for the child. The Allen Family Court ordered the child be placed with his mother.

The Allen County Attorney's Office represented the Cabinet's interests during the proceedings, and the caption of R.W.'s notice of appeal is "IN RE: [R.W.], a minor child" while the body states that "the name of the Appellee against whom this appeal is taken is the Commonwealth of Kentucky, Allen County Attorney's Office." The Cabinet is not mentioned in the notice of appeal.

It is established law that "when the Cabinet files a dependency action, the Cabinet is in fact the plaintiff." *Commonwealth, Cabinet for Health and Family Services v. Byer*, 173 S.W.3d 247, 249 (Ky. App. 2005) (quotation marks, brackets and citation omitted). Since the Cabinet filed the petition in this case, the Cabinet was the plaintiff. Although the Allen County Attorney's Office provided legal representation for the Cabinet's interests in family court,¹ the Allen County

¹ Kentucky's Family Court Rules of Procedure and Practice (FCRPP) 19(2) requires dependency, neglect or abuse petitions to be served on the county attorney.

Attorney’s Office was not a party to the action. Its role is analogous to that of a Commonwealth Attorney’s office representing the interests of the Commonwealth in a felony criminal prosecution without being a party.

Because the Cabinet was the “plaintiff,” it is inescapably an indispensable party to this appeal. Although the Cabinet’s absence was not brought to our attention by the parties, failure to name an indispensable party in a notice of appeal is a jurisdictional defect requiring dismissal. *See, e.g., Slone v. Casey*, 194 S.W.3d 336, 337 (Ky. App. 2006).²

It is **ORDERED** that this appeal be **DISMISSED**.

ALL CONCUR.

Entered: December 6, 2019

/s/ Sara Walter Combs
Judge, Court of Appeals

BRIEF FOR APPELLANT:

Traci Peppers
Scottsville, Kentucky

BRIEF FOR APPELLEE:

Hallye M. Arterburn
Scottsville, Kentucky

² We note several instances of our dismissal of appeals from dependency, neglect, and abuse determinations when the Cabinet was not named as an appellee. *See, e.g., M.D. v. Cabinet for Health and Family Services*, No. 2009-CA-000615-ME, 2009 WL 2971533 (Ky. App. Sept. 18, 2009); *K.H. v. Commonwealth*, No. 2017-CA-001863-ME, 2018 WL 5310145 (Ky. App. Oct. 26, 2018).