

Commonwealth Of Kentucky

Court of Appeals

NO. 2007-CA-000707-ME

A.N.K.B.

APPELLANT

v. APPEAL FROM MCCREARY CIRCUIT COURT
HONORABLE PAUL E. BRADEN, JUDGE
ACTION NO. 05-AD-00035

J.N.G., A MINOR; T.L.; J.L.

APPELLEES

OPINION
AFFIRMING IN PART,
REVERSING IN PART, AND REMANDING

** ** * * *

BEFORE: KELLER, THOMPSON AND WINE, JUDGES.

WINE, JUDGE: A.N.K.B. appeals from a findings of fact, conclusions of law and a judgment of the McCreary Circuit Court terminating her parental rights to J.N.G. and allowing T.L. and J.L. to adopt the child. The order terminating the parental rights of the child's father is not in dispute. Because the parties concede that A.N.K.B. was entitled to consideration of her motion for appointment of counsel on this petition, the order terminating her parental rights must be set aside and this matter remanded for additional proceedings.

The essential facts of this action are not in dispute. A.N.K.B. is the natural mother of J.N.G., who was born December 11, 2003. A subsequent paternity judgment by the McCreary District Court named T.G. as the child's biological father. Shortly after her birth, J.N.G. was removed from her mother's custody and placed in the custody of the Cabinet for Families and Children. On December 23, 2004, the McCreary District Court entered an order placing J.N.G. in the permanent custody of T.L., the child's third cousin, and T.L.'s husband, J.L. The child has remained in their custody since that time.

On September 20, 2005, T.L. and J.L. filed a petition to terminate the parental rights of A.N.K.B. and T.G., and to adopt J.N.G. T.G. was served with the petition but he failed to respond or appear in this action. A.N.K.B. filed a response informing the court that she was incarcerated in Indiana. Upon receiving this information, the trial court appointed a guardian *ad litem* for A.N.K.B. But following her release from jail, A.N.K.B.'s guardian *ad litem* moved to withdraw. The trial court granted the motion on June 26, 2006.

Thereafter, A.N.K.B. filed several affidavits of indigency and requests for appointment of counsel. However, the motion was apparently never served on the petitioners and the trial court never ruled on the motion. On February 26, 2006, the trial court conducted an evidentiary hearing on the petitions for termination of parental rights and for adoption of J.N.G. After considering the evidence of record, including the report of the child's guardian *ad litem*, the trial court granted the petition terminating the parental rights of A.N.K.B. and T.G., and entered a judgment of adoption to T.L. and J.L.

T.G. has not appealed from this order, and the judgment terminating his parental rights is not in dispute. In her appeal, A.N.K.B. argues that the trial court erred by failing to appoint counsel for her and by failing to inform her of her rights at the evidentiary hearing. In response, T.L. and J.L. explain that they were unaware of A.N.K.B.'s request for appointment of counsel until the filing of this appeal. Nevertheless, they agree that KRS 625.080(3) requires that counsel be appointed for indigent parents in involuntary termination actions. Because the trial court never ruled on her motion for appointment of counsel, T.L. and J.L. concede that the order terminating A.N.K.B.'s parental rights should be set aside and this matter must be remanded for additional proceedings which comport with A.N.K.B.'s due process rights.

Accordingly, the judgment of the McCreary Circuit Court is affirmed with respect to the order terminating T.G.'s parental rights, but is reversed with respect to the portion of the order terminating A.N.K.B.'s parental rights and allowing T.L. and J.L. to adopt J.N.G. This matter is remanded for the trial court to address A.N.K.B.'s motion for appointment of counsel and for additional proceedings as may be appropriate thereafter.

ALL CONCUR.

BRIEF FOR APPELLANT:

A.N.K.B., *pro se*
Whitley City, Kentucky

BRIEF FOR APPELLEES, T.L. AND
J.L.:

D. Bruce Orwin
Somerset, Kentucky

NO BRIEF FILED FOR APPELLEE,
J.N.G.