RENDERED: JANUARY 12, 2024; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2023-CA-0783-ME

K.E.H. APPELLANT

v.

APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE MONICA MEREDITH, JUDGE
ACTION NO. 22-AD-00045

C.R.L.; J.D.L; C.S.E.;
AND C.M.E., A MINOR CHILD APPELLEES

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; ECKERLE AND KAREM, JUDGES.

ECKERLE, JUDGE: K.E.H. ("Biological Mother") appeals two orders (collectively "Orders") granting a petition ("Petition") for an adoption without the consent of the biological, living parents. The main issue concerns whether the Family Court made sufficient findings required by one of the controlling statutes.

We hold that the Family Court's Orders do not make sufficient findings; thus, we reverse and remand for entry of new Orders.

The facts leading to this appeal are not pertinent to our reversal. Procedurally, the Petition initiated an adoption proceeding – one where the biological, living parents did not consent to the adoption. The Petition proceeded to a trial and resulted in subsequently entered Orders that were timely appealed. Because we are reversing and remanding for additional findings, we will refrain from reciting the evidence that was adduced at trial.

We initially note the gravity of the cause of action. Adoption proceedings where the biological parent does not consent to the adoption constitute serious matters as they terminate the parental rights of the biological, living parent. *Moore v. Asente*, 110 S.W.3d 336, 351 (Ky. 2003) ("[A] valid adoption judgment terminates the parental rights of the birth parent."); and *Wright v. Howard*, 711 S.W.2d 492, 496 (Ky. App. 1986) ("[T]he adoption itself terminates the non-consenting parent's parental rights."). Termination proceedings, "in all their forms, are 'the family law equivalent of the death penalty in a criminal case.'" *M.S.S. v. J.E.B.*, 638 S.W.3d 354, 367-68 (Ky. 2022) (Lambert, J., dissenting) (citation omitted). Accordingly, courts must carefully adhere to the procedural and substantive law governing such actions.

Adoptions are by nature "creatures of the statute that gave them birth," and, as such, "we must require 'strict compliance with the procedures provided in order to protect the rights of the natural parents.'" *E.K. v. T.A.*, 572 S.W.3d 80, 84 (Ky. App. 2019) (quoting *Day v. Day*, 937 S.W.2d 717, 719 (Ky. 1997)). KRS[1] Chapter 199, which codifies the adoption proceedings applicable to this case, can – and did, here – result in "vitiat[ing the] parental rights of [the] biological parents." *E.K.*, 572 S.W.3d at 83 (citing KRS 199.520(2)).

There are four statutory requirements that must be found to grant an adoption without the consent of the biological, living parents. Pertinent to the instant appeal, one of the four requirements mandates pleading and proof that "any of the [KRS 199.502(1)(a)-(j)] conditions exist with respect to the child." KRS 199.502(1).[2] These conditions concern the actions, omissions, or statuses of the purported biological, living parents:

> (a) That the parent has abandoned the child for a period of not less than ninety (90) days;
>
> (b) That the parent had inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;

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[1] Kentucky Revised Statutes.

[2] The other three statutory requirements are not challenged. They are: (1) the petitioner complies with the jurisdictional requirements, *see* KRS 199.470, 199.490; (2) the petitioner meets the standard of good moral character, has a reputable standing in the community, and has the ability to properly maintain and educate the child, *see* KRS 199.520(1); and (3) the best interest of the child will be promoted by the adoption and the child is suitable for adoption, *see id*.

(c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;

(d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to a child named in the present adoption proceeding;

(e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child, and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;

(f) That the parent has caused or allowed the child to be sexually abused or exploited;

(g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;

(h) That:

> 1. The parent's parental rights to another child have been involuntarily terminated;
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> 2. The child named in the present adoption proceeding was born subsequent to or during the pendency of the previous termination; and

> > 3. The condition or factor which was the basis for the previous termination finding has not been corrected;
>
> (i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect; or
>
> (j) That the parent is a putative father, as defined in KRS 199.503, who fails to register as the minor's putative father with the putative father registry established under KRS 199.503 or the court finds, after proper service of notice and hearing, that:
>
> > 1. The putative father is not the father of the minor;
> >
> > 2. The putative father has willfully abandoned or willfully failed to care for and support the minor; or
> >
> > 3. The putative father has willfully abandoned the mother of the minor during her pregnancy and up to the time of her surrender of the minor, or the minor's placement in the home of the petitioner, whichever occurs first.

KRS 199.502(1)(a)-(j).

