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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2023-CA-0046-ME

J.P. AND C.P. APPELLANTS

v.

APPEAL FROM BREATHITT FAMILY COURT
HONORABLE LARRY MILLER, JUDGE
ACTION NO. 20-J-00096-001

S.C.; THE COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES; AND A.J.C., A MINOR CHILD APPELLEES

OPINION AND ORDER
DISMISSING

** ** ** ** **

BEFORE: ACREE, GOODWINE, AND JONES, JUDGES.

ACREE, JUDGE: J.P. and C.P. appeal a January 3, 2023 custody order of the Breathitt Family Court. Upon review, we dismiss.

The facts relevant to our disposition of this appeal are as follows. Shortly after her birth in August 2020, A.J.C. ("Child") was removed from S.C.

("Mother")[1] pursuant to a dependency/neglect/abuse ("DNA") action filed in Breathitt Family Court by the Cabinet for Health and Family Services ("Cabinet"). Weeks later, and without objection, the family court placed Child in the temporary custody of J.P. (Child's second cousin) and C.P. (J.P.'s husband). Afterward, Mother stipulated to neglect; the family court entered a disposition order directing Child to remain in J.P.'s and C.P.'s temporary custody; the Cabinet provided Mother a reunification plan; and Mother eventually made enough progress in her reunification plan to cause the Cabinet to move the family court to return Child to her custody. At some unspecified point shortly before or after the Cabinet filed its motion, J.P. and C.P. filed a parallel action in Rockcastle Family Court for permanent custody of Child. Nevertheless, the instant action proceeded, and the family court held an extensive hearing on the Cabinet's motion. There, J.P. and C.P. were permitted to cross-examine and introduce witnesses, and to argue against returning Child to Mother's custody. Ultimately, the family court granted the Cabinet's motion.

On appeal, J.P. and C.P. argue the family court entered its custody order in error because, in their view: (1) insufficient evidence supported Mother substantially completed her case plan; (2) insufficient evidence supported Child would not be neglected if returned to Mother's legal custody; (3) the Cabinet's

[1] According to the appellate record, the identity of Child's father remains unknown.

custody recommendation of custody to Mother, upon which the family court relied, was not made "in good faith"; and (4) the family court's final order of custody was not timely entered. Due to these asserted errors, J.P. and C.P. ask this Court to reverse the family court and reinstate the prior status quo. In effect, J.P. and C.P. are attempting to revitalize the Cabinet's DNA proceeding and reclaim custody of Child from Mother.

However, the dispositive issue is whether we have authority to review the merits of this appeal. Mother and the Cabinet argue we lack subject matter jurisdiction to proceed because, among other reasons,[2] J.P. and C.P. were not parties[3] below who were aggrieved or prejudiced by the family court's judgment, and, as a general rule, "[o]nly parties to litigation who have rights that may have

[2] The Cabinet also argues this appeal was "untimely" because the appellants filed it on January 6, 2023 – over a year after Child was returned to Mother pursuant to an oral pronouncement of the family court. However, a reviewing court "cannot infer rulings not made explicit by the trial court." *Erie Insurance Exchange v. Johnson*, 647 S.W.3d 198, 202 (Ky. 2022). And, "an oral pronouncement is not a judgment until it is reduced to writing." *Brock v. Commonwealth*, 407 S.W.3d 536, 538 (Ky. 2013) (citation omitted). Accordingly, the instant appeal – which was filed within *three days* of when the family court eventually incorporated its oral pronouncement into the written custody order at issue – was timely. *See* Kentucky Rule of Appellate Procedure 3(A)(1).

[3] To be sure, Mother's and the Cabinet's appellate arguments are largely devoted to the proposition that J.P. and C.P. never qualified as "parties" below because they never formally intervened or filed a petition in the DNA proceeding to assert an independent claim for custody of Child; and because, in their view, J.P.'s and C.P.'s participation in the DNA proceeding was no more expansive than the level of participation afforded to non-party "[f]oster parents, preadoptive parents, or relatives providing care for the child" under Kentucky Revised Statute ("KRS") 620.100(5). It is unnecessary to address whether J.P. and C.P. were "parties" because, regardless, the record clearly reflects J.P. and C.P. were not *aggrieved* by the family court's judgment.

been erroneously injured or rights which may be enforced by law in whole or in part by obtaining a reversal of a judgment are entitled to maintain an appeal." *Civil Serv. Comm'n v. Tankersley*, 330 S.W.2d 392, 393 (Ky. 1959) (citations omitted). *See also Riehle v. Riehle*, 504 S.W.3d 7, 9 (Ky. 2016) ("[A] person usually has [constitutional] standing if that party has a substantial interest in the subject matter of the litigation and they will be aggrieved by an adverse ruling by the court."); KRS 620.155 (authorizing "[a]ny interested party aggrieved by a proceeding under KRS 610.010(2)(d)" to appeal).

