

Commonwealth of Kentucky
Court of Appeals

NO. 2020-CA-1603-ME

J.T.E.

APPELLANT

v.

APPEAL FROM ROWAN CIRCUIT COURT
HONORABLE WILLIAM LANE, JUDGE
ACTION NO. 15-AD-00007

A.R.

APPELLEE

OPINION AND ORDER DISMISSING

** ** * * * * *

BEFORE: CALDWELL, DIXON, AND L. THOMPSON, JUDGES.

DIXON, JUDGE: Appellant J.T.E. appeals the order of the Rowan Circuit Court, entered October 21, 2020, denying his motion to vacate an October 23, 2015, judgment of adoption regarding his biological daughter. After careful review of the briefs, record, and law, we dismiss for J.T.E.’s failure to name an indispensable party.

J.T.E. and Appellee A.R. are the biological parents of J.A.R. (“Child”). On March 3, 2015, E.J.R., A.R.’s husband and Child’s step-father,

petitioned to adopt Child. No response was filed by J.T.E., and the petition was granted on October 23, 2015.

On May 7, 2020, J.T.E filed a motion seeking to set aside the judgment of adoption asserting that, despite the signed certified mail receipt filed in the record, he was never served with the petition. After conducting an evidentiary hearing, the court denied the motion. On December 17, 2020, J.T.E. filed a notice of appeal naming himself as the Appellant and A.R. as the sole Appellee. On appeal, J.T.E. asserts that the court erred in denying relief where he demonstrated fraud affected the adoption proceedings and that he was never served with the petition. We need not reach the merits of J.T.E.’s arguments because we conclude dismissal is required for failure to name an indispensable party.

CR¹ 73.03(1) states “[t]he notice of appeal shall specify by name all appellants and all appellees[.]” Failure to name an indispensable party is a jurisdictional defect that cannot be remedied after the period for filing a notice of appeal has expired and necessitates dismissal of the appeal. *Browning v. Preece*, 392 S.W.3d 388 (Ky. 2013); *City of Devondale v. Stallings*, 795 S.W.2d 954 (Ky. 1990). A party is indispensable on appeal if they have an interest that would be

¹ Kentucky Rules of Civil Procedure.

affected, either adversely or favorably, by the decision of the Court. *Browning*, 392 S.W.3d at 391.

Herein, undoubtedly E.J.R., who was the petitioner in the lower court action and whose parental rights to Child are subject to being voided by this action, has an interest which would be affected by a decision of this Court. Accordingly, E.J.R. is indispensable to this appeal. As E.J.R.'s name does not appear in either the body or the caption of the notice of appeal, J.T.E. has failed to strictly comply with CR 73.03, and dismissal is required.

For the foregoing reasons, the Court ORDERS that 2020-CA-1603-ME be DISMISSED.

ALL CONCUR.

ENTERED: June 18, 2021



JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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