Regarding these conditions, Biological Mother notes that the Orders do not specify which of the KRS 199.502(1)(a)-(j) conditions was proven nor the facts underlying such a conclusion. Indeed, one of the two Orders entered in this case, which was titled Findings of Fact, Conclusions of Law In re Adoption Without Consent, generally concludes, "The Petitioners have satisfied the

conditions for adoption without consent of the child's biological living parents pursuant to KRS 199.502." The other of the two Orders ("Adoption Judgment") says nothing about the KRS 199.502(1) conditions.

C.R.L. and J.D.L. ("Adoptive Parents") ostensibly concede the Orders do not specify which conditions were proven and argue that we must read in a third document, the Petition, to understand the lack of findings in the Orders. Adoptive Parents note that the Adoption Judgment specifically concluded that "the averments of the Petition are true[,]" and the Petition had specified "KRS 199.502(1)(a)(e) [sic], **and/or**(g) [sic]" were the applicable conditions. (Emphasis added.) Alternatively, Adoptive Parents argue we should not address the lack of specific findings in the Orders because Biological Mother never prevailed herself of CR[3] 52.02-52.04 and made a written request of the Family Court for additional factual findings on an essential issue.

We reject both arguments. Regarding the CR 52.02-52.04 argument, we note that CR 52.01[4] is applicable to adoptions where the biological, living

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[3] Kentucky Rules of Civil Procedure.

[4] This Rule provides:

> In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately its conclusions of law thereon and render an appropriate judgment; and in granting or refusing temporary injunctions or permanent injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action.

parents do not consent. *See Jouett v. Rhorer*, 339 S.W.2d 865, 868-69 (Ky. App. 1960). Accordingly, the Family Court must make essential findings that at least one of the KRS 199.502(1) conditions has been pled and proven.

The Orders here have "findings of fact" that are essentially a recitation of the evidence introduced at the hearing. The Orders also have a summary conclusion that "[t]he Petitioners have satisfied the conditions for adoption without consent of the child's biological living parents pursuant to KRS 199.502." What the Orders do not have are "several factual reasons to support" the conclusions, nor even the specific conclusions regarding which conditions were pled and proven. *See generally Anderson v. Johnson*, 350 S.W.3d 453, 457 (Ky. 2011) (finding "clear violation" of CR 52.01 where a family court judge found moving a child to Paducah was not in the best interests of the child and "could have stated several factual reasons to support his conclusion," but "he did not"). Even adding the Petition's contents to the Orders does not connect any facts to any

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> Requests for findings are not necessary for purposes of review except as provided in Rule 52.04. Findings of fact, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a commissioner, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41.02.

CR 52.01.

specific conclusion. Accordingly, the Orders do not comport with CR 52.01, and the case must be remanded for additional findings.

Biological Mother's failure to file a CR 52.04 motion does not alter the analysis. That Rule requires litigants to make a written request of the Family Court for a finding of fact essential to the judgment that has been omitted. However, it does not apply when "it is mandatory that a court make specific findings of fact and conclusions of law . . . [and] a court fails to make them 'for purposes of review.'" *Anderson*, 350 S.W.3d at 457. "One should not have to ask a court to do its duty, particularly a mandatory one." *Id*. at 458. As the Kentucky Supreme Court summarized:

> . . . such a reading is in keeping with the intent of CR 52: a judge must make findings of fact and not address the matter in a perfunctory manner, but if he misses only some key fact in his findings, the litigant must assist the court in its good faith efforts to comply with the rule by requesting that specific finding.
>
> Also, as a matter of policy, when a court fails to make *any* kind of factual findings as required, the litigant should not be prohibited from asking an appellate court to require the lower court to make such findings.

Id.

In adoption petitions where the biological, living parent does not consent, KRS 199.502(2) mandates that following proof and argument of counsel the Family Court must enter findings of fact, conclusions of law, and a decision

either granting or denying the petition. Which of the KRS 199.502(1) conditions have been pled and proven is an essential finding of fact and conclusion of law that must be in the judgment. *See, e.g.*, *M.S.S.*, 638 S.W.3d 354 (noting the petition relied on conditions (a), (e), and (g), but the Family Court concluded the facts only supported (a)); and *B.L. v. J.S.*, 434 S.W.3d 61, 68 (Ky. App. 2014) ("[T]he trial court properly found that subsections (a), (e), and (g) were satisfied . . . ."). The Family Court's Orders here violate CR 52.01 because they have no specific conclusion regarding the conditions and no specific factual findings regarding the conditions. Accordingly, pursuant to *Anderson*, it was not incumbent upon Biological Mother to file a request for specific findings per CR 52.04.

