

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000021-ME

K. C.

APPELLANT

v.

APPEAL FROM BOONE CIRCUIT COURT
HONORABLE LINDA R. BRAMLAGE, JUDGE
ACTION NO. 16-AD-00004

P. E. C. R., T. R., & R. R.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, JOHNSON, AND JONES, JUDGES.

JONES, JUDGE: This is an appeal from a judgment of the Boone Circuit Court (Family Court Division) that simultaneously terminated the parental rights of the Appellant, K.C. (“Biological Father”), to his minor child, P.E.C. (“Child”), and granted a petition for adoption in favor of T.P.R. and R.J.R., Child’s paternal grandmother and paternal step-grandfather (hereinafter collectively referred to as “Adoptive Parents”). On appeal, Biological Father alleges that the termination of

his parental rights and corresponding adoption must be reversed because the family court failed to appoint a guardian ad litem (“GAL”) to represent Child. Having carefully reviewed the applicable law, we disagree with Biological Father that a GAL was required. KRS¹ 199.480(3) is clear that when a natural parent is named as a defendant in an adoption petition, a GAL does not need to be appointed to represent the interests of the child. Accordingly, we AFFIRM.

I. BACKGROUND

Child was born in October of 2011 in Edgewood, Kentucky. Child resided with her biological parents for the first several months of her life. In June of 2012, when Child was approximately eight months old, Child’s biological parents went out for the evening to attend a church picnic. They left Child in the care of Adoptive Parents. Tragically, Child’s biological mother was killed in an automobile collision on the way home from the picnic. For the most part, Child has remained in the exclusive care of Adoptive Parents since the night of the accident.

Biological Father admits that he had a difficult time coping with his wife’s death. He testified that he turned to illegal drugs to numb the pain.² And, he readily acknowledges that since June of 2012 until he was incarcerated in May

¹ Kentucky Revised Statutes.

² Biological Father testified that up until the death of his wife, he was a law-abiding citizen. Adoptive Mother’s testimony, however, indicated that Biological Father may have been abusing pain medications even before the wreck. This discrepancy is largely immaterial as there was no allegation that Biological Father abandoned or neglected Child prior to June of 2012.

of 2015, he put his addiction before anything else in his life, including Child. As a result of Biological Father's drug use and related legal problems, Adoptive Parents³ were granted emergency custody of Child in June of 2013. They were granted permanent sole custody of Child in August of 2014. In January of 2016, while Biological Father was incarcerated, Adoptive Parents filed a petition in Boone Circuit Court to legally adopt Child. Adoptive Parents named the following as defendants: Child, Biological Father, Child's deceased biological mother, and the Cabinet for Health and Family Services ("Cabinet").

In February of 2016, while still incarcerated, Biological Father filed a *pro se* response to the petition for adoption strenuously objecting to the termination of his parental rights through the proposed adoption. He asked the family court to dismiss the petition, or alternatively, to appoint him counsel so that he could defend his rights to Child. Shortly thereafter, the family court appointed a GAL to represent Biological Father.

In March of 2016, the GAL filed a report with the Boone Circuit Court. The GAL noted that he had sent correspondence to Biological Father informing him of the nature and pendency of the action, and had also conducted a phone conference with Biological Father to discuss the action. The GAL explained that Biological Father did not want to have his parental rights terminated through

³ Adoptive Parents have been married since July of 1988, and currently reside together in Florence, Kentucky. Adoptive Mother, R.J.R., is employed by the Boone County Board of Education. Adoptive Father, T.P.R., is retired from the United States Postal Service.

the adoption of Child because Biological Father did not believe that it would be in the best interest of Child to be adopted. The GAL's report also indicated that Biological Father would be eligible for parole in June of 2016 and had a job in Northern Kentucky lined up so he could begin working once released.⁴ The report also outlined the steps Biological Father had taken since his incarceration to overcome his drug addiction and become a better parent to Child.

The family court conducted a final hearing on November 4, 2016. Because Biological Father was still incarcerated, he participated in the hearing by telephone. Adoptive Mother, Adoptive Father, and Biological Father testified at the hearing.

