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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000498-ME

S.S. and J.S. APPELLANTS

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE KEVIN L. GARVEY, JUDGE
ACTION NO. 04-AD-500575

CABINET FOR HEALTH AND FAMILY SERVICES;
AND H.E., AN INFANT APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BARBER, MINTON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: S.S. and J.S., the maternal great-grandparents of H.E., an infant, appeal from an order entered February 10, 2005, by the Jefferson Family Court denying their motion to intervene in a proceeding to involuntarily terminate the parental rights of H.E.'s parents. We affirm.

On January 31, 1998, H.E. was born to sixteen-year old B.E. Following the birth, B.E. and H.E. lived with B.E.'s

maternal great-grandparents, S.S. and J.S.[1] B.E. and H.E. lived with S.S. and J.S. until sometime in 2000.

In August 2003, a petition was filed in the Jefferson Family Court alleging that H.E. was an abused and neglected child.[2] B.E. again stipulated to the abuse. Following a temporary removal hearing on August 14, 2003, the family court placed H.E. in the temporary custody of S.S. In October 2003, S.S. and J.S. apparently moved to Florida taking H.E. with them. On December 18, 2003, the court returned H.E. to B.E.'s custody.

In September 2004, the g*uardian ad litem* for H.E. contacted S.S. in Florida. S.S. reported to the guardian that despite the family court's December 2003 order, B.E. did not take physical custody of H.E. Rather, H.E. was still living in Florida with S.S. and J.S. S.S. indicated that B.E. had weekly phone contact with H.E., but had not visited H.E. since June 2004. S.S. also admitted utilizing the family court's August 2003 order, awarding her temporary custody of H.E., to enroll H.E. in school in Florida and to obtain medical insurance coverage for her. On September 2, 2004, the family court again awarded temporary custody of H.E. to S.S. A permanent custody hearing was scheduled for October 7, 2004.

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[1] S.S. is the maternal great-grandmother of H.M.E. J.S. is married to S.S. and is the maternal step great-grandfather of H.M.E.

[2] A previous petition alleging abuse and neglect had been filed in January 2002. Despite a stipulation of abuse, the Cabinet allowed H.E. to remain in B.E.'s custody.

The *guardian ad litem* for H.E. and the Cabinet purportedly agreed that permanent custody of H.E. should be placed with S.S. In preparation for the custody hearing, the guardian prepared a motion requesting that S.S. be awarded permanent custody of H.E. The guardian also prepared an affidavit for S.S. to sign in support of the motion. S.S. refused to sign the affidavit because she believed it contained untrue statements about B.E. abusing H.E.[3]

Although the parties give different reasons, the custody hearing scheduled for October 7, 2004, was rescheduled to October 28, 2004. At the October 28 hearing, the family court made a finding that H.E. was at risk of abuse or neglect from both S.S. and B.E, and thus granted temporary custody of H.E. to the Cabinet.

On November 17, 2004, the Cabinet filed a petition seeking to involuntarily terminate B.E.'s parental rights. On January 6, 2005, S.S. and J.S. filed a motion to intervene in the involuntary termination action. Following a hearing, the court entered an order denying the motion on February 10, 2005. S.S. and J.S. subsequently filed a "Motion to Reconsider." The

[3] Although B.E. had stipulated to the abuse, S.S. did not believe the abuse actually occurred, and asserted that H.E. should be ultimately returned to B.E.

court also denied that motion by order entered February 24, 2005.[4] This appeal follows.

S.S. and J.S. contend the family court erred by denying their motion to intervene in the involuntary termination of parental rights action. Specifically, S.S. and J.S. contend that pursuant to Baker v. Webb, 127 S.W.3d 622 (Ky. 2004) and Ky. R. Civ. P. (CR) 24.01, the family court should have permitted their intervention in the termination action.

CR 24.01 provides for intervention as a matter of right and states in relevant part:

> [A]nyone shall be permitted to intervene in an action (a) when a statute confers an unconditional right to intervene, or (b) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless that interest is adequately represented by existing parties.

In Baker, the Kentucky Supreme Court addressed whether biological relatives of a child could intervene under CR 24.01 in an adoption proceeding. Relying upon 922 KAR 1:140, in regard to foster care and adoption permanency services, the Court concluded that qualified relatives of a child should be given preference for placement in an adoption proceeding. The

[4] An order was also entered February 24, 2005, terminating the parental rights of B.E. and W.S., H.E.'s biological parents. That order is not before the Court of Appeals in this appeal.

Court held that pursuant to the regulations and policies of the Cabinet, the relatives had a "sufficient, cognizable legal interest in the adoption proceeding" and, thus, should be allowed to intervene pursuant to CR 24.01. Baker, 127 S.W.3d at 625.

In the case *sub judice*, the parties were seeking to intervene in a termination of parental rights action, not an adoption proceeding. We do not interpret Baker so broadly as to allow intervention in a termination of parental rights action. The sole purpose of a termination proceeding is to determine whether the parental rights of the child's biological parents should be terminated. Kentucky Revised Statutes (KRS) 625.050, *et seq.* KRS 625.060 specifically limits the parties to an involuntary termination proceeding to the child, the Cabinet (if not the petitioner), the petitioner and the biological parents. Since neither S.S. nor J.S. was the petitioner, each lacked standing to intervene in this action.

Even if S.S. and J.S. had been permitted to intervene, we do not believe the family court could have granted them relief in the termination proceeding under the statutes. Accordingly, we believe S.S. and J.S. did not have standing to intervene as a matter of right in the termination of parental rights action pursuant to CR 24.01.

S.S. and J.S. also contend the circuit court erred by denying their motion to intervene pursuant to CR 24.02. CR 24.02 provides for permissive intervention and states, in relevant part, as follows:

> [A]nyone may be permitted to intervene in an action . . . (b) when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

S.S. and J.S. specifically contend that the "common question" in the termination proceeding was H.E.'s best interest. While H.E.'s best interest is undoubtedly important, the only purpose of the termination proceeding was to determine whether the parental rights of the H.E.'s biological parents should be terminated. Again, S.S. and J.S. could not have been granted relief in the termination proceeding under applicable law. As such, we cannot conclude that the family court abused its discretion by denying the parties' motion to intervene under CR 24.02. See Webster v. Board of Ed. of Walton-Verona Ind. School Dist., 437 S.W.2d 956 (Ky. 1969).

For the foregoing reasons, the order of the Jefferson Family Court denying S.S. and J.S.'s motion to intervene in the termination proceeding is affirmed.

ALL CONCUR.

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