

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000856-ME

SANDRA HAGAN

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DOLLY W. BERRY, JUDGE
ACTION NO. 06-CI-500558

MONICA S. WATERS; AND
MICHAEL WATERS

APPELLEES

OPINION AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, KELLER, AND LAMBERT; JUDGES.

LAMBERT, JUDGE: Sandra Hagan appeals from a dismissal of her petition for custody of her two grandchildren, Samantha and Shelby Waters. For the reasons set forth herein, we affirm.

Hagan filed the petition in February 2006, and Monica and Michael Waters filed a motion to dismiss immediately. The motion to dismiss referenced the fact that an order entered in the dependency docket prohibited Hagan from having contact with either

of the children pending a therapists' recommendation out of dependency court. The trial court granted the motion to dismiss, and Hagan hereby appeals.

It is well established in Kentucky that when matters outside the pleadings are considered in ruling on a motion to dismiss, the motion is converted to one for summary judgment. *See Bowlin v. Thomas*, 548 S.W.2d 515, 516 (Ky.App.1977); *Commonwealth v. Kentucky Central Life Ins. Co.*, 746 S.W.2d 565, 566 (Ky.App.1987). Therefore, since the dependency docket was referenced, we must review the court's dismissal as a grant of summary judgment.

Summary judgment may only be granted if there are no material issues of fact to be decided by a jury and if the moving party is entitled to judgment as a matter of law. *See* CR 56.03; *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky.1991). Summary judgment is to be granted when it would be impossible for the non-moving party, in this case, Hagan, to produce any evidence at trial warranting a judgment in her favor. *Id.* In ruling on Waters's motion for summary judgment, the circuit court was required to construe the record in a light most favorable to Hagan, the party opposing the motion. *Id.*

Applying these standards, it is apparent that at the time the motion to dismiss was made, there was no genuine issue of material fact as to whether the petition for custody should be granted. Despite a series of allegations by Hagan, the fact is that there is an order prohibiting contact between Hagan and the children of whom she

purports to obtain custody. Therefore, regardless of any other issues, there is no feasible way the petition could be granted in light of the order of the dependency court.

Accordingly, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE

John T. Fowler III
Louisville, Kentucky