

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000608-MR

M.F.R.¹

APPELLANT

v. APPEAL FROM SHELBY CIRCUIT COURT
HONORABLE JOHN DAVID MYLES, JUDGE
ACTION NO. 05-CI-00502

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY SERVICES;
M.A.C.; AND P.W.R.

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: DIXON AND LAMBERT, JUDGES; ROSENBLUM,² SENIOR JUDGE.

DIXON, JUDGE: M.F.R. appeals from an order of the Shelby Circuit Court dismissing her petition for grandparent visitation. We affirm.

¹ We reference the parties by their initials to protect the identity of the minor child in this proceeding.

² Senior Judge Paul W. Rosenblum, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

M.F.R. is the paternal grandmother of a minor child who was committed to the custody of the Cabinet for Health and Family Services (“CHFS”). CHFS instituted legal action in Shelby Circuit Court to terminate the parental rights of the child's parents, M.A.C. and P.W.R.³

During the pendency of the termination action, M.F.R. petitioned to intervene, which the circuit court denied. Thereafter, on September 27, 2005, M.F.R. instituted her own action in circuit court and moved for custody and visitation. No further action was taken in M.F.R.'s case for more than one year. During the interim, in March 2006, the circuit court terminated the parental rights of M.A.C. and P.W.R.

On October 18, 2006, M.F.R. filed a motion for grandparent visitation pursuant to Kentucky Revised Statutes (KRS) 405.021(1). CHFS filed a response opposing the motion, and the case was heard by the domestic relations commissioner (DRC). The DRC recommended the circuit court deny visitation because M.F.R. failed to obtain an order granting visitation prior to the termination of parental rights as required by KRS 405.021. The circuit court adopted the DRC's recommendation on February 15, 2007. This appeal followed.

KRS 405.021, the grandparent visitation statute, states in relevant part:

“(1) The Circuit Court may grant reasonable visitation rights to either the paternal or maternal grandparents of a child and issue any necessary orders to enforce the decree if it determines that it is in the best interest of the child to do so. Once a grandparent has been granted visitation rights under this subsection, those rights shall not be adversely affected by

³ M.A.C. and P.W.R. are named as appellees herein. It does not appear from the record that either party participated in this action below or on appeal.

the termination of parental rights belonging to the grandparent's son or daughter, who is the father or mother of the child visited by the grandparent, unless the Circuit Court determines that it is in the best interest of the child to do so.

(2) The action shall be brought in Circuit Court in the county in which the child resides.”

Furthermore, in *E.D. v. Commonwealth, Cabinet for Health and Family Services*, 152

S.W.3d 261 (Ky.App. 2004), a panel of this Court interpreted the visitation statute. The Court held,

“[T]he protections available in KRS 405.021(1) for preserving grandparent visitation, which would otherwise be severed by the termination of parental rights of the grandparent's son or daughter who is the parent of the child at issue, are conditional on the grandparent's having 'been granted visitation rights under this subsection.' This refers back to the earlier sentence in KRS 405.021(1) about obtaining reasonable visitation through the circuit court. Clearly KRS 405.021 requires a visitation order issued by the circuit court prior to the termination of parental rights of a grandparent's son or daughter to protect grandparent visitation rights with the children of that son or daughter.”

Id. at 264-65.

Despite the holding in *E.D.*, *supra*, M.F.R. argues that the statute does not preclude her from seeking visitation because she took “several steps to protect her rights,” and visitation would be in the child's best interest. We find M.F.R.'s arguments unpersuasive.

It is apparent that M.F.R.'s actions were insufficient to protect her right to visitation pursuant to the plain language of KRS 405.021(1). M.F.R. clearly failed to obtain a visitation order prior to March 20, 2006, the date her son's parental rights were

terminated by the circuit court. *See Id.* at 265. Consequently, we find the court correctly dismissed M.F.R.'s petition for visitation.

For the reasons stated herein, the order of the Shelby Circuit Court is affirmed.

ROSENBLUM, SENIOR JUDGE, CONCURS.

LAMBERT, JUDGE, DISSENTS.

BRIEFS FOR APPELLANT:

David J. Guarnieri
Frankfort, Kentucky

BRIEF FOR APPELLEE,
Commonwealth of Kentucky,
Cabinet for Health and Family Services:

Barbara M. Gunther
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NO BRIEF FOR APPELLEES,
M.A.C. and P.W.R.