

RENDERED: JULY 23, 2021; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-0282-ME

A.H.

APPELLANT

v.

APPEAL FROM TRIMBLE CIRCUIT COURT
HONORABLE DOREEN S. GOODWIN, JUDGE
ACTION NO. 19-J-00019-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; J.E., A CHILD;
AND D.E.

APPELLEES

OPINION
DISMISSING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; MAZE AND K. THOMPSON, JUDGES.

CLAYTON, CHIEF JUDGE: A.H. (“Mother”) is the biological mother of J.E.

(“Child”), who was removed from her custody by the Trimble Circuit Court after

she stipulated to neglect. Mother appeals from an order of the circuit court

changing the permanency goal from reunification to adoption and a subsequent order denying her motion to alter, amend, or vacate. Because these are not final and appealable orders, we must dismiss this appeal.

Child was born on April 8, 2019. Mother and Child's natural father, D.E. (Father) are not married and, according to Mother, are no longer romantically involved. On May 1, 2019, the Cabinet filed a dependency, neglect, or abuse petition alleging that during her pregnancy and upon admission to the hospital, Mother tested positive for methamphetamines, amphetamines, and cannabinoids, and Child tested positive for methamphetamines upon birth. Following a pretrial conference, the circuit court placed Child in the temporary custody of Father.

On June 10, 2019, Mother stipulated to neglect and agreed to the recommendations of the Cabinet. The court accepted the stipulation and adopted the recommendations contained in the Cabinet's report which included ordering Mother and Father to submit to random drug screens. After Father failed to comply with the drug screens, the court removed Child from his custody and placed her in the care of fictive kin. The fictive kin violated the orders of the court by permitting Mother and Father to take Child to Mississippi for two weeks to visit her paternal grandparents. Mother apparently wished to remain in Mississippi with Child or to return to Mississippi upon completion of her case plan. The Cabinet sought and obtained a court order requiring Mother and Child to return to

Kentucky. The circuit court removed Child from the custody of the fictive kin and placed her in the custody of the Cabinet. Mother and Father stipulated to being in contempt of the orders of the circuit court by removing Child from Kentucky. The Cabinet placed Child with her maternal aunt and uncle, who started the process to become a child-specific foster home.

On July 29, 2020, the Cabinet filed a motion to change the permanency goal to adoption. It stated that the Cabinet was asking for a waiver of reasonable efforts because Mother and Father had “not been honest with the Cabinet” throughout the case and continued “to make excuses for their actions as well as their lack of actions and progress.”

On October 26, 2020, the circuit court held a permanency hearing in accordance with KRS¹ 610.125(1). The statute requires the court to address whether a child who has been removed from the home and placed in the custody of the Cabinet should be returned to the parent, placed for adoption or with a permanent custodian. KRS 610.125(1)(a)-(c). Accordingly, evidence was presented at the hearing regarding Father and Mother’s compliance with the case plans the Cabinet had created and their relationship with Child. On the basis of the evidence presented, the circuit court entered an order on October 27, 2020, changing the goal from reunification to adoption. Its order stated: “Child is 18

¹ Kentucky Revised Statutes.

months old and parents have not succeeded in their goals. [Father] has failed to comply with ordered case plan. [Mother] has made some progress in her plan which is commendable. However, she continues to affiliate with [Father]; her visits continue supervised.”

Mother filed a motion to alter, amend, or vacate the goal change, arguing that the family court abused its discretion in basing its decision primarily on her purported relationship with Father. The family court entered an order denying the motion and designated the order as final and appealable. This appeal by Mother followed.

A final or appealable judgment is defined as “a final order adjudicating all the rights of all the parties in an action or proceeding, or a judgment made final under [Kentucky Rules of Civil Procedure (CR)] 54.02.” CR 54.01. CR 54.02(1) provides that “[w]hen more than one claim for relief is presented in an action, . . . or when multiple parties are involved, the court may grant a final judgment upon one or more but less than all of the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final.”

The orders of the circuit court in this case do not represent the final adjudication of Mother’s parental rights to Child. The court’s decision to change the goal from reunification to adoption is subject to future review and modification

by the court. Although the order included a recitation that it was final and appealable, “[w]here an order is by its very nature interlocutory, even the inclusion of the recitals provided for in CR 54.02 will not make it appealable.” *Hook v. Hook*, 563 S.W.2d 716, 717 (Ky. 1978) (citations omitted). Consequently, “[a]s there is no final order or judgment from which to appeal, the Court of Appeals [is] without jurisdiction.” *Wilson v. Russell*, 162 S.W.3d 911, 913 (Ky. 2005).

For the foregoing reasons, Mother’s appeal must be dismissed because it is taken from a non-final ruling of the circuit court.

MAZE, JUDGE, CONCURS.

THOMPSON, K., JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

Valerie L. Shannon
LaGrange, Kentucky

BRIEF FOR APPELLEE CABINET
FOR HEALTH AND FAMILY
SERVICES:

Crystal L. Heinz
Bedford, Kentucky