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Supreme Court of Kentucky

COMMONWEALTH OF KENTUCKY
SUPREME COURT
NO. 2024-SC-0143

G.G., ET AL.

APPELLANTS

APPELLANTS BRIEF

CABINET FOR HEALTH AND FAMILY
SERVICES, ET AL.

APPELLEES

ON APPEAL FROM

COURT OF APPEALS
CASE NUMBER 2023-CA-1399

JACKSON CIRCUIT COURT
ACTION NO. 23-AD-00018

Marsha Taylor
Attorney at Law
490 Cave Spring Rd
McKee, KY 40447
(606)975-2414 (text only)
Attyatlaw2001@yahoo.com
Attorney for Appellants

CERTIFICATE OF SERVICE

I hearby certify that a true and accurate copy of the foregoing was served this 13th day of September, 2024, as follows: electronically filed with the Kentucky Supreme Court, c/o Hon. Kelly Stephens, Clerk of the Supreme Court of the Commonwealth of Kentucky, State Capitol, 700 Capital Avenue, Room 235, Frankfort, Kentucky 40601; by regular United States mail to to Hon. Clint Harris, 316 Main Street, Suite 325, Manchester, KY 40962; and by electronic mail to Hon. Julliana Coffey, CHF.

/s/Marsha Taylor
Marsha Taylor

INTRODUCTION AND
STATEMENT CONCERNING ORAL ARGUMENT

This case appears to be a matter of first impression for the Court, as Appellants can find no case law on point. Appellants are an unmarried couple who have been together for 17 years, who seek to adopt T.G.'s granddaughter, a seven year old child that both of them have had legal custody of, pursuant to a juvenile action in Madison Family Court, since the child was born. There is no qualified father and the mother consents to the adoption.

The Cabinet opposes the adoption, stating KRS 199.470(1) and KRS 199.520(2) do not permit adoptions by an unmarried couple. The Family Court ultimately agreed with the Cabinet and dismissed the Petition. Appellants timely filed an Appeal with the Court of Appeals, which upheld the Family Court ruling dismissing the Petition of Adoption.

This Court has granted Discretionary Review. The question now before the Court is "Does Kentucky law prohibit adoption by an unmarried couple?"

Appellants believe, due to the novelty of the facts of this case, given that Appellants contests a widely accepted interpretation of statute, that oral argument may be beneficial in helping this honorable Court determine if the legislature did in fact intend to prohibit the adoption of a child by an unmarried couple, as is the generally accepted view among the bench and bar.

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STATEMENT OF THE CASE

Appellants, G.G. and T.S. filed a Petition to Adopt with Consent on September 13, 2023 (TR 1). Said Petition conformed with all requirements of KRS 199.490 and included AOC form 292 “Appearance Waiver and Consent to Adoption” (TR 4) duly signed and notarized by the biological mother. There are no fathers who meet the requirements of KRS 199.480(b) and Appellants are exempt from the requirement of approval of the secretary, by KRS 199.470(4)(a).

G.G. and T.S. have been a committed, cohabitating couple for 17 years. However, they are not married. Nonetheless, in Juvenile action 17-J-00183-001, on November 29, 2017, the Madison County Family Court granted them permanent joint custody of A.L.V, born February 17, 2017. A.L.V. is T.S.’s biological granddaughter and has lived with Appellants since the day she came home from the hospital.

Pursuant to KRS 199.510, a copy of the petition was sent to the Cabinet for investigative report. On September 20, 2023, the Cabinet filed its “Investigative Report” (TR 10) stating it was unable to process the Petition because KRS 199.470(1) and KRS 199.520(2) does not allow adoptions by unmarried couples. Thereafter, Appellants filed a motion to order the Cabinet to proceed with the investigation. (TR 11) Cabinet counsel filed objection (TR 16) and the Court overruled Appellants motion.