Additionally, Biological Mother was not required to avail herself of CR 52.02 or 52.03 prior to this appeal. Those Rules permit a party to file a motion to alter, amend, or vacate a judgment, CR 52.02, or challenge the sufficiency of the evidence post-judgment, CR 52.03. But those Rules do not alter the error here, which was the Family Court's lack of findings and conclusions required by CR 52.01

Finally, regarding Adoptive Parents' argument that the contents of the Petition should be read into the Orders, we are again reminded of the seriousness of adoption/termination proceedings. It is incumbent upon the Family Court to issue orders making specific findings in conformity with its KRS Chapter 199

obligations. A dearth of specific findings in the Family Court's orders on an adoption/termination proceeding neuters any meaningful appellate review of the loss of a constitutionally-protected right to parent one's child.

With the seriousness of these types of cases in mind, we must conclude that adding the contents of the Petition to the Orders does not meet the level of sufficiency required to terminate the parental rights. While in other contexts CR 52.01 is satisfied by reference to other written documents, docket entries, or even oral findings, *c.f. Smith v. McCoy*, 635 S.W.3d 811 (Ky. 2021), there are two principal reasons why the Petition's contents do not meet the CR 52.01 standard. First, from the face of the Petition we cannot tell which condition was ultimately determinative. The Petition pled "KRS 199.502(1)(a)(e) [sic], and/or(g)[sic.]" By using "and/or" it is impossible to know which of the subsections the Family Court specifically found applied. *See, e.g.*, *M.S.S.*, 638 S.W.3d at 365 ("The family court found Appellees had failed to meet their burden of proof with respect to subsections (e) and (g) . . . [but] the family court concluded that Mother had abandoned Child for a period of 90 days under subsection (a) and it granted the Appellee's petition on that basis."). This ambiguity in the Petition's language further highlights the lack of a finding by the Family Court. We will not speculate regarding the Family Court's conclusions when the end result is the death penalty to parental rights.

Second, and as previously discussed, reference to the Petition is insufficient because it does not specify the Family Court's findings as to *why* any of those three subsections are met. The Family Court's Orders recite the evidence that was introduced and then contain a summary and broad conclusion that the entirety of KRS 199.502 was met. No findings connected specific facts to KRS 199.502(1) conditions. Thus, these Orders do not meet the standard of CR 52.01 or KRS 199.502(2). *Cf. M.S.S.*, 638 S.W.3d at 365 ("More specifically, the family court found that, 'during periods of time when [Mother] was not in custody, she did not devote herself to parenting Child.' The [F]amily [C]ourt noted that, even though Mother was not incarcerated from November 2014 to November 2015, she had no contact with Child, and instead engaged in activities that led to her re-incarceration. The [Family C]ourt summarized Mother's efforts as 'too little and too late.'").

Importantly, the facts from the trial and the weight given to certain evidence are necessarily imperative on appellate review. Some of the evidence was conflicting,[5] and the Family Court must weigh the evidence, assess credibility,

[5] For example, there was some evidence that Biological Mother had a lengthy period of nonsupport followed by a singular but significant support payment. Our Courts have held that under KRS 199.502(1)(a)'s abandonment condition the former "does not constitute abandonment *per se*" and the latter "does not necessarily indicate that a person did not abandon his child." *R.P., Jr. v. T.A.C.*, 469 S.W.3d 425, 427 (Ky. App. 2015) (relating to abandonment per KRS 199.502(1)(a)). Given these fact-driven standards, appellate review of the weight given to evidence by the Family Court is incumbent upon written findings and conclusions where the

and resolve the issues presented by the conflicting evidence. *M.S.S.*, 638 S.W.3d at 359-60. The Family Court's determination of whether to terminate parental rights is "afforded a 'great deal of discretion'" on appeal. *Id*. at 359 (citation omitted). Its determination will be reversed only if it is clearly erroneous and not based upon clear and convincing evidence. *Id*. at 359-60. Accordingly, on remand the Family Court must specify which condition or conditions it found existed and the evidence and facts upon which it based its conclusions.

Based on the foregoing, we REVERSE AND REMAND the Orders and direct the Family Court to enter Orders that make specific findings regarding the KRS 199.502(1) conditions it believes were pled and proven.

ALL CONCUR.

BRIEF FOR APPELLANT:

Troy DeMuth
Abbey Aldridge
Prospect, Kentucky

BRIEF FOR APPELLEE J.D.L.:

J. Scott Wantland
Shepherdsville, Kentucky

Family Court denotes the weight and substance it gave to the evidence and the conclusions drawn therefrom.