

COURT OF APPEALS OF KENTUCKY

Waters v. Cabinet for Human Resources

736 S.W.2d 365 (Ky. App. 1987) · Decided September 18, 1987

SUMMARY

The Kentucky Court of Appeals reversed and remanded an order relieving the Cabinet for Human Resources of responsibility for returning two children to New York and facilitating reunification with their father. The court held that the Cabinet had not made a good-faith effort under the original judgment and clarified the applicability of the Interstate Compact on Placement of Children, including continuing financial responsibility by the sending state. On remand, the trial court was directed to determine New York’s custody status, the compact’s applicability, financial responsibility, and the children’s placement if they could not be returned to New York.

CASE DETAILS

COURT	Court of Appeals of Kentucky
WRITING FOR THE COURT	Cooper; Combs; Dyche
JURISDICTION	Kentucky
DECIDED	September 18, 1987
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Daniel P. Waters appealed from an order of the Nelson Circuit Court relieving the Cabinet for Human Resources of responsibility for placing the two youngest children in New York and attempting to reunite them with him.
STANDARD OF REVIEW	Whether the trial court clearly abused its discretion in relieving the Cabinet of its responsibilities under the original order; the appellate court reviewed the record and the language of the original judgment.
PRECEDENTIAL VALUE	Published Kentucky Court of Appeals opinion
PARTIES	Daniel P. Waters v. Cabinet for Human Resources

TOPICS

- parental rights
- family law
- interstate disputes
- appellate procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the successor trial court clearly abused its discretion by relieving the Cabinet of its obligation to make a good-faith effort to reunite the children with their father.
2. Whether the original judgment referred to the Interstate Compact on Placement of Children rather than the Interstate Compact on Juveniles.
3. Whether the Interstate Compact on Placement of Children permits placement in New York while Kentucky retains financial responsibility and jurisdiction over the placement.
4. What factual and jurisdictional issues had to be resolved on remand concerning New York's original custody order, interstate placement, financial responsibility, and the children's status if they could not be returned to New York.

HOLDINGS

1. The trial court abused its discretion by relieving the Cabinet of its responsibilities solely because New York would not accept jurisdiction and all financial responsibility. The Cabinet was required to make a good-faith effort to implement the reunification plan ordered by the original judgment.
2. The original circuit court's reference to an interstate compact was reasonably understood as referring to the Interstate Compact on Placement of Children, not the Interstate Compact on Juveniles.
3. The order relieving the Cabinet of responsibility had to be reversed and the matter remanded for a complete hearing and additional findings on the children's custody, the applicability and operation of the Interstate Compact on Placement of Children, financial responsibility, and the children's status if they could not be returned to New York.

KEY QUOTATIONS

“Stated simply, what difference exists in the Cabinet financially providing foster care for the children in the Commonwealth of Kentucky or placing the children in New York and continuing to provide foster care at its own expense?” (736 S.W.2d at 369)

“Following the logic of such argument, no attempt could even be made to reunite the family or to terminate the appellant’s parental rights and allow the children to be adopted.” (736 S.W.2d at 369)

“Yet every attempt should be made to reunite an already fragmented and broken family.” (736 S.W.2d at 370)

FACTUAL BACKGROUND

The three Waters children had been placed in the custody of New York social-services authorities in 1978, but their mother later removed them and moved them through several states. After the children were found in Kentucky living with their mother and her boyfriend, who had sexually abused them, Kentucky authorities placed them in emergency care. The circuit court terminated the mother's parental rights but found insufficient clear and convincing evidence to terminate Daniel Waters's rights, ordering a reunification plan in New York.

The Cabinet made an initial placement inquiry but stopped pursuing placement when New York would not assume all financial responsibility.

PROCEDURAL HISTORY

The Cabinet removed the children from an abusive home and later filed a proceeding to terminate the parental rights of Sandra and Daniel Waters. The circuit court terminated Sandra's parental rights but declined to terminate Daniel's rights and ordered the Cabinet to initiate a plan to reunite the children with him in New York. After the Cabinet sought relief from that order, a successor circuit judge relieved the Cabinet of its placement and financial responsibilities. The Court of Appeals reversed and remanded for a complete hearing and additional findings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court was directed to conduct a complete hearing and make additional findings concerning: (1) whether New York authorities still had legal custody under the original custody order; (2) whether the Interstate Compact on Placement of Children could be used to place the children in New York and whether New York could assume jurisdiction and financial responsibility; (3) if New York could not assume financial responsibility, whether continued Kentucky responsibility would be unduly burdensome compared with Kentucky's existing support obligations; and (4) the children's status if they could not be returned to New York. The court was also directed to determine whether the two youngest children could be reunited with their father.

CASES CITED

- D.S. v. F.A.H., 684 S.W.2d 320 (Ky. App. 1985)
- O.S. v. C.F., 655 S.W.2d 32 (Ky. App. 1983)