RENDERED: DECEMBER 18, 2020; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2020-CA-0183-ME

P.C. APPELLANT

v. APPEAL FROM BOONE CIRCUIT COURT
HONORABLE JENNIFER R. DUSING, JUDGE
ACTION NO. 19-AD-00064

S.A.; J.O.; AND R.J.O. APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, JONES, AND K. THOMPSON, JUDGES.

THOMPSON, K., JUDGE: P.C. filed a petition to adopt his step-grandson, J.O. J.O.'s biological mother, S.A., and father, R.J.O., consented to the petition.[1] However, though she agreed to it, the petition was premised upon S.A. retaining

[1] To protect the privacy of the minor child, we will use initials for all parties.

her parental rights to J.O. In other words, if the petition had been granted, P.C. and S.A. would have jointly been J.O.'s legal parents.[2]

The Boone Circuit Court, Family Court Division, dismissed the petition in reliance upon Kentucky Revised Statute (KRS) 199.520(2), which provides in relevant part that "[u]pon granting an adoption, all legal relationship between the adopted child and the biological parents shall be terminated except the relationship of a biological parent who is the spouse of an adoptive parent." The family court concluded the statute meant it could not grant an adoption petition which would let a biological mother retain her parental rights alongside someone to whom she was not married. P.C. then filed this expedited appeal.[3] We affirm.

As we have held, "KRS 199.520(2) makes a biological parent's retention of parental rights on the one hand, and his or her consent to the adoption of his or her child by a non-spouse on the other, mutually exclusive options under the law." *S.J.L.S. v. T.L.S.*, 265 S.W.3d 804, 828 (Ky.App. 2008). Indeed, we

[2] P.C.'s spouse did not join in the adoption proceeding. KRS 199.470(2) provides that "[i]f the petitioner is married, the husband or wife shall join in a petition for leave to adopt a child unless the petitioner is married to a biological parent of the child to be adopted, except that if the court finds the requirement of a joint petition would serve to deny the child a suitable home, the requirement may be waived." Because the family court found P.C.'s adoption petition failed on other grounds, its order did not address the impact, if any, of P.C.'s spouse's failure to join the petition.

[3] The order dismissing the petition does not state that it is final and appealable. However, as a practical matter, dismissing the petition left nothing remaining to adjudicate (even though the family court offered to hold what would have been a futile final hearing) so we will accept that, under these facts, the dismissal order was a sufficient basis for taking an appeal.

must strictly construe all adoption statutes. *Id.* at 824 ("[S]ince 1933 and before, Kentucky courts have consistently held, without correction by Kentucky's Legislature, that our adoption laws must be strictly construed."). Regardless of P.C.'s laudable intentions or his loving relationship with J.O., we agree with the family court that a strict, proper construction of the plain language of KRS 199.520(2), as discussed in our decision in *S.J.L.S.*, precludes permitting a biological parent (S.A. here) to retain her parental rights alongside an adoptive parent to whom the biological parent is not married (P.C. here).

Perhaps cognizant of the inescapable conclusion that his petition contravenes KRS 199.520(2), P.C. now argues the statute violates "the due process and equal protection clauses of the United States and Kentucky constitutions." Appellant's brief, p. 8. But P.C. has not met his duty under Kentucky Rule of Civil Procedure (CR) 76.12(4)(c)(v) to show where he raised this issue in family court, nor has he requested any review for palpable error under CR 61.02. Indeed, from our review of the record, P.C. did not challenge the constitutionality of KRS 199.520 in family court, nor did he serve the Attorney General of Kentucky with any challenges to the statute's constitutionality during those proceedings. Instead, the first time the Attorney General was notified of the constitutional challenge appears to be when P.C. sent the Attorney General a copy of the notice of appeal and, later, his appellate brief.

We cannot address P.C.'s constitutionality argument for two reasons. First, the issue is unpreserved as it was not raised to the family court. "The Court of Appeals is one of review and is not to be approached as a second opportunity to be heard as a trial court. An issue not timely raised before the circuit court cannot be considered as a new argument before this Court." *Lawrence v. Risen*, 598 S.W.2d 474, 476 (Ky.App. 1980). In reliance upon that rule, we have declined to address arguments which had not previously been raised in family court. *See, e.g.*, *Triplett v. Triplett*, 414 S.W.3d 11, 16 (Ky.App. 2013).

Second, P.C. failed to comply with the notification requirements of KRS 418.075(1). Specifically, that statutory subsection provides in relevant part that "[i]n any proceeding which involves the validity of a statute, the Attorney General of the state shall, before judgment is entered, be served with a copy of the petition, and shall be entitled to be heard . . . ."

Our Supreme Court has held that "strict compliance with the notification provisions of KRS 418.075 is mandatory" and that "[b]ecause the plain language of KRS 418.075 requires notice be given to the Attorney General prior to the entry of judgment, we reject any contention that merely filing an appellate brief, which necessarily occurs post-judgment, satisfies the clear requirements of KRS 418.075." *Benet v. Commonwealth*, 253 S.W.3d 528, 532 (Ky. 2008) (citations omitted). Similarly, a notice of appeal necessarily is issued post-

judgment and thus cannot satisfy KRS 418.075's notification requirements. And we have applied the Attorney General notification requirements to family court appeals. *See, e.g.*, *Shafizadeh v. Shafizadeh*, 444 S.W.3d 437, 457 (Ky.App. 2012) ("To mount a successful challenge—whether as applied or facially—on due process grounds, Saeid was obligated to (1) raise this argument before the family court; and (2) notify the Office of the Kentucky Attorney General of his argument."). Because P.C. did not notify the Attorney General of his constitutional argument during the family court proceedings, we cannot address it on appeal. *Id.* at 458.

For the foregoing reasons, the decision of the Boone Circuit Court, Family Court Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

P.C., *pro se*
Cincinnati, Ohio

NO BRIEF FILED FOR APPELLEES