

Commonwealth of Kentucky

Court of Appeals

NO. 2022-CA-0976-ME

C.S.R.

APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 19-AD-00057

M.B.; N.B.; AND B.P.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; MAZE AND McNEILL, JUDGES.

MAZE, JUDGE: C.S.R. appeals from an order of the Campbell Family Court denying his motion to set aside a judgment of adoption pursuant to CR¹ 60.02. We conclude that the family court complied with this Court's mandate following remand from the prior appeal. We further conclude that the family court did not

¹ Kentucky Rules of Civil Procedure.

abuse its discretion by denying C.S.R.'s motion under CR 60.02. Hence, we affirm.

The underlying facts of this matter were set out in this Court's prior opinion as follows:

D.J.B. ("Child") was born to B.P. ("Mother") on July 18, 2019. On July 22, 2019, Mother executed a Voluntary and Informed Consent to Adoption and Waiver of Service, which was duly notarized. By separate affidavit, Mother averred that Child was born out of wedlock and that she had not voluntarily identified the biological father. Mother further stated that she and biological father were never married and that biological father was not on the child's birth certificate, had not commenced a judicial proceeding claiming parental rights to Child, had not contributed financially to the support of Child, and did not reside with Child or Mother.

Child was placed with M.K.B. and N.J.B. (collectively, "Adoptive Parents"), and on August 23, 2019, they petitioned for adoption. In the petition, Adoptive Parents asserted that the identity of the biological father had not been disclosed, that there was no legal father, and that none of the qualifications set forth in KRS² 199.480(1)(b) for naming a putative father were met. Further, as required by KRS 199.505, Adoptive Parents submitted the Cabinet for Health and Family Services' Affidavit of Diligent Search, averring that no one had filed with the putative father registry claiming a paternity interest in Child. Accordingly, only Mother and Child were named as defendants. After a final hearing, the circuit court entered a judgment of adoption on October 18, 2019.

² Kentucky Revised Statutes (footnote in original).

Thereafter, on December 23, 2019, C.S.R. moved to intervene pursuant to CR 24.01 and, in accordance with CR 24.03, included a CR 60.02 motion to vacate the judgment setting forth the claims for which intervention was sought. In support of both motions, C.S.R. asserted he was Child's biological father and, having initiated paternity and custody proceedings against Mother in Simpson County on August 26, 2019, (a mere three days after the adoption petition was filed) was a mandatory party to the adoption pursuant to KRS 199.480(1)(b)(4). C.S.R. argued Mother had committed fraud by hiding Child's birth from him and further committed fraud upon the court when she failed to advise of the paternity action. Adoptive Parents objected to the motions, the court denied intervention, and this appeal timely followed.

C.S.R. v. M.K.B., No. 2020-CA-1306-ME, 2021 WL 1933692, at *1 (Ky. App. May 14, 2021) (some footnotes omitted).

In the prior appeal, a panel of this Court concluded that the trial court erred by denying C.S.R.'s motion to intervene. The panel first concluded that, as putative father, C.S.R. was a mandatory party to the adoption pursuant to KRS 199.480(1)(b). Furthermore, since C.S.R. had initiated a paternity action in Simpson County prior to entry of the adoption, this Court held that he qualified as a necessary party to the adoption action because he had commenced a paternity action regarding the Child. KRS 199.480(1)(b)4. Finally, this Court disagreed with the trial court's conclusion that C.S.R.'s failure to file with the Putative Father Registry, as established by KRS 199.503, extinguished his interest in the matter.

The putative father registry serves the stated purpose of determining the name and address of fathers, who are not identified by the mothers, of children placed for adoption so that they may be afforded notice of the proceedings. KRS 199.503(1). As such, a putative father³ is more broadly defined in that the statute permits any male who believes he may be a father, excepting only men who have already established legal acknowledgment of their paternity, to receive notice in adoption proceedings without taking any formal legal steps to assert paternal rights or undertaking parental obligations. Indeed, the legislature's inclusion of putative father registrants in KRS 199.480(1)(b)(2) demonstrates that the registry is merely an additional way by which a putative father could be included in the proceedings, not the only way. Accordingly, the court's determination that the failure to register curtailed C.S.R.'s interest in the litigation is contrary to the purpose of the registry and the plain language of KRS 199.480.

