

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002913-MR

THEODORE MARAS

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GEOFFERY P. MORRIS, JUDGE
ACTION NO. 99-CI-004680

WAYNE MOORE;
KATHLEEN MOORE;
T.M., AN INFANT;
A.M., AN INFANT;
CABINET FOR FAMILIES AND CHILDREN

APPELLEES

OPINION
AFFIRMING
** **

BEFORE: GUDGEL, Chief Judge; BARBER, and SCHRODER, JUDGES.

BARBER, JUDGE: Theodore Maras (Maras) appeals the judgment of the Jefferson Circuit Court denying his motion to alter, amend or vacate its prior order adjudging that the circuit court lacked the authority to conduct a hearing on a motion to alter the custody of Maras' two (2) minor children. Having reviewed the record and applicable law, we affirm.

On December 13, 1996, a petition was filed in the Jefferson Family Court alleging neglect by him of his two (2)

minor children. A temporary removal hearing was held on December 17, 1996, at which time the children were permitted to remain in their father's custody. Thereafter, at a hearing conducted on January 29, 1997, Maras stipulated to the alleged neglect and the children were placed in the custody of the Cabinet for Families and Children (Cabinet).¹ They were placed by the Cabinet with Wayne and Kathy Moore (the Moores).

Following several continuances, a hearing was conducted on September 9, 1997, wherein due to Maras continued use of alcohol and illegal drugs, it was determined that the Moores would retain temporary custody of the children. Maras was instructed to attend therapy and anger management classes upon the completion of which he could redocket the matter for further custody consideration.

In May 1998, Maras filed a motion to have the children returned to his custody. However, due to evidence demonstrating that Maras continued to be troubled with alcohol and illegal drug use, as well as having a tendency to leave the children unsupervised during visitation, the court concluded the children remained at risk. Therefore, the court ordered that temporary custody was to remain with the Moores, permitting Maras only supervised visitation during therapeutic sessions with the children and counselors.

In June 1998, the Moores filed a motion for permanent custody. On August 25, 1998, the Jefferson Family Court entered

¹ At the time of the January 1997, hearing the Cabinet for Families and Children remained known as the Cabinet for Human Resources.

a final order awarding permanent custody of the children to the Moores. As grounds therefor, the court found that Maras had inflicted physical and emotional abuse upon the children, was not a suitable custodian for the children's care, and that in accord with the children's therapist, they should have no contact with their father other than in a strictly therapeutic setting.²

On September 25, 1998, Maras filed a notice of appeal challenging the August 25, 1998, permanent custody award. Maras failed to perfect his appeal with a timely statement of same; however, on November 3, 1998, he obtained a court order allowing five (5) days in which to file an amended notice of appeal. Maras failed to comply with the time extension. Due to these deficiencies, the circuit court dismissed Maras' appeal pursuant to CR 72.08.³

On April 11, 1999, Maras petitioned the circuit court for immediate entitlement to custody, KRS 620.110, and for a writ of habeas corpus, KRS 419.020. The court denied the petition in its entirety and this appeal followed.

Maras raises several arguments before this Court regarding the sufficiency of the initial neglect summons, the propriety of the procedure followed by the family court, as well as the validity of the temporary custody order. We believe that the sole issue, as noted in Maras' introduction, remains whether

² A Judgment of Custody was entered on September 11, 1998, which incorporated by reference the court's prior findings of fact and conclusions of law.

³ "An appeal from the district court must be perfected within 30 days after the date of filing the first notice of appeal." CR 72.08.

the circuit court properly ruled as to the application of KRS 620.110 in the matter sub judice. We conclude there was no error.

KRS 620.110 provides, in pertinent part:

Any person aggrieved by the issuance of a temporary removal order may file a petition in circuit court for immediate entitlement to custody

Unquestionably, the statute addresses relief from a "temporary removal order." The order which Maras challenged in the circuit court was a "permanent order," that is, the August 25, 1998, judgment awarding permanent custody of the children to the Moores. As such, the circuit court correctly concluded that KRS 620.110 has no application in this case and its final disposition will not be disturbed. CR 52.01

The remainder of Maras' contentions are not arguable in this appeal. Rather, Maras challenges a number of issues arising in the context of the temporary custody proceedings and orders resulting therefrom. If Maras perceived that he was aggrieved by or through these proceedings, the onus was upon him to appeal same in accordance with CR 72.02. He failed to properly appeal from that proceeding and, therefore, he cannot now be heard to complain. Stewart v. Kentucky Lotto Corp., Ky. App., 986 S.W.2d 918 (1998).

In accordance with the above discussion, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

J. Russell Lloyd
Louisville, Kentucky

BRIEF FOR WAYNE MOORE AND
KATHY MOORE:

Bruce D. Prizant

BRIEF FOR COMMONWEALTH OF
KENTUCKY, CABINET FOR FAMILIES
AND CHILDREN:

Carey Arnold
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