Appellants then filed a motion for the Court to appoint a third party to investigate, pursuant to KRS 199.510(2), and to hold a hearing to determine if the Cabinet is arbitrarily and unjustly withholding its consent. (TR 20). Again, the Cabinet filed its objection (TR 29) and the Court overruled the motion and dismissed the Petition. Counsel for Appellants was instructed to prepare the Order.

G.G. and T.S. did in fact appeal to the Court of Appeals, which upheld the trial court's dismissal of the Petition. This honorable Court has now granted Discretionary Review.

The issue for appeal has evolved between the time of actions in the trial court to where we are now. G.G. and T.S. are not appealing the upholding of the refusal to appoint a third party or hold a hearing to determine if the Cabinet was acting arbitrarily and unreasonably. They appeal the Dismissal of the Petition.

They appeal the dismissal because they believe the trial court, the Court of Appeals, the Cabinet, and the majority of those involved with our judicial system, have misinterpreted and misapplied the relevant statutes and case law.

STANDARD OF REVIEW

The issue before the Court is whether KRS Chapter 199 prohibits the joint adoption of a child by an unmarried couple. The issue is a matter of statutory interpretation that should be reviewed de novo.

ARGUMENT

This matter, in its entirety, was preserved for review at VR 10/17/23 at 10:15, and in Motion to Appoint Investigator and Hearing (TR 23)

I. THE COURT ERRED IN FINDING KRS 199 PROHIBITS ADOPTION BY UNMARRIED COUPLES AND DISMISSING THE PETITION

The Cabinet argued that KRS 199.470(1) and KRS 199.520(2) do not permit adoptions by an unmarried couple. KRS 199.470, in its entirety, states;

(1) Any person who is eighteen (18) years of age and who is a resident of this state or who has resided in this state for twelve (12) months next before filing may file a petition for leave to adopt a child in the Circuit Court of the county in which the petitioner resides.

(2) ***IF*** the petitioner is married, the husband or wife shall join in a petition for leave to adopt a child unless the petitioner is married to a biological parent of the child to be adopted, except that if the court finds the requirement of a joint petition would serve to deny the child a suitable home, the requirement may be waived. (emphasis added)

(3) If a child is placed for adoption by the cabinet, by an agency licensed by the cabinet, or with written approval by the secretary of the cabinet, the petition may be filed at the time of placement. In all other adoptions, the petition shall not be filed until the child has resided continuously in the home of the petitioner for at least ninety (90) days immediately prior to the filing of the adoption petition.

(4) No petition for adoption shall be filed unless prior to the filing of the petition the child sought to be adopted has been placed for adoption by a child-placing institution or agency, or by the cabinet, or the child has been placed with written approval of the secretary; but no approval shall be necessary in the case of:

(a) A child sought to be adopted by a blood relative, including a relative of half blood, first cousin, aunt, uncle, nephew, niece, and a person of a preceding generation as denoted by prefixes of grand, great, or great-great; stepparent; stepsibling; or fictive kin; however, the court in its discretion may order a report in accordance with KRS 199.510 and a background check as provided in KRS 199.473(8);

(b) A child received by the proposed adopting parent or parents from an agency without this state with the written consent of the secretary;

(c) A child adopted under the provisions of KRS 199.585(1); or

(d) A child who has been approved under KRS Chapter 615.

And KRS 199.520 states;

(1) After hearing the case, the court shall enter a judgment of adoption, if it finds that the facts stated in the petition were established; that all legal requirements, including jurisdiction, relating to the adoption have been complied with; that the petitioners are of good moral character, of reputable standing in the community and of ability to properly maintain and educate the child; and that the best interest of the child will be promoted by the adoption and that the child is suitable for

adoption. In the judgment, the name of the child shall be changed to conform with the prayer of the petition. The judgment and all orders required to be entered and recorded in the order book, including the caption, shall contain only the names of the petitioners and the proposed adopted name of the child, without any reference to its former name or the names of its birth parents.

(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 relationships 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.

