RENDERED: FEBRUARY 28, 2003; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000180-MR

CHRIS BAKER;
DENISE BAKER — APPELLANTS

v.

APPEAL FROM EDMONSON CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
ACTION NO. 01-AD-00006

RONALD WILLIAM WEBB;
ANGELA JOYCE WEBB;
JAMES ALEXANDER JONES;
CABINET FOR FAMILIES
AND CHILDREN — APPELLEES

OPINION

AFFIRMING

** ** ** ** **

BEFORE: BAKER, GUIDUGLI, AND SCHRODER, JUDGES.

BAKER, JUDGE. Chris and Denise Baker bring this appeal from an order of the Edmonson Circuit Court entered December 21, 2001, which effectively denied their motion to intervene in an adoption proceeding. We affirm.

The facts of this case are fairly straightforward. James Alexander Jones is a minor child who was ordered removed from the home of his biological father by an order of the Warren District Court. Pursuant to the order, the Cabinet for Families and Children (the Cabinet) took custody of Jones, and his biological father subsequently committed suicide.[1]

Appellants are the biological relatives of the child. Specifically, Chris Baker states that he is the child's cousin. Appellants have five children of their own and apparently live in the greater Cincinnati, Ohio, area.

The minor child remained in foster care for several months subsequent to his removal from his father's home. In a separate proceeding, the parental rights of the biological mother were terminated in her absence; the foster family petitioned the Edmonson Circuit Court for adoption of the child. Appellants claim that they were never notified of these proceedings and that they learned of them "by sheer accident" in November 2001. The final hearing on the issue of adoption was scheduled to be held on December 17, 2001. Appellants filed a motion to intervene in the adoption proceeding on December 13,

[1] The child's biological mother's whereabouts were unknown at the time. The child was removed from his father's home based upon allegations of sexual abuse.

2001.[2] Appellants maintained they were entitled to intervene in the underlying adoption both as a matter of right under Ky. R. Civ. P. (CR) 24.01 and permissively under CR 24.02. As set forth above, the Edmonson Circuit Court denied this motion, and this appeal follows.

Intervention as a Matter of Right

Appellants claim "an interest relating to the property or transaction" of this action which involves the minor child, the Cabinet, and the adoptive parents. CR 24.01(1)(b). Specifically, appellants argue that, because they are the "blood relatives" to the minor child, they are entitled to intervene within these proceedings as a matter of right. They do not cite any statute or any common law principle which would appear to confer such a right, and this court is independently unaware of any such statute or case which would so indicate.

In short, simply because Chris Baker is a cousin – or blood relative – of the minor child, this certainly does not confer a right of intervention to him in an adoption proceeding. This court could easily envision a factual scenario wherein the child's biological parents both came from large families with many siblings. We could just as easily imagine a scenario where many of these siblings had many children of their own. All of

[2] This motion to intervene is not accompanied by a complaint or other pleading setting forth the claim for which intervention is sought. CR 24.03.

these children would be cousins to the minor child involved in the adoption, and we are simply unwilling to confer a right of intervention to each and every one of them who might choose, for whatever reason, to become involved.

While there do not appear to be any Kentucky cases directly on point, the court finds persuasive the language of *In re* the Adoption of C.C.L.B., a Minor, 305 Mont. 22, 22 P.3rd 646 (2001), which has strikingly similar facts. In this case, a second cousin of the minor child attempted to intervene in the adoption process, and her motion was ultimately denied. The Montana court held: "We conclude that the [appellants] have not established a direct, substantial, legally protectible interest in the proceedings, and the District Court correctly concluded that they do not have a sufficient claim of interest to intervene as a matter of right." Id.

Upon the whole, we are of the opinion that appellants were not entitled to intervene as a matter of right under CR 24.01.

Permissive Intervention

Appellants also contend that they were entitled to intervene within these proceedings pursuant to CR 24.02(b), stating that there are common questions of law and fact as to

the child's best interests, as well as who are the best parties to adopt the minor child.

This argument was squarely resolved in the case of Department for Human Resources v. R.G., Ky., 664 S.W.2d 519 (1984), wherein it was expressly stated:

> The thrust of the Argument, when the chaff is blown away, is that they were denied an opportunity to prove that their's [sic] was an excellent home for the child, possibly better than....However, this is not the criterion. We quake at the thought of the additional burden upon overloaded courts if they were required to engage in qualitative comparisons in instances where one home has already been approved before another even applies.

As such, we conclude that the circuit court did not abuse its discretion by denying appellants' motion to permissively intervene under CR 24.02(b).

Based upon the foregoing, the order of the Edmonson Circuit Court is hereby affirmed.

GUIDUGLI, JUDGE, CONCURS.

SCHRODER, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

SCHRODER, JUDGE, DISSENTING. When a minor loses his or her parents for whatever reason, a relative placement through adoption or permanent relative placement should first be considered before foster care placement. KRS 194B.010, which

states the functions of the Cabinet for Families and Children, provides in pertinent part:

> Recognizing that children are the Commonwealth's greatest natural resource and that individuals and their families are the most critical component of a strong society, the cabinet shall deliver social services to promote their safety and security and preserve their dignity. (emphasis added.)