2021 WL 1933692, at *2.

The Court also held that C.S.R. had a necessary interest to intervene under CR 24.01(b) because he claimed a custody or visitation right with the Child. Consequently, this Court reversed the trial court's order denying C.S.R.'s motion

³ KRS 199.503(2) defines putative father as:

a male who may be a child's father, but who:

- (a) Is not married to the child's mother on or before the date that the child is born;
- (b) Has not established paternity of the child in a court or agency proceeding in this or another state before the filing of a petition for adoption of the child; or
- (c) Has not completed an acknowledgment of paternity affidavit before the filing of a petition for adoption of the child.

to intervene. The Court set out the following instructions to the trial court for its subsequent consideration of the matter.

On remand, the court must determine if C.S.R. has satisfied the remaining requirements of CR 24.01, including whether his motion was timely. Whether a motion to intervene is timely is a question of fact that is committed to the sound discretion of the court. *Rosenbalm v. Commercial Bank of Middlesboro*, 838 S.W.2d 423, 427 (Ky. App. 1992). When necessary to preserve a right that cannot be protected otherwise, post-judgment intervention is permissible; however, the movant has a heavy burden to justify the apparent lack of timeliness. *Id.*; *Arnold v. Com. ex rel. Chandler*, 62 S.W.3d 366, 369 (Ky. 2001). The following factors are relevant:

(1) [t]he point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his interest in the case; (4) the prejudice to the original parties due to the proposed intervenor's failure, after he or she knew or reasonably should have known of his or her interest in the case, to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention.

Carter v. Smith, 170 S.W.3d 402, 408 (Ky. App. 2004). If the court finds that the motion was timely, C.S.R.'s motion to intervene should be granted, and the court shall then consider the CR 60.02 motion on its merits.

2021 WL 1933692, at *3.

After the Kentucky Supreme Court denied discretionary review, the matter was remanded to the family court. The family court held a hearing on C.S.R.'s motions to intervene and for relief from the adoption judgment. The court heard testimony from C.S.R. and his mother.

On April 20, 2022, the family court entered findings of fact and conclusions of law addressing the timeliness of C.S.R.'s motion to intervene. After setting out the elements to determine timeliness set out in this Court's prior opinion, the trial court made the following conclusions of law.

1. . . . The Court held a Case Management Conference on November 30, 2021, where the Court stated that the relevant factors in dispute as to timeliness are: (3) the length of time preceding the application which the proposed intervenor knew or reasonably should have known his interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention. The other factors regarding the point at which the intervention occurred and the purpose for which the intervention is sought were obvious. The final Judgment of Adoption had occurred about two months prior to the month to intervene. The purpose for the intervention is that C.S.R. believes he is the father of the child and wants to assert his parental rights. No evidence was put on as to . . . the prejudice to the original parties caused by the delay between when C.S.R. should have known he had an interest and when he filed his motion. The prejudice issue was not mentioned by the Court of Appeals in its decision.

2. From a logistical standpoint, C.S.R. brought the motion to intervene as quickly as he could under the circumstances. The confidentiality surrounding the adoption process is a circumstance that mitigated in favor

of allowing C.S.R. to intervene in order to present his CR 60.02 motion. Pursuant to testimony provided by C.S.R. and C.S.R.'s mother, there was no logistical way for C.S.R. to have had notice of the adoption proceeding. C.S.R. knew [Mother] was pregnant when they ended their relationship in June 2019. C.S.R. knew [Mother]'s approximate due date, but he did not know for certain when B.P. delivered the baby. Further, C.S.R. was unaware that B.P. executed a consent to adoption on July 22, 2019. [Mother] did not offer any information about the child's birth when they met in court in late July. Given the nature of the adoption proceedings, which are confidential, and the quick timeline between when [Mother] delivered the child (July 18, 2019) and the Petitioner's [*sic*] filed their Notice of Intent to Adopt (July 29, 2019) in Campbell Family Court case 19-CI-644, there was no logistical way that C.S.R. could have known about the adoption proceedings. The motion to intervene was filed in a reasonable time under the circumstances. The motion to intervene for purposes of arguing the merits of the CR 60.02 motion is hereby **GRANTED**.

Family Court Order, April 20, 2022, pp. 5-6 (emphasis in original).

Following additional briefing and arguments, the trial court entered findings of fact, conclusions of law, and an order denying the CR 60.02 motion.

After setting out the background information previously discussed, the trial court made the following findings

4. Pursuant to testimony, C.S.R. and [Mother] were previously in a relationship and living together. C.S.R. and [Mother] share a child in common, [son], age 6, and C.S.R. now apparently has custody of [son]. C.S.R. and [Mother] ended their relationship in June 2019. The lease on the parties dwelling ended and C.S.R. and [Mother] moved into separate residences. At the time,

[Mother] was approximately eight months pregnant. After the breakup, [Mother] went through the birth process of D.J.B. on her own. There was no evidence that C.S.R. provided any assistance. The parties cut ties in June of 2019 as if there was no pregnancy.