We agree. To begin, J.P.'s and C.P.'s prior roles as Child's temporary custodians conferred upon them no right to force the Cabinet – which is now an appellee – to continue prosecuting its DNA action against Mother. J.P. and C.P. insinuated below[4] that they could nevertheless achieve this result because, as Child's temporary custodians, they believed they qualified as "person[s] exercising custodial control or supervision" within the ambit of KRS 620.100(2), and were therefore authorized under that provision to appeal any disposition of the underlying DNA action. However, this is incorrect. In relevant part, KRS 620.100 provides:

> (2) If the court determines that further proceedings are required, the court also shall advise the child and his parent

[4] J.P. and C.P. made this insinuation in a December 6, 2021 filing styled "brief in support of person exercising custodial control's ability to meaningfully participate." They have not pressed it on appeal, but it is necessary to address this point.

> or other person exercising custodial control or supervision that they have a right to not incriminate themselves, and a right to a full adjudicatory hearing at which they may confront and cross-examine all adverse witnesses, present evidence on their own behalf and to an appeal.
>
> (3) The adjudication shall determine the truth or falsity of the allegations in the complaint. The burden of proof shall be upon the complainant, and a determination of dependency, neglect, and abuse shall be made by a preponderance of the evidence. The Kentucky Rules of Civil Procedure shall apply.

Under a plain reading of these provisions, the right "to an appeal" described in KRS 620.100(2) is only directed at children or their "parent or other person exercising custodial control or supervision" who – unlike J.P. and C.P. – are the *targets* of DNA proceedings. This point is underscored by the additional admonitions in that provision, and in section (3), that the children or their "parent or other person exercising custodial control or supervision" shall be advised of their right to an adjudicatory hearing regarding the truth or falsity of the allegations in the complaint; their right against self-incrimination; their right to cross-examine and confront all *adverse* witnesses; and their right to present evidence on their *own* behalf.

Likewise, their prior roles as Child's temporary custodians conferred upon them no continued right to maintain custody of Child in opposition to Mother's wishes.[5] Rather, more was required:

> Parents of a child have a fundamental, basic, and constitutional right to raise, care for, and control their own children. *Davis v. Collinsworth*, 771 S.W.2d 329, 330 (Ky. 1989). When a non-parent does not meet the statutory standard of de facto custodian in KRS 403.270, the non-parent pursuing custody must prove either of the following two exceptions to a parent's superior right or entitlement to custody: (1) that the parent is shown by clear and convincing evidence to be an unfit custodian, or (2) that the parent has waived his or her superior right to custody by clear and convincing evidence.

Mullins v. Picklesimer, 317 S.W.3d 569, 578 (Ky. 2010) (footnote omitted).

As indicated, J.P. and C.P. are non-parents. They have made no contention in this matter that they qualify as Child's de facto custodians, or that Mother waived her superior right of custody. Moreover, while they claim on appeal that they "would" have standing as persons "acting as a parent" under KRS 403.800(13) to prove Mother's parental unfitness and to accordingly seek custody of Child against Mother's wishes, this is presumably a claim J.P. and C.P. have made in the separate and apparently ongoing custody action they initiated in Rockcastle Family Court. They never asked the family court in *this* action to

[5] *See, e.g.*, *Diaz v. Morales*, 51 S.W.3d 451 (Ky. App. 2001) (holding that absent additional findings of waiver or de facto custodianship, an individual awarded temporary custody of a child had no ground to oppose returning the child to the parents' custody).

consider any such claim; accordingly, the outcome of *this* action has no bearing upon that claim.

In sum, J.P. and C.P. cannot invoke our appellate jurisdiction because they cannot be considered aggrieved or prejudiced by the family court's judgment. Accordingly, we DISMISS their appeal.

ALL CONCUR.

ENTERED: FEB 23, 2024

JUDGE, COURT OF APPEALS

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