Adoptive Mother testified that Biological Father had minimal contact with Child after Child's mother died. Since June of 2012, with the exception of getting Child a kitten, Biological Father provided no financial, educational, or emotional support to Child. Adoptive Mother testified that she does not believe that Child has a memory of any home other than her current one and often resists speaking to Biological Father on the telephone because she has almost no memory of him. In contrast, Adoptive Mother indicated that Child was bonded to her and Adoptive Father. She described Child as happy and thriving. Child is enrolled in soccer and gymnastics and attends a local parochial school, activities that were

⁴ Biological Father later explained that he was denied parole in April of 2016. At the hearing, he testified that he believed that he would be placed on monitored supervised release in May of 2017.

coordinated and paid for entirely by Adoptive Parents, without any support or input from Biological Father.

Adoptive Father's testimony was largely duplicative of Adoptive Mother's testimony. However, he disagreed with Adoptive Mother's assertion that Biological Father was not remorseful for his past actions. Adoptive Father indicated that he believed Biological Father was grateful to Adoptive Parents for their help in raising Child and that Biological Father did feel remorse for his past actions. Nevertheless, Adoptive Father does not believe Child would be safe if returned to Biological Father when he is released from prison. While Adoptive Father is hopeful that Biological Father can overcome his drug addiction, he has yet to see him do so and, therefore, is unconvinced that he has the ability to parent Child.

Biological Father largely agreed with the testimony of Adoptive Parents regarding his lack of involvement in Child's life. He admitted that since his wife's death in June of 2012, he had provided virtually no support to Child. He also candidly admitted that he could not name Child's doctors or teachers.

Biological Father explained that he had foolishly put drugs ahead of anything else in his life, including Child from June of 2012 until he was incarcerated in May of 2015. Biological Father identified his current incarceration as marking a major turning point in his life. He explained that since being incarcerated, he had actively (and voluntarily) taken steps to address his addiction and better himself

through the completion of substance abuse programs and parenting classes offered to him as part of his incarceration. Biological Father also testified that despite his failures, he had attempted to maintain contact with Child. He had a visitation schedule prior to his incarceration that he attempted to keep alive through phone calls. However, after Biological Father told Adoptive Parents that he would not consent to the adoption, Adoptive Mother stopped answering his calls thereby preventing him from speaking to Child on the telephone.

Following all the testimony, the family court announced from the bench that it was granting the adoption petition and terminating Biological Father's parental rights. The family court entered written findings of fact and conclusions of law along with separate judgments terminating Father's parental rights and approving the adoption. Biological Father timely appealed.

II. ANALYSIS

Biological Father raises only one issue on appeal: that the family court's failure to appoint a GAL for Child was error. According to Biological Father, the termination of his parental rights was a prerequisite to any valid adoption order, and the termination statute, KRS 625.080, mandates the appointment of a GAL for Child. While Biological Father's argument is logical on its face, a deeper reading of the statutes and corresponding case law makes clear that the adoption statute, not the termination of parental rights statute, governs this case. And, the adoption statute is explicit that a GAL need not be appointed so

long as the biological parent is named as a defendant in the adoption petition. *See* KRS 199.480(3).

We begin by underscoring that Adoptive Parent’s counsel appropriately filed a single petition for adoption. It was unnecessary to file a separate motion for termination of parental rights. “The adoption judgment itself terminates parental rights by virtue of the provisions of KRS 199.520(2)[.]”

Wright v. Howard, 711 S.W.2d 492, 495 (Ky. App. 1986). That statute provides:

(2) Upon entry of the judgment of adoption, from and after the date of the filing of the petition, the child shall be deemed the child of petitioners and shall be considered for purposes of inheritance and succession and for all other legal considerations, the natural child of the parents adopting it the same as if born of their bodies. Upon granting an adoption, all legal relationship between the adopted child and the biological parents shall be terminated except the relationship of a biological parent who is the spouse of an adoptive parent.