5. On or about July 26, 2019, C.S.R. next saw [Mother] in Simpson Family Court at a child support proceeding. [Mother] was seeking child support on the parties' oldest child as apparently [Mother] had custody of [son] at that time. At the Simpson County Court date, C.S.R. saw that [Mother] had given birth. C.S.R. testified that [Mother] would not offer any information about the delivery of the child. C.S.R. then sought out an attorney to assist in locating the child.

6. On August 26, 2019, C.S.R. initiated an action in Simpson Family Court seeking custody and to establish paternity of the minor child born to [Mother] in July 2019. [Mother] was served in that action on September 6, 2019, pursuant to C.S.R.'s Exhibit A. Page 3. Per testimony, [Mother] failed to appear for court on September 30, 2019. The Simpson Family Court set a date of November 8, 2019, warning that a bench warrant would be issued for [Mother] if she failed to appear again.

7. [Mother] appeared in Simpson Family Court on November 8, 2019, and presented a Notice of Adoption, and redacted copies of the Petition for Adoption, birth certificate, Affidavit of the Putative Father Registry, and Judgment of Adoption, Exhibit D. Further, in open court at the November 8, 2019, hearing in Simpson Family Court, [Mother] said the child was in Cold Spring, Kentucky. While testimony in the February 14, 2022 hearing provided that [Mother] did not offer any additional information, upon review of the supplemented video record from the Simpson County November 8, 2019 proceedings, [Mother] further provided the child's adoptive name, the adoptive parents' names, and the

name and phone number of the attorney who reviewed the adoption with [Mother].

8. C.S.R.'s mother, Lisa, testified that once she heard B.P. mention Cold Spring as a potential location, Lisa took to [Mother]'s social media and found that [Mother] had two friends from Cold Spring on her Facebook page. Lisa testified that based on the posted pictures to the account, she believed she had found the child born in 2019 to [Mother], as the child in the pictures favored the parties' older child, [son].

9. Pursuant to Lisa's testimony, C.S.R. only had the clue of "Cold Spring." C.S.R. still did not have a case number or county where the action was initiated. C.S.R. then retained Attorney Brian Halloran as local counsel in November 2019. The initial Motion to Intervene was subsequently filed on December 23, 2019.

Family Court Order, July 8, 2022, pp. 2-4.

In its conclusions of law, the family court noted that C.S.R. is a putative father as defined by KRS 199.503(2). The trial court acknowledged this Court's prior holding that his failure to file with the Registry did not extinguish his interest in the adoption litigation. The trial court also recognized that C.S.R. filed his custody petition in Simpson Family Court only three days after the adoption petition was filed.

However, the family court found no evidence that the Adoptive Parents violated any procedures for an adoption under KRS Chapter 199. The court focused on the facts that C.S.R. did not execute documents at the hospital acknowledging he was the father of the child, and he failed to register with the

Putative Father Registry. Accordingly, the court concluded that the Adoptive Parents were not required to name him at the time the adoption petition was filed.

The family court also found no other grounds for relief under CR 60.02. The trial court concluded that Mother did not have an obligation to correct her affidavit based on the Simpson County paternity/custody action. The court held that KRS 199.502 authorizes an adoption judgment where the putative father fails to file with the Registry. As a result, the family court concluded C.S.R. could not claim mistake or surprise. Finally, the court held that C.S.R.'s rights would have been protected if he filed with the Registry. But because he did not, his due process rights were not violated. This appeal followed.

As noted above, this Court previously directed the trial court to determine whether C.S.R.'s post-judgment motion to intervene was timely. Having found C.S.R.'s motion to be timely, the trial court properly proceeded to the analysis under CR 60.02, which provides as follows:

On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: (a) mistake, inadvertence, surprise or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (c) perjury or falsified evidence; (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the

judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief. The motion shall be made within a reasonable time, and on grounds (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this rule does not affect the finality of a judgment or suspend its operation.

It is well established that we review the family court's denial of a CR 60.02 motion for abuse of discretion. *Richardson v. Brunner*, 327 S.W.2d 572, 574 (Ky. 1959). *See also Foley v. Commonwealth*, 425 S.W.3d 880, 886 (Ky. 2014). "The test for abuse of discretion is whether the trial judge's decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Goodyear Tire & Rubber Co. v. Thompson*, 11 S.W.3d 575, 581 (Ky. 2000) (citation omitted). More specifically, a court abuses the discretion afforded it when "(1) its decision rests on an error of law . . . or a clearly erroneous factual finding, or (2) its decision . . . cannot be located within the range of permissible decisions." *Miller v. Eldridge*, 146 S.W.3d 909, 915 n.11 (Ky. 2004) (cleaned up). We will affirm the family court's decision on appeal unless there is found a "flagrant miscarriage of justice[.]" *Gross v. Commonwealth*, 648 S.W.2d 853, 858 (Ky. 1983).

