

Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-0884-ME

L.S.,¹ THE BIOLOGICAL MOTHER

APPELLANT

v. APPEAL FROM WARREN CIRCUIT COURT
HONORABLE DAVID A. LANPHEAR, JUDGE
ACTION NO. 16-J-00644-003

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
B.P., MATERNAL COUSIN; J.S. THE
BIOLOGICAL FATHER; AND P.S., A
CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

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

DIXON, JUDGE: L.S. (Mother) appeals from dependency, neglect, and abuse

(DNA) orders entered by the Warren Circuit Court, arguing she was erroneously

¹ Pursuant to Court policy, to protect the privacy of minors, we refer to parties in dependency, neglect, and abuse cases by initials only.

deprived of her right to counsel during the proceedings. After careful review of the brief, record, and law, we affirm the trial court's judgments and, by separate order, grant Mother's appointed counsel's motion to withdraw.

BACKGROUND FACTS AND PROCEDURAL HISTORY

Mother and J.S. (Father) are the parents of P.S. (Child). In November 2016, through a prior DNA action wherein Father stipulated to abuse or neglect, Child was placed in the temporary custody of her maternal aunt. On June 29, 2020, B.P. (Cousin) filed the underlying DNA petition alleging that Child was dependent due to the aunt's terminal illness and requesting emergency custody, which was granted. The parents were not named as parties responsible for Child's dependency, but they were served with the petition and given notice for the subsequent proceedings.

At a pretrial conference, the parents stated that they had not applied for the appointment of counsel, that they were attempting to retain private counsel, and that Child should be returned to their care. At the adjudication hearing, the parents, still acting *pro se*, expressed confusion as to the nature of the proceedings, renewed their request that Child be returned, and erroneously argued that no findings had been made against them. They further denied having been appointed counsel in prior proceedings and again indicated they would retain counsel. Ultimately, the Court found Child to be dependent. At disposition, for the first

time, the parents requested that counsel be appointed for them. The Commonwealth opposed the request citing the fact Child had been out of their care, custody, and control for approximately four years. Noting that the parents had failed to complete an affidavit in support of their oral request for appointment of counsel and the advanced nature of the proceedings, the court granted their request only to the extent of appointing counsel for appeal. This appeal followed.

ANALYSIS

Mother's sole complaint is that she was entitled to counsel in the underlying proceedings. The United States Supreme Court has held that, even in the more serious matter of termination of parental rights, parents do not have an absolute right to counsel. *Lassiter v. Dep't of Soc. Servs. of Durham County, N.C.*, 452 U.S. 18, 31-32, 101 S. Ct. 2153, 2162, 68 L. Ed. 2d 640 (1981). By Kentucky statute, indigent parents have "a categorical right to counsel in several child welfare proceedings." *Cabinet for Health and Family Servs. v. K.S.*, 610 S.W.3d 205, 213 (Ky. 2020). In DNA cases, KRS² 620.100(1)(b) governs the appointment of counsel for parents and provides that "the court shall appoint separate counsel for the parent who exercises custodial control or supervision if the parent is unable to afford counsel[.]"

² Kentucky Revised Statutes.

Herein, it is unclear what, if any, interactions Mother has had with Child since her removal in November 2016. Moreover, at no point during the underlying proceedings did Mother have physical control or legal custody of Child. Accordingly, we conclude that Mother was not exercising custodial control or supervision. *See B.L. v. J.S.*, 434 S.W.3d 61, 66 (Ky. App. 2014). Thus, the court did not err in declining to appoint her counsel.

CONCLUSION

Therefore, and for the foregoing reasons, the orders of the Warren Circuit Court are AFFIRMED.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO APPELLEE BRIEF FILED.

Carlos D. Bailey
Bowling Green, Kentucky