KRS 199.520(2).

Given this statute, it was unnecessary for Adoptive Parents to ask that Biological Father’s parental rights be terminated. And, it was likewise unnecessary for the family court to enter a separate judgment of termination. We have previously explained,

[T]he prayer to terminate is unnecessary—the adoption itself terminates the non-consenting parent’s parental rights. Allegation and proof of the grounds for involuntary termination suffices as a substitute for KRS 199.500 sworn consent and, assuming all other legal requirements have been met, without resort to an order

terminating the parental rights of the recalcitrant father, the trial court then can enter a valid judgment of adoption containing only the mandatory findings of KRS 199.520, which is titled Judgment—Prerequisites—Order—Name and legal status of child.

Wright, 711 S.W.2d at 496. When two judgments have been unnecessarily entered in an adoption case, we view “the ‘judgment of adoption’ and ‘order terminating parental rights’ as being one document that comprises the judgment.” *Id.* at 494. The effect of the judgment is the adoption of Child. Thus, we must determine whether there was proper compliance with the adoption statutes. *See Goldfuss v. Goldfuss*, 565 S.W.2d 441, 442 (Ky. 1978) (“The legal act of adoption is purely statutory, and the statute authorizing the adoption must be strictly complied with.”).

Adoptions are governed by KRS 199.470 through KRS 199.590. Of particular importance to this case is KRS 199.502, which governs adoption without the consent of a child’s biological living parents. It provides:

- (1) Notwithstanding the provisions of KRS 199.500(1), an adoption may be granted without the consent of the biological living parents of a child if it is pleaded and proved as part of the adoption proceeding that any of the following conditions exist with respect to the child:
 - (a) That the parent has abandoned the child for a period of not less than ninety (90) days;
 - (b) That the parent had inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;
 - (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by

other than accidental means, physical injury or emotional harm;

(d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to a child named in the present adoption proceeding;

(e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child, and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;

(f) That the parent has caused or allowed the child to be sexually abused or exploited;

(g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;

(h) That:

1. The parent's parental rights to another child have been involuntarily terminated;

2. The child named in the present adoption proceeding was born subsequent to or during the pendency of the previous termination; and

3. The condition or factor which was the basis for the previous termination finding has not been corrected; or

(i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect.

(2) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law, and a decision either:

(a) Granting the adoption without the biological parent's consent; or

(b) Dismissing the adoption petition, and stating whether the child shall be returned to the biological parent or the

child's custody granted to the state, another agency, or the petitioner.

Id.

While this section outlines the proof necessary to support an adoption petition made without parental consent, the provisions of KRS 199.480 govern who must be named in the adoption petition. The statute explicitly states that “the child to be adopted” must be made a party defendant. *See* KRS 199.480(1)(a). Adoptive Parents complied with KRS 199.480(1)(a) by naming Child as a defendant. The issue presented here is whether the family court was required to name a GAL to represent the Child. The statute supplies our answer. KRS 199.480(3) states in no uncertain terms that:

(3) If the child's biological living parents, if the child is born in lawful wedlock, or if the child is born out of wedlock, its mother, and if paternity is established in legal action or if an affidavit is filed stating that the affiant is father of the child, its father, are parties defendant, no guardian ad litem need be appointed to represent the child to be adopted.

Id.

Since Biological Father, Child’s only living biological parent, was named as a party defendant, it was unnecessary for the family court to appoint a GAL to represent Child. This was made clear by this Court in *Wright, supra*. In *Wright*, a biological parent would not consent to the adoption of his minor twins. As such, the nonconsenting parent was named as a party defendant. After

determining that the action had to be remanded because the trial court addressed the matter as one of parental termination rather than adoption without consent, we held that the trial court also erred in appointing a “guardian ad litem for the twins . . . because their father is a defendant . . . and pursuant to KRS 199.480(3), a guardian ad litem need not be appointed to represent the twins’ interest.” *Wright*, 711 S.W.2d at 497.

III. CONCLUSION

For the reasons set forth above, we affirm the Boone Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

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