C.S.R. focuses on this Court's prior holding that "nothing in KRS 199.480 indicates [failure to file with the Registry] constituted a forfeiture of C.S.R.'s interest in the adoption action." The Court went on to hold that KRS

199.503(1) broadly defines the term “putative father,” and does not limit standing to participate in adoption proceedings to putative fathers who have filed with the Registry. Consequently, C.S.R. takes the position that the trial court’s analysis regarding his failure to file with the Putative Father Registry is directly contrary to this Court’s holding in the prior appeal.

In a subsequent appeal following a retrial after remand, this Court must first determine whether the family court properly construed and applied the mandate. *Inman v. Inman*, 648 S.W.2d 847, 849 (Ky. 1982). The lower court must strictly follow the mandate set out in the prior appellate decision. *Id.* See also *Buckley v. Wilson*, 177 S.W.3d 778, 781 (Ky. 2005). However, the issues presented in the first appeal were distinct from those presented here. The first appeal only considered C.S.R.’s motion to intervene under CR 24.01, while the matters addressed on remand involved his motion to set aside the adoption judgment under CR 60.02.

The family court pointed to the provisions of KRS 199.502(1)(j), which permits an adoption to be granted without the consent of a putative father who fails to file under the Registry established under KRS 199.503. This Court’s prior opinion holds that a putative father’s failure to register does not extinguish his right to be a party to the adoption proceeding under KRS 199.480. But this Court did not consider whether such failure would restrict C.S.R.’s right to contest

the adoption. Likewise, this Court did not address whether it would be a relevant factor on the merits of the CR 60.02 motion.

The circumstances of this case are troubling. C.S.R. filed a paternity and custody action in Simpson Family Court only three days after the adoption petition was filed. Mother actively participated in that case but failed to disclose the pendency of the adoption petition until after the judgment was entered. It appears that Mother used the confidentiality afforded to such proceedings as a means to cut off C.S.R.'s rights in this action. As a result of these actions, C.S.R. was deprived of an opportunity to appear during the adoption proceedings and to present evidence against termination of his parental rights.

Nevertheless, our review is confined to the family court's denial of the CR 60.02 motion. The trial court found that C.S.R. failed to establish any of the grounds for relief under CR 60.02. Although Mother plainly failed to disclose the adoption proceeding in the Simpson County action, the affidavit was truthful at the time she filed it. Furthermore, Mother was under no statutory obligation to amend her affidavit in the adoption action to disclose the pending custody matter. Thus, C.S.R. cannot show "mistake or surprise," "perjury," or "fraud affecting the proceedings.

In addition, the judgment is not void because the Adoptive Parents complied with all of the requirements for the petition under KRS Chapter 199.

There is no allegation that the Adoptive Parents knew or had reason to know of Mother's actions, or that they participated in any of Mother's conduct. C.S.R.'s filing of the paternity/custody action did not stay the adoption proceedings, nor is there any suggestion that notice of the later-filed proceedings was required. We also agree with the family court that it was authorized to grant the adoption because C.S.R. failed to file with the Registry. Thus, C.S.R. cannot show that the result would have been different had he been a party to the action prior to entry of the adoption judgment.

This leaves only “(f) any other reason of an extraordinary nature justifying relief.” Relief under this section may be granted only where a clear showing of extraordinary and compelling equities is made. *Bishir v. Bishir*, 698 S.W.2d 823, 826 (Ky. 1985), *overruled on other grounds by Smith v. McGill*, 556 S.W.3d 552 (Ky. 2018). The equities in favor of C.S.R., while significant, do not meet this standard.

The Registry serves as a means by which a putative father could be included in adoption proceedings. While C.S.R.'s failure to file did not extinguish his right to contest the termination of any parental rights, it affects the statutory prerequisites for granting termination of parental rights over his objection. Since C.S.R. could have protected his rights by filing with the Registry, there are no compelling equities to require setting aside of the adoption judgment. Therefore,

the trial court did not abuse its discretion by denying C.S.R.'s motion under CR 60.02.

Accordingly, we affirm the order of the Campbell Family Court denying C.S.R.'s motion for relief under CR 60.02.

ALL CONCUR.

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