

Commonwealth of Kentucky
Court of Appeals

NO. 2022-CA-1473-ME

A.B.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE SHELLEY M. SANTRY, JUDGE
ACTION NOS. 21-AD-500227 AND 22-CI-500293

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; E.D.B., A
MINOR CHILD; G.E.; AND T.B.

APPELLEES

OPINION
VACATING AND REMANDING

** ** * ** * **

BEFORE: EASTON, ECKERLE, AND JONES, JUDGES.

JONES, JUDGE: A.B. (“Father”) appeals the October 19, 2022 Findings of Fact and Conclusions of Law of the Jefferson Circuit Court (“family court”) terminating his parental rights to his minor child, E.D.B., (“Child”). Father contends that the family court erred because the Appellee, G.E., (“Grandmother”), lacked standing

to seek termination of his parental rights under KRS¹ Chapter 625 and the family court's findings of fact and conclusions of law do not comply with requirements for granting an adoption without consent under KRS Chapter 199. Having reviewed the record and being otherwise sufficiently advised, we VACATE and REMAND.

I. BACKGROUND

The relevant facts are not in dispute. Child was born in late 2013, and he began residing with Grandmother in December 2017. A Missouri court granted Grandmother permanent legal custody of Child on or about December 27, 2018. On May 24, 2021, Grandmother, acting with the assistance of counsel, filed a petition with the family court styled "Verified Petition for Termination of Parental Rights and Grandparent Adoption." Grandmother did not cite any statutes in her petition.

Father was served with the petition, and with the assistance of counsel, entered an appearance contesting the termination of his parental rights.² The family court conducted a final hearing on July 29, 2022. Thereafter, on

¹ Kentucky Revised Statutes.

² T.B., Child's natural mother, was also served with the petition. Prior to the final hearing, she voluntarily consented to the adoptions and termination of her parental rights.

October 19, 2022, the family court entered its findings of fact and conclusions of law. Relevant to this appeal, the family court's order provides:

1. [Father], for a period of not less than six months, have [sic] continuously or repeatedly failed or refused to provide essential parental care and protection for the minor child and there is no reasonable expectation of improvement for parental care and protection considering the age of the child. The child has been in the care of [Grandmother] since the age of four years and he is now eight years of age. The child was in foster care placement from the age of two until the age of four.
2. [Father] has had no contact with the minor child for at least 12 months and has abandoned [Child] for a period of over 90 days.
3. [Father], for reasons other than poverty alone, has continuously or repeatedly failed to provide essential food, clothing, shelter, medical care, and education reasonably necessary and available for the well-being of [Child], and there is no reasonable expectation of improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child.
4. The minor child has been adjudged to be an abused and neglected child by a Court of competent jurisdiction as defined by KRS 600.020 and termination would be in the best interest of the minor child.

Based upon the foregoing, the Court Orders as follows:

1. The parental rights of [Father] to [Child] are terminated;
2. The parental rights of [Mother] to [Child] are voluntarily terminated; [and]

3. Any child support obligation of [Father] and/or [Mother] are terminated[.]

THIS IS A FINAL AND APPEALABLE ORDER[.]

Father filed a timely motion to alter, amend, or vacate, which the family court denied by order entered November 17, 2022. This appeal followed.

II. ANALYSIS

From its inception, this case has been plagued by a failure to identify and follow the correct statutory procedures. Grandmother's end goal is to adopt Child. However, for reasons that are not entirely clear, Grandmother and the family court conducted this case as though it were a parental termination under KRS Chapter 625. This error is a fatal one because a petition for involuntary termination of parental rights may only be filed by the cabinet, a child-placing agency licensed by the cabinet, a county or Commonwealth's attorney, or parent. KRS 625.050(3). Thus, Father is correct that Grandmother lacked standing to file a petition to terminate his parental rights.

To achieve her goal of adopting child over Father's objection, Grandmother should have filed a petition for adoption without consent pursuant to KRS 199.490. If granted, the adoption itself terminates the parental rights of the biological parents. KRS 199.520(2). Grandmother's failure to follow the correct statutory procedure caused unnecessary confusion and ultimately the entry of an invalid judgment.

Even though Grandmother's ultimate goal is to adopt Child, the "final and appealable" order entered by the family court only terminates Father's parental rights under KRS Chapter 625. As already noted, however, Grandmother never had standing to seek termination. Rather than following the termination statute, the family court should have conducted an adoption without consent proceeding, and assuming all the requirements were satisfied, entered an adoption decree instead of an order of termination. The family court's final order does not address the elements required for an adoption without consent such as whether all the jurisdictional requirements of the adoption statute have been met, whether adoption is in Child's best interest, Grandmother's standing in the community, and whether Child is suitable for adoption. Specifically, KRS 199.520(1) states that:

After hearing the case, the court shall enter a judgment of adoption, if it finds that the facts stated in the petition were established; that all legal requirements, including jurisdiction, relating to the adoption have been complied with; that the petitioners are of good moral character, of reputable standing in the community and of ability to properly maintain and educate the child; and that the best interest of the child will be promoted by the adoption and that the child is suitable for adoption. In the judgment, the name of the child shall be changed to conform with the prayer of the petition. The judgment and all orders required to be entered and recorded in the order book, including the caption, shall contain only the names of the petitioners and the proposed adopted name of the child, without any reference to its former name or the names of its birth parents.

While it might be tempting to characterize the errors in this case as harmless and presume that the requirements exist, when dealing with adoption “[n]othing can be assumed, presumed, or inferred[.]” *Day v. Day*, 937 S.W.2d 717, 719 (Ky. 1997). “Since adoption is a statutory right which severs forever the parental relationship, Kentucky courts have required strict compliance with the procedures provided in order to protect the rights of the natural parents.” *Id.*

Accordingly, we vacate the family court’s findings of fact and conclusions of law and remand this matter for further proceedings. Should Grandmother wish to proceed with adoption, the family court must require her to file an amended petition, which meets the requirements of the adoption without consent statute, and the family court must then conduct these proceedings as outlined in KRS Chapter 199. Should the family court determine that all the requirements necessary for adoption without consent, KRS 199.502, have been proven by Grandmother, it should enter an order of adoption pursuant to KRS 199.520. Otherwise, it should deny the petition.

ALL CONCUR.

BRIEF FOR APPELLANT:

Bethanni Forbush-Moss
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BRIEF FOR APPELLEE G.E.:

Peter J. Jannace
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