Indeed, in viewing the other statutes and regulations governing the Cabinet, we see the consistent priority of preserving and maintaining families, including relative placement of children. In addition, contrary to the majority view, there is no language in any of these statutes/regulations excluding first cousins from relative status.

According to 922 KAR 1:140, Section 7:

> Permanent Relative Placement. The permanency goal for a child under custodial control of the cabinet shall be permanent relative placement if:
>
> (1) Return to the parent is not in the child's best interest; and
>
> (2) A relative who does not pursue adoption or legal guardianship is able to provide a permanent home for the child. (emphasis added.)

(See also 922 KAR 1:140, Section 4(1)(c) and Section 6(2)(a).

Also, KRS 605.120(5) and 922 KAR 1:130 provide for a Kinship Care Program whereby a child whose parents have died or have been found to have abused or neglected the child is placed with a "caring relative" who has received an approved home

evaluation by the Cabinet, passed a criminal records check, and has not abused or neglected a child or adult. Apparently, the Bakers were not even considered by the Cabinet for eligibility under this program.

Under the adoption regulations in 922 KAR 1:100, Section 3(2), "Priority consideration for an adoptive placement shall be given to the: (a) Existing relative; or (b) Current foster parent." We would note that in the instant case, the only reason there was a current foster parent to be considered was the Cabinet's discretionary decision to initially place the child in a nonrelative foster home instead of with the Bakers. Once the Cabinet placed the child in a nonrelative foster home, the Bakers were at a distinct disadvantage due to the fact that the child and foster family would have started to bond and they would now be on equal footing for consideration for adoptive placement.

The Cabinet For Families And Children admits it has a current standard of practice which requires the Cabinet to assess the possibility of a relative placement prior to placement in foster care. That policy should give an interested relative a sufficient interest under CR 24.01 to intervene in an adoption proceeding in order to object to the adoption where the policy is not only ignored, but circumvented by the social

worker who misleads the relatives as to what steps they should be taking to be considered.

In this case, after a complaint was filed against the Cabinet, the Ombudsman conducted an investigation and found that: "The Warren county staff advised that they did not initiate a home study for the relatives because they felt it was more appropriate to pursue an adoptive home for Alex." (emphasis added.) And, "It is the opinion of this office that, upon being made aware of your interest in becoming a placement for Alex, the local office should have initiated a home study for the purposes of relative placement or adoption. Since you reside outside the state of Kentucky, the local office should have made a referral to the Interstate Compact Administrator to initiate that process." (emphasis added.)

The Bakers were in a no-win situation in this case. If they had retained an attorney at the outset, they would have ostensibly been informed of the home study requirement and could have legitimately filed a petition for adoption, rendering intervention unnecessary. However, such action would have put them in an adversarial situation with the Cabinet, surely not endearing them to Cabinet employees who currently seem to have unfettered discretion in decisions regarding child placement.

Instead, they chose to trust and cooperate with the Cabinet to their detriment.

In spite of the Cabinet's policy, the adoption proceeded and the blood relatives lost a child. The Cabinet For Families And Children is playing God. This child was fortunate enough to be born into a family that cares. The Cabinet even has a policy to consider relative placement, and said policy is not restricted to those closer than first cousins. Yet the staff did not consider the relatives because the staff wanted the foster parents to be able to adopt.[3] Where is the justice? Because of the reckless actions of the Cabinet's staff, we now have numerous victims. The child has lost his family, and now may lose his adoptive parents. The blood relatives have lost a child. The adoptive parents have presumably built a bond with Alex and may eventually lose Alex also. If the Cabinet had followed its policy from the beginning, Alex could have been placed with the relatives and bonded with them from the start.

In playing God, the Cabinet's staff has created a mess that cannot be undone without injuring someone. This may be one case, but it has far-reaching consequences. If the Cabinet does not have to follow its own policies, grandparents, uncles,

[3] There was also some suggestion at oral argument that the Bakers were not considered for adoption placement of the child because they already had five children and the foster parents had none. We would point out that pursuant to 922 KAR 1:030, Section 10, "Applicants with natural or adopted children shall be given the same consideration as childless applicants."

aunts, etc. will not be considered in adoptions unless the staff feels like it. Worst yet, parents that are concerned about their children in the event of the parents' deaths frequently designate a guardian in their will. Legally, we know such designation is not binding on a court but is one consideration that is to be considered and is frequently followed. However, if the Cabinet decides to play God again, a complete stranger may end up adopting their child. We cannot allow that to happen. We must rein in the Cabinet's staff. I would set aside the adoption and require the Cabinet to follow its policy, study the relative placement and make an honest recommendation.

BRIEFS AND ORAL ARGUMENT FOR APPELLANT:

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Bowling Green, Kentucky

BRIEF AND ORAL ARGUMENT FOR APPELLEE, CABINET FOR FAMILIES AND CHILDREN:

Mary Gaines Locke
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BRIEF AND ORAL ARGUMENT FOR APPELLEES, RONALD WILLIAM WEBB AND ANGELA JOYCE WEBB:

Bryan LeSieur
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