

RENDERED: NOVEMBER 22, 2019; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000401-ME

M.M.

APPELLANT

v.

APPEAL FROM ALLEN FAMILY COURT
HONORABLE G. SIDNOR BRODERSON, JUDGE
ACTION NO. 18-J-00171-002

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

APPELLEES

AND

NO. 2019-CA-000402-ME

M.M.

APPELLANT

v.

APPEAL FROM ALLEN FAMILY COURT
HONORABLE G. SIDNOR BRODERSON, JUDGE
ACTION NO. 18-J-00172-002

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

APPELLEES

AND

NO. 2019-CA-000403-ME

M.M.

APPELLANT

v. APPEAL FROM ALLEN FAMILY COURT
HONORABLE G. SIDNOR BRODERSON, JUDGE
ACTION NO. 19-J-00001-001

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

APPELLEES

AND

NO. 2019-CA-000404-ME

M.M.

APPELLANT

v. APPEAL FROM ALLEN FAMILY COURT
HONORABLE G. SIDNOR BRODERSON, JUDGE
ACTION NO. 19-J-00002-001

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

APPELLEES

OPINION AND ORDER
DISMISSING

** **

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

JONES, JUDGE: M.M. appeals the Allen Family Court's disposition regarding four minor children residing in his household on allegations of drug use, domestic violence, and environmental neglect. Because M.M. has failed to respond to our order requiring him to show cause why his appeals should not be dismissed for failure to name the Cabinet for Health and Family Services ("the Cabinet") as a party, we order these appeals to be dismissed.

I. BACKGROUND

The four appeals in this case involve four young children ordered to be temporarily removed from the home by the family court. Prior to the removal, all four children lived with M.M. and A.R., his paramour, in Allen County. The two oldest children are A.R.'s biological children from her previous marriage to W.R.; the third child is M.M.'s biological child from a previous relationship; and the youngest child is the biological child of M.M. and A.R.

The Cabinet became involved with the four children in December 2018, based on reports of domestic violence and suspected drug use by the adults in the household. Upon speaking to the social worker by telephone from Tennessee, A.R. confirmed reports of drug use and an incident of domestic violence. The social worker visited M.M. and A.R.'s residence because the children told her the home was in disrepair; M.M. had apparently "destroyed the home" because he was angry. When the social worker arrived, she found no one home. The door to the residence was open, however, and the social worker saw signs of disarray and a Christmas tree knocked over on its side. The social worker took photographs of what she perceived as environmental neglect. Later, after returning to M.M.'s home, A.R. recanted her statements asserting domestic violence. When the social worker told A.R. she did not believe her recantation, A.R. began to cry and again admitted domestic violence had taken place. A.R. did not describe the domestic violence events or state whether the children were present during these events.

Later, at the adjudication hearing, a Scottsville police officer testified he had performed a welfare check on the children on December 13, 2018. The officer met M.M., W.R., and the children at a retail store. M.M. was there to exchange the children with W.R., the biological father of two of the children, but he did not know where A.R. was at the time. According to the officer, M.M. stated

there had been a fight the day before, and A.R. had cut him with a knife. M.M. had not contacted police about the altercation. In his testimony, M.M. denied telling the officer that A.R. had cut him with a knife. M.M. also blamed the disarray in his home on his brother, who he alleged had broken into the house and ransacked it for valuables while they were out of town. M.M. also denied ever committing acts of domestic violence against A.R.

At the conclusion of the adjudication, the family court found insufficient evidence supporting allegations of drug use. However, the family court found sufficient and credible evidence to support a finding that domestic violence had taken place in the home. In addition, based on its viewing of the photographs of the home, the family court determined environmental neglect had occurred in this case. The family court did not credit M.M.'s account of a robbery, finding instead that the photographs did not depict a ransacking so much as the overall presence of trash strewn within the home. At disposition, two of the four children involved in this case were remanded to the custody of the Cabinet, while the other two children were placed with their biological father in Tennessee. In addition, the family court ordered M.M. to go through a domestic violence assessment. These appeals follow.

II. ANALYSIS

We do not reach the merits of this case because, as a threshold matter, the Cabinet has not been named as a party in the appellant's notices of appeal. The Allen County Attorney's office represented the Cabinet's interests during the proceedings. The caption of the notices of appeal use the following format: "IN RE: [name], a minor child," while the body states, "the name of the Appellee against whom this appeal is taken is the Commonwealth of Kentucky, Allen County Attorney's Office." The notices of appeal do not name or make any reference to the Cabinet.

We have previously held "the Cabinet is in fact 'the plaintiff'" when it files a dependency action. *Commonwealth, Cabinet for Health and Family Services v. Byer*, 173 S.W.3d 247, 249 (Ky. App. 2005) (quoting *Cabinet for Human Resources v. Howard*, 705 S.W.2d 935, 937 (Ky. App. 1985)). The Cabinet may not be considered a "nominal party" in such cases. *Id.* Based on this rationale, we have dismissed dependency, neglect, and abuse cases in which the Cabinet was erroneously omitted as a party.¹ "[F]ailure to name an indispensable party in the notice of appeal results in dismissal of the appeal." *Slone v. Casey*,

¹ See, e.g., *K.H. v. Commonwealth*, No. 2017-CA-001863-ME, 2018 WL 5310145 (Ky. App. Oct. 26, 2018); *M.D. v. Cabinet for Health and Family Services*, No. 2009-CA-000615-ME, 2009 WL 2971533 (Ky. App. Sept. 18, 2009).

194 S.W.3d 336, 337 (Ky. App. 2006); *see also City of Devondale v. Stallings*, 795 S.W.2d 954, 957 (Ky. 1990).

On October 10, 2019, we entered an order requiring the appellant to show cause why these appeals should not be dismissed for failure to name an indispensable party. As of the deadline on October 30, 2019, we received no response to our order.

III. ORDER²

Having ordered the appellant to show cause why these appeals should not be dismissed for failure to name the Cabinet as a party in the notices of appeal, and the appellant thereafter failing to timely respond, it is hereby ORDERED that these appeals are DISMISSED for failure to name an indispensable party.

ALL CONCUR.

ENTERED: Nov. 22, 2019

/s/ Allison Emerson Jones
JUDGE, COURT OF APPEALS

² Parties should take note that this decision is designated an “opinion and order” and therefore falls under Kentucky Rule of Civil Procedure (CR) 76.38. Petitions for rehearing are thus not authorized under CR 76.32(1)(a).

BRIEF FOR APPELLANT:

Traci Peppers
Scottsville, Kentucky

BRIEF FOR APPELLEE:

Teresa E. Kirby
Scottsville, Kentucky