

RENDERED: MARCH 31, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000701-ME

M.R.S.

APPELLANT

v.

APPEAL FROM BOONE FAMILY COURT
HONORABLE LINDA R. BRAMLAGE, JUDGE
ACTION NO. 04-AD-00032

P.M.S.; R.E.R.; AND Z.W.R.

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, MINTON, AND TACKETT, JUDGES.

TACKETT, JUDGE: M.R.S. appeals from the judgment of the Boone Family Court, which rejected his petition for termination of the parental rights of R.E.R. M.R.S. sought to adopt Z.W.R., son of R.E.R. and P.M.S. The family court held that termination was not in the child's best interest, and rejected the petition. M.R.S. now argues on appeal that the court's ruling was clearly erroneous, and that it should have held that R.E.R. had

abandoned Z.W.R. We disagree and affirm the judgment of the family court.

Z.W.R. was born in Illinois in 1993, and R.E.R. and P.M.S. divorced in that state in 1997. P.M.S. married M.R.S. in 2001, but the relationship appears to date back some time before the marriage. The record reflects that R.E.R. still resides in Illinois, while P.M.S., the custodial parent, has resided in five states other than Illinois in that time period, with Kentucky being the latest. R.E.R. has not seen Z.W.R. since 2003, and had difficulties meeting his child support obligation beginning around that time as well. A \$2,000 arrearage accumulated in 2004, but R.E.R. has paid consistently since the second half of that year and has had a wage assignment and federal tax intercepts to address the arrearage. R.E.R. says that his business failed and he experienced serious emotional problems in 2004, and was unable to see his son during this time, but that he wants to rebuild the relationship. It is apparent that there is some degree of discord between the two sides in this matter.

M.R.S. sought to adopt Z.W.R. and filed this action in furtherance of that aim. In order for M.R.S. to adopt, R.E.R.'s parental rights would first need to be terminated, and so the family court considered that issue first. A guardian ad litem was appointed for Z.W.R. in this matter, and the guardian ad

litem recommended against the termination of R.E.R.'s rights. The family court, after a hearing, determined there was not sufficient reason to terminate R.E.R.'s parental rights. This appeal followed.

Kentucky Revised Statute (KRS) 625.110 governs appeals in matters involving the involuntary termination of parental rights, and states that any order for the involuntary termination of parental rights shall be conclusive and binding all parties, except that an appeal may be taken from a judgment terminating parental rights to this Court. The language of the statute, as it does not provide a right of appeal from an order denying a requested termination of parental rights, would seem to prevent such an appeal. This Court, however, recently held in C.M.C. v. A.L.W., 180 S.W.3d 485 (Ky. App. 2005) that the statute on adoptions, KRS 199.560, which specifically allows an appeal from an order denying an adoption petition, is controlling over the more general KRS 625.110. We believe that this case falls squarely under the rule announced in C.M.C. and therefore shall review the matter.

The applicable standard of review is whether the court's ruling is clearly erroneous. KRS 625.090 governs involuntary termination of parental rights, and requires clear and convincing proof that the child has been abused or neglected and that the proposed adoption is in the best interest of the

child. P.M.S. and M.R.S. contended R.E.R. had abandoned Z.W.R., after having had no contact with him for a great length of time and having fallen behind in his child support. R.E.R. argued that he never intended to abandon Z.W.R., but he had simply gone through a difficult time in his life during which his business failed and he grappled with depression, but that he always hoped to continue his relationship with his son. R.E.R. also argued that there was no guarantee of the permanence of P.M.S.'s relationship with M.R.S., as it was her fifth marriage, and therefore the adoption would not be in the best interest of the child. The family court found that M.R.S. had not met his burden of proof, and refused to terminate R.E.R.'s rights.

On appeal, M.R.S. argues the evidence showed R.E.R. had abandoned Z.W.R. for the minimum 90-day time period required by the statute, and therefore it was clearly erroneous for the court to hold otherwise. M.R.S. cites Kimblor v. Arms, 102 S.W.3d 517 (Ky. App. 2003). But in that case, the period of failure to pay child support and of no contact with the child was much longer than the case at bar. Likewise, Hafley v. McCubbins, 590 S.W.2d 892 (Ky. App. 1979), is not applicable because the sixteen-year-old child had been abandoned since birth by the parent. We believe that "abandonment", for purposes of the statute, requires more than simply failure to exercise visitation rights, and the court did not err in

determining that R.E.R. had not abandoned Z.W.R. It is clear that there is no serious argument for any of the other conditions for termination under KRS 625.090(2). Therefore, the court's finding that M.R.S. had not met his burden was not erroneous and must be affirmed.

For the foregoing reasons, the judgment of the Boone Family Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Mary Suzanne Cassidy
Covington, Kentucky

BRIEF FOR APPELLEE R.E.R.:

Beth Albright Louis
Florence, Kentucky

NO BRIEF FOR APPELLEE P.M.S.
AND Z.W.R.