

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

State of Utah, in the interest)
of S.M., K.K., A.K., M.K.,)
M.K., J.K., J.K., K.K., M.K.,)
R.K., and L.K., persons under)
eighteen years of age.)

MEMORANDUM DECISION
(Not For Official Publication)
Case No. 20051033-CA

J.D.K.,)
Appellant,)
v.)
State of Utah,)
Appellee.)

F I L E D
(June 2, 2006)

2006 UT App 224

Third District Juvenile, Salt Lake Department, 919778
The Honorable Elizabeth A. Lindsley

Attorneys: Daniel V. Irvin, Salt Lake City, for Appellant
Mark L. Shurtleff and Carol L.C. Verdoia, Salt Lake
City, for Appellee
Martha Pierce and Kristen G. Brewer, Salt Lake City,
Guardians Ad Litem

Before Judges Greenwood, McHugh, and Orme.

PER CURIAM:

J.D.K. (Father) appeals from the juvenile court's permanency order returning some of Father's children to the care of their mother. This matter is before the court on the State and the Guardian ad Litem's motions to dismiss Father's petition on appeal because this court lacks jurisdiction due to the lack of a final appealable order as it relates to Father.

A permanency order may be final and appealable if it "ends the current juvenile proceedings, leaving no question open for further judicial action. An order which does not completely determine the rights of the parties . . . is merely interlocutory in nature." In re A.F., 2006 UT App 200, ¶8 (quoting In re H.J., 1999 UT App 238, ¶27, 986 P.2d 115). "[B]ecause permanency orders

may contain a vast array of pronouncements," some portions of a permanency order may be appealable and some may not. Id. at ¶9. The determination of what aspects of a permanency order may be final and appealable "requires pragmatic analysis of the order itself." Id. "[O]rders merely continuing jurisdiction of the juvenile court, . . . orders giving only temporary custody to the State or an individual, . . . and orders which otherwise leave parental status unresolved [] anticipate further judicial action and determination of rights, and thus, are interlocutory in nature and cannot be appealed as a matter of right." Id. at ¶10 (citations omitted).

We conclude that the permanency order is not final and appealable as it pertains to Father.¹ No aspect of that order had the effect of completely or finally resolving the issues regarding Father. Thus, because the order left Father's parental status unresolved and anticipated further judicial action and determination of rights, the permanency order as applied to Father was not final and appealable. Accordingly, this court has no jurisdiction to resolve Father's appeal. When we lack jurisdiction, we retain "only the authority to dismiss the action." Varian-Eimac, Inc. v. Lamoreaux, 767 P.2d 569, 570 (Utah Ct. App. 1989).

We therefore dismiss the appeal.²

Pamela T. Greenwood,
Associate Presiding Judge

Carolyn B. McHugh, Judge

Gregory K. Orme, Judge

¹We note that the Guardian ad Litem has filed an appeal from the same permanency order in case 200501030-CA. The issue concerning whether the permanency order is final and appealable as it pertains to the Guardian ad Litem remains subject to review by this court.

²Because the issue concerning the appealability of permanency orders has only recently been clarified by this court, we also deny the State's request for attorney fees under rule 33 of the Utah Rules of Appellate Procedure.