

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-002383-ME

T.N.C.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JO ANN WISE, JUDGE
ACTION NO. 06-AD-00015

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER DISMISSING

** ** * * * **

BEFORE: COMBS, CHIEF JUDGE; DIXON, JUDGE; KNOPF,¹ SENIOR JUDGE.

KNOPF, SENIOR JUDGE: T.N.C. appeals the two October 13, 2006 orders of the Fayette Circuit Court terminating her parental rights of her two infant sons. Having concluded that T.N.C.'s failure to name the minor children in the notice of appeal is a jurisdictional defect which cannot be remedied, we dismiss this appeal.

Children are indispensable parties to a termination of parental rights action.

R.L.W. v. Cabinet for Human Resources, 756 S.W.2d 148 (Ky.App. 1988). Failure to name an indispensable party in a timely-filed notice of appeal is a jurisdictional defect

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

that cannot be remedied. *City of Devondale v. Stallings*, 795 S.W.2d 954, 957 (Ky. 1990). The notice of appeal filed by T.N.C on November 14, 2006, reads in part: “On appeal, the Appellant will be T.N.C.² and the Appellee will be the Commonwealth of Kentucky.” On July 31, 2007, T.N.C. filed an amended notice of appeal with the children listed as parties in the notice of appeal's body.³ This amended notice of appeal was not filed in a timely manner nor was it filed with leave of the Court. Therefore, it is not properly before this Court and the November 14, 2006, notice of appeal governs.

The Kentucky Supreme Court has found an exception to the requirement that children be named as parties in the body of the notice of appeal when the children were named in the caption and the guardian ad litem was served with the pleadings. *Morris v. Cabinet for Families and Children*, 69 S.W.3d 73 (Ky. 2002). *See also R.C.R. v. Com. Cabinet for Human Resources*, 988 S.W.2d 36 (Ky.App. 1998). In the case before us, the children were named in the caption of the notice of appeal as being the party "in the interest of" whom the appeal was filed. However, there is no certification that the guardian ad litem was served with the notice of appeal or any of the pleadings until the appellant attempted to amend her notice of appeal on July 31, 2007. This attempt to retroactively serve the guardian ad litem, eight and a half months after the appeal had been initiated and almost two months after the appeal had been perfected, was not timely. Therefore, the appeal before us fails to rise to the exception found in *Morris*.

² The names listed in the notice of appeal have been reduced to initials in order to protect the privacy of the parties.

³ This amended notice of appeal was filed with a response to Appellee's motion to dismiss and motion for leave to include infants as Appellees, which were returned to counsel because they were not tendered within the time limit allowed.

Accordingly, it is ORDERED that the appeal be, and it is hereby,
DISMISSED.

ALL CONCUR.

ENTERED: February 22, 2008

/s/ Wm. L. Knopf
SENIOR JUDGE, COURT OF APPEALS

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