

RENDERED: JANUARY 24, 2003; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002228-MR

TRACY GARRETT

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE MARY C. NOBLE, JUDGE
ACTION NO. 00-AD-00191

CABINET FOR FAMILIES AND CHILDREN,
COMMONWEALTH OF KENTUCKY AND
NAUTICA RAION GARRETT (A/K/A NAUTICA BIXLER)

APPELLEES

OPINION
AFFIRMING
** **

BEFORE: HUDDLESTON, PAISLEY, AND TACKETT, JUDGES.

TACKETT, JUDGE: Tracy Garrett appeals from the judgment of the Fayette Circuit Court, which terminated his parental rights, as well as those of the biological mother, to the minor child, Nautica Garrett. Tracy now argues on appeal that he did not have counsel at the hearing, and that his appointed counsel was ineffective. We affirm.

Tracy Garrett, biological father of Nautica Garrett, is presently incarcerated. The evidence showed that he has been incarcerated for the child's entire life and has never had contact with the child. The circuit court found that it was in the best interest of the child that Tracy Garrett's parental rights be terminated. This appeal followed.

The first allegation Tracy raises on appeal, that he was denied counsel, is clearly refuted on the face of the record. Counsel was appointed for him and appeared at all stages of the hearing, including trial, until he was permitted to withdraw by the circuit court by order entered October 15, 2001, well after the trial. Tracy argued in the circuit court that the court could not terminate his parental rights because he was not a named party in the district court proceeding which substantiated neglect on the part of the biological mother, Bridgette Bixler, who had tested positive for cocaine while pregnant with the child. To that extent, it is true that he did not have counsel at all proceedings related to the child's welfare; however, the proceeding in the district court is not under review here. Moreover, the circuit court held that it was not relying on the district court's findings to terminate his parental rights, as it would be improper to do so since he was not a party in the district court proceeding, and then conducted a hearing of its own. At that hearing, the court found that Tracy Garrett was serving a ten-year sentence at North Point Training Center in

Burgin, Kentucky, starting in June 2000, and that An expectation of an improvement in his ability to provide parental care is not reasonable.@ The child had been in foster care since birth, and the court found that it was in the best interest of the child for both parents=rights to be terminated.

Tracy's other claim, that his appointed counsel was ineffective, is raised for the first time on appeal and therefore is not subject to appellate review. No action was taken in the circuit court to preserve this argument, and therefore we have no ruling on the issue to review. Accordingly, we cannot review the issue. Additionally, such a claim is not subject to review on direct appeal, but only on a collateral attack on the judgment. Humphrey v. Commonwealth, Ky., 962 S.W.2d 870 (1998); White v. Commonwealth, Ky. App., 695 S.W.2d 438 (1985). We therefore will not address the argument.

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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