(3) The clerk of the court shall notify the cabinet of any action of the court with respect to entering a judgment granting an adoption, the amendment of an adoption, or the denial or dismissal of a petition for adoption.

(4) (a) The health history and other nonidentifying background information of biological parents and blood relatives of the adopted person, in writing, on a standardized form, provided by the cabinet, if known, shall be given by the cabinet or child-placing agency which has the information to the adoptive parents and to the Circuit Court not

later than the date of finalization of the adoption proceedings. This information shall include the results of any tests for HIV or hepatitis A, B, and C; and

(b) The information provided for in paragraph (a) of this subsection, if known, shall, upon the request in person or in writing of the adult adopted person be made available in writing to that person. The information shall not be made available if it is of a nature that would tend to identify the biological parents of the adopted person except as provided in KRS 199.570 and 199.572.

Nothing in either of these statutes prohibit unmarried couples from adopting. The Cabinet, in its filing of October 10, 2023 (TR 16), relied upon *Tucker v. Tucker*, 623 S.W.3d 142 (Ky. Ct. App. 2021), citing *Day v. Day*, 937 S.W.2d 717 (Ky. 1997) quoting “The law of adoption is in derogation of the common law. Nothing can be assumed, presumed, or inferred and what is not found in the statute is a matter for the legislature to supply and not the courts” *id* at 719

However, this is exactly what the Cabinet, and the Court, is doing. They are assuming, presuming and inferring that the legislature must not have intended for unmarried couples to adopt. A comprehensive review of the entirety of all adoption related statutes as well as a historical look back at all child related statutes, leads one to the opposite conclusion. A review of any Kentucky case law related to children, leads one to the opposite conclusion. The consistent theme of both legislation and case law in this great Commonwealth has always been “the best interest of the child”.

Both *Tucker* and *Day* are cases that involve expressed explicit statutes and violations thereof. *Day* is a case concerning an adoption petition filed prior to the child residing with the Petitioners for 90 days. Residing with Petitioners for 90 days is an explicit requirement. *Tucker* is a case dealing with inheritance rights by a child who is neither biologically related, nor adopted. Inheritance statutes and case law explicitly require a child be biologically related or adopted in intestate matters. The case before us also involves explicit statutes. Those statutes do not prohibit joint adoption by unmarried couples.

The Cabinet's reliance on KRS 199.470(1) doesn't even makes sense since that section states anyone over 18 may petition to adopt. A further reading of the statute as a whole, leans towards the legislature having no intent of banning unmarried couples from adopting. Section 2 states "If the petitioner is married, the husband or wife shall join in a petition for leave to adopt a child unless the petitioner is married to a biological parent of the child to be adopted, except that if the court finds the requirement of a joint petition would serve to deny the child a suitable home, the requirement may be waived." IF the petitioner is married. This clearly show the legislature did not simply overlook marriage. Had they intended marriage to be a prerequisite, they would have so stated and not have said anyone over 18. They went on to further state the Court could waive the requirement of a joint petition, if it was in the best interest of the child. Would it not then follow, that they would not have intended a lack of marriage to deny a child a suitable home?

Next, the Cabinet referred to KRS 199.520(2), which again, makes no sense because that section is irrelevant to the issue at hand. There is nothing in this entire

statute that relates to the marital status of the petitioners beyond stating a parent's rights are not terminated by a spouses step-parent adoption.

G.G and T.S. meet every single requirement the Legislature set forth for being permitted to adopt a child. KRS 199.470(2) does mention marriage and is the only place in either statute where marriage is mentioned. And it goes on to provide for the ability of the trial court to make an exception to the rule requiring married couple's to adopt jointly, if doing so is in the best interest of the child.

