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TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-1333-ME

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE GEORGE W. DAVIS, III, JUDGE
ACTION NO. 21-AD-00014

H.O.; D.J.O., III; AND H.J.O., A
CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: ACREE, CETRULO, AND L. THOMPSON, JUDGES.

ACREE, JUDGE: Appellant, the Cabinet for Health and Family Services, appeals the Boyd Circuit Court's October 11, 2021 order terminating D.J.O.'s (Father) parental rights to H.J.O. (Child). The Appellee in this appeal is Child's mother, H.O. (Mother). We affirm.

On April 19, 2021, Mother filed a petition pursuant to KRS¹ 625.050 in the Boyd Circuit Court to involuntarily terminate the parental rights of Father pursuant to KRS 625.090. Although Father pays \$520.00 in child support each month and was afforded visitation during the parents' divorce proceedings, he has not exercised his visitation rights since 2019. After the original petition, Mother filed an amended petition on June 9, 2021, which included the Cabinet as a respondent in the circuit court action.

The Cabinet filed an answer to the amended petition, which included the following: (1) the Cabinet had not investigated Child's circumstances and had no pending investigation of Father; (2) the Cabinet had not initiated the petition proceedings in this action, which is commonplace for involuntary termination of parental right actions originating under KRS 625.090; and (3) the Cabinet knew of no adoption proceedings concerning Child.

The Cabinet then filed a motion to dismiss, arguing the requirements of KRS 625.090 were not satisfied. The Cabinet alleges KRS 625.090 only permits termination if the Cabinet files the petition.

After conducting a final hearing, the Boyd Circuit Court terminated Father's parental rights, finding the statutory requirements of KRS 625.090 were met. This appeal follows.

¹ Kentucky Revised Statutes.

The sole issue on appeal is whether a parent filing the petition may satisfy the requirements of KRS 625.090, or whether the plain language of KRS 625.090 demonstrates the General Assembly’s intent to prohibit the grant of involuntary termination petitions to all except the Cabinet.

Under the Cabinet’s reading of KRS 625.090, it is the only entity authorized to prosecute an involuntary termination petition to judgment, despite acknowledging a parent is authorized to file a petition under KRS 625.050.

KRS 625.090 states that one of the requirements for granting a petition is as follows: “The Cabinet for Health and Family Services has filed a petition with the court” KRS 625.090(1)(b)1. Here, it is also undisputed the Cabinet did not file any petition in this action.

Just as clearly, KRS 625.050 states: “Proceedings for involuntary termination of parental rights may be initiated upon petition by the cabinet, any child-placing agency licensed by the cabinet, any county or Commonwealth’s attorney or *parent*.” KRS 625.050(3) (emphasis added). Thus, the procedural requirements for petitioning the court conflict with the statute setting forth requirements for who may obtain a judgment terminating parental rights. We have visited this issue before. *See L.G.A. v. W.R.O.*, 638 S.W.3d 472 (Ky. App. 2021).²

² We note, however, the rationale of this opinion is not binding on us. The majority agreed in result only; there was no majority concerning the rationale given in the published decision.

In *L.G.A. v. W.R.O.*, we affirmed a circuit court order dismissing a petition filed by a parent pursuant to KRS 625.050 – a petition similar to the petition in the case *sub judice*. 638 S.W.3d at 476. The opinion’s author agreed with the circuit court’s reasoning that the parent failed to satisfy the requirement of KRS 625.090(1)(b) that an order terminating parental rights must be preceded by the Cabinet’s filing of a petition. *Id.* Although there was no majority opinion – one of the three-judge panel having concurred only in result and a second dissenting – the opinion concludes as follows:

If we have misread the intent of the General Assembly or if the General Assembly should conclude that the policy reasons articulated by Mother merit changes in KRS 625.090 to allow for the granting of involuntary termination of parental rights in certain circumstances in the absence of Cabinet petitions, the remedy is for the General Assembly to address these concerns through appropriate legislation.

Id. at 478. The General Assembly heeded our plea and chose to amend KRS 625.090. This is fatal to the Cabinet’s appeal here.

In its 2022 regular session, the legislature amended KRS 625.090(1)(b) to read as follows:

1. The Cabinet for Health and Family Services has filed a petition with the court pursuant to KRS 620.180 *or* 625.050; *or*
2. *A child-placing agency licensed by the cabinet, any county or Commonwealth’s attorney, or a parent has filed a petition with the court under KRS 625.050[.]*

2022 Ky. Acts ch. 230 (eff. July 14, 2022) (emphasis added). This amendment integrates the language of KRS 625.050 into KRS 625.090 and eliminates the statutory conflict. A parent’s petition now satisfies the statutory requirements of KRS 625.090.

However, Mother initiated her action under the prior version of the statute. And although “there is no presumption from the amendment that such is what the statute meant originally[,]” *Whitley Cnty. Bd. of Ed. v. Meadors*, 444 S.W.2d 890, 891 (Ky. 1969), this amendment was responsive to this Court’s opinion in *L.G.A. v. W.R.O.* in which discerning legislative intent proved a challenge. This amendment, in our view, answers that challenge.

We find no error in the circuit court’s decision to terminate Father’s parental rights pursuant to KRS 625.090.

Accordingly, for the foregoing reasons, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

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