It would be impossible to specify every scenario where one is permitted to adopt. The legislature has not stated Muslims may adopt, nor have they stated Asian people may adopt. These are common sense assumptions we make. It is much more realistic that our law makers intended to set forth what is required and what is prohibited. They have done so with the adoption statutes. KRS 199.470 sets forth detailed requirements for adoption. There is nothing that would lead to the assumption they intended to prohibit unmarried couples anymore than they intended to prohibit Muslims, Asians or any other members of our diverse Commonwealth.

What is a fair assumption, however, based on all statutes ever enacted and all case law ever published, is that the number one criteria in all decisions regarding our children is "the best interest of the child"

KRS 199.520(1) states "After hearing the case, the court shall enter a judgment of adoption, if it finds that the facts stated in the petition were established; that all legal requirements, including jurisdiction, relating to the adoption have been complied with; that the petitioners are of good moral character, of reputable standing in the community

and of ability to properly maintain and educate the child; and that the best interest of the child will be promoted by the adoption and that the child is suitable for adoption.” Shall.

The Court of Appeals relied upon *S.B.P V R.L.*, 567 S.W.3d 142 (Ky. App. 2018), quoting “Practitioners are warned, the law of adoption is in derogation of the common law. Nothing can be assumed, presumed or inferred and what is not found in the statute is a matter for the legislature to supply and not ours” Our esteemed Legislators were very specific in what is required to adopt a child in the Commonwealth of Kentucky. Appellants meet every single requirement. The Cabinet and the Court of Appeals have added an additional requirement under the guise of “legislative intent”. Nothing supports the assertion that the Legislature intended to prohibit adoption by unmarried couples. Especially when such adoption is clearly in the best interest of the child.

Appellants are aware the Cabinet has been bestowed the right and duty to “establish criteria to be followed for the adoption of children and promulgate this criteria by administrative regulation” KRS 199.472(1). This does not give the Cabinet the authority to create laws or restrictions where the legislature has not done so.

Petitioners meet every statutory requirement that does exist. It’s incredulous to think the legislature intended to deprive a child of a traditional family simply because her parents are not married. The Cabinet is inventing a restriction that does not appear in statute, case law or even their own Standards of Practice. A restriction that is not committed to writing, anywhere, but is generally accepted, simply because the Cabinet says so.

The Cabinet argues in the conclusion of their Appellate Brief, that G.G or T.S. could either one adopt as a single person, or they could get married. G.G. and T.S. both want to be the legal parents of their child. And they do not wish to be married. Nor are they attempting to force recognition of a common law marriage. They hold themselves out as a family, but they do not hold themselves out as a married couple. The longevity of their relationship is important nonetheless, because it shows the stability needed by a child.

What would happen, should they later break-up? Does the child no longer have a dad or G.G. no longer have a daughter, simply because he's not a blood relative? Was this the intent of Legislature?

CONCLUSION

“The law of adoption is in derogation of the common law. Nothing can be assumed, presumed, or inferred and what is not found in the statute is a matter for the legislature to supply and not the courts” *Day*, 719.

It is also not for the Cabinet to supply. Had the legislature intended for non-married couples to be prohibited from adopting, it would have said so. That it goes on to state ‘if they are married...’ shows an intentional refusal to prohibit non married couples. Throughout all case laws, statutes and Kentucky’s history, one theme has ruled superior; The best interest of the child. Here, a young seven year old child wishes to be adopted by the only parents she has ever known and to solidify her place in the family for all intents and purposes. Appellants are fit and proper persons to provide this.

The trial court itself appeared perturbed by this outcome when it stated “I wont go forward with the Petition. I hope Ms. Taylor appeals this” (VR 10/17/23 at 8:20) and “This will be interesting. We might make the law here in Jackson County” (VR 10/17/23 at 11:18).

This Court is being asked to clarify, once and for all, if Kentucky law prohibits adoption by unmarried couples. This matter should be remanded to determine if Appellants are qualified to adopt based upon the laws that actually do exist. Do Kentucky statutes prohibit adoption by unmarried couples? G.G., T.S. and A.L.V. do not believe they do.

/s/ Marsha Taylor