214 Va. 425

Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 8249

COMMONWEALTH OF VIRGINIA

IN RE: CLARA JEAN CAUDELL, BONNIE SUE CAUDELL AND EVA DARLENE CAUDELL, UPON THE PETITION OF DAVID PARKS, PROBATION OFFICER, JUVENILE AND DOMESTIC RELATIONS COURT OF THE CITY OF RADFORD, VIRGINIA; AND THE DEPARTMENT OF PUBLIC WELFARE OF THE CITY OF RADFORD, VIRGINIA; AND SUZANNE GLASS, DIRECTOR OF THE BOARD OF PUBLIC WELFARE OF THE CITY OF RADFORD, VIRGINIA

Appellant

V.

ESTHER JONES CAUDELL BALCKBURN,

Appellee

FROM THE CIRCUIT COURT
OF THE CITY OF RADFORD

APPENDIX

JOHN M. GOLDSMITH
MARSHALL L. ELLETT
Goldsmith & Jenkins
Box 892
Radford, Virginia 24141

Counsel for Appellant

APPENDIX

TABLE OF CONTENTS

ASSIGNMENT OF ERROR	3
FINAL JUDGMENT OF THE COURT	1
MOTIONS	2
STIPULATION OF PROCEEDINGS	6

IN THE

SUPREME COURT OF VIRGINIA

At Richmond

COMMONWEALTH OF VIRGINIA

IN RE: CLARA JEAN CAUDELL, BONNIE SUE CAUDELL AND EVA DARLENE CAUDELL, UPON THE PETITION OF DAVID PARKS, PROBATION OFFICER, JUVENILE AND DOMESTIC RELATIONS COURT OF THE CITY OF RADFORD, VIRGINIA; AND THE DEPARTMENT OF PUBLIC WELFARE OF THE CITY OF RADFORD, VIRGINIA; AND SUZANNE GLASS, DIRECTOR OF THE BOARD OF PUBLIC WELFARE OF THE CITY OF RADFORD, VIRGINIA,

Appellant

v. RECORD NO. 8249

ESTHER JONES CAUDELL BLACKBURN,

Appellee

APPENDIX

FINAL JUDGMENT OF THE COURT

These causes came on this 11th day of September, 1972, the first day of the September term of this Court,

and upon the motion of Esther Blackburn that the appeals in the above cases be dismissed on the ground that said cases were appealed by the Board of Public Welfare of the City of Radford, and that said Board of Public Welfare of the City of Radford is not a person within the Code of Virginia, being Section 16.1-214, and does not have a right of appeal; and after hearing argument and consideration of said statute, the Court being of the opinion that said motion is well taken and the same is sustained, doth order that said appeals be dismissed, and said causes be stricken from the docket, to which action the Board of Public Welfare of the City of Radford, duly excepts, by counsel.

MOTIONS

IN RE: EVA DARLENE CAUDELL

Comes now Esther Blackburn, mother of the above named infant and moves this Court to dismiss the appeal of this case by the Board of Public Welfare of the City of Radford on the grounds that the local Board of Public Welfare of the City of Radford is not a person and does not have a right of appeal under the statute, being Section 16.1-214 of the Code of Virginia.

IN RE: CLARA JEAN CAUDELL

Comes now Esther Blackburn, mother of the above named infant and moves this Court to dismiss the appeal of this case by the Board of Public Welfare of the City of Radford on the grounds that the local Board of Public Welfare of the City of Radford is not a person and does not have a right of appeal under the statute, being Section 16.1-214 of the Code of Virginia.

IN RE: BONNIE SUE CAUDELL

Comes now Esther Blackburn, mother of the above named infant and moves this Court to dismiss the appeal of this case by the Board of Public Welfare of the City of Radford on the grounds that the local Board of Public Welfare of the City of Radford is not a person and does not have a right of appeal under the statute, being Section 16.1-214 of the Code of Virginia.

ASSIGNMENT OF ERROR

The Commonwealth of Virginia by the Board of Public Welfare of the City of Radford, and hereinafter referred to as the Board of Public Welfare of the City of

Radford, the petitioner in the above-styled cases, hereby gives notice of appeal from the final order entered on the 11th day of September, 1972.

The petitioner sets forth the following assignments of error:

(1) That the Court's ruling was contrary to the law in that the Board of Public Welfare of the City of Radford is not a person within Va. Code Ann. 1950, Section 16.1-214 and therefore has no right to appeal from the Third Regional Juvenile and Domestic Relations Court for the City of Radford, Virginia, to the Circuit Court of the City of Radford, Virginia.

(2) That the Court's ruling was contrary to the law in that the Board of Public Welfare of the City of Radford is composed of three competent persons who are, and would be, aggrieved, and therefore a person within the meaning of Va. Code Ann. 1950, Section 16.1-214 and as such would have a right of appeal.

(3) That the Court's ruling was contrary to the law in that even if the Board of Public Welfare of the City of Radford is not a person within Va. Code Ann. 1950,

Section 16.1-214, that the Guardians ad Litem, who were never appointed, would be a person within said statute or that Suzanne G. Glass, Director, Department of Public Welfare, Radford, Virginia, would be a party aggrieved and/or interested and therefore a person within the meaning of the statute having a right of appeal.

(4) That the Court's ruling was contrary to the law in that no Guardians ad Litem were ever appointed for said infants.

(5) That the Court's ruling was contrary to the law in that even if the Board of Public Welfare of the City of Radford is not a person within Va. Code Ann. 1950, Section 16.1-214 and that it was not error to fail to appoint Guardians ad Litem for said infants, that the said John M. Goldsmith, counsel for the Board of Public Welfare of the City of Radford, is a person within said Code Section and therefore has a right of appeal.

(6) That the Court's ruling was contrary to the law in that the Board of Public Welfare of the City of Radford was previously granted custody of said infants and that if they are unable to perfect an appeal to the Circuit

Court for the City of Radford, Virginia, from the Third Regional Juvenile and Domestic Relations Court for the City of Radford, Virginia, then there is no person within Va. Code Ann. 1950, Section 16.1-214 who could protect the interests of said infants.

STIPULATION OF PROCEEDINGS

(1) That on the 15th day of March, 1967, and on the 22nd day of March, 1967, David Parks, a probation officer, filed petitions requesting a hearing as to the custody of Clara Jean Caudell, Bonnie Sue Caudell and Eva Darlene Caudell, alleging that the children were neglected and ill-treated.

(2) By order entered March 29, 1967, by the Third Regional Juvenile and Domestic Relations Court of the City of Radford, Virginia, custody of Clara Jean Caudell, Bonnie Sue Caudell and Eva Darlene Caudell was awarded to the Board of Public Welfare of the City of Radford, Virginia.

(3) That thereafter on June 22, 1972, Esther Blackburn, the natural mother, petitioned said Court for

custody of the children, who were at that time still under the custody and control of the Board of Public Welfare of the City of Radford, Virginia.

(4) That a hearing was conducted by the Third Regional Juvenile and Domestic Relations Court of the City of Radford, Virginia, on two separate days with testimony heard on behalf of both the Board of Public Welfare of the City of Radford, Virginia, and by and on behalf of Esther Blackburn as well as a report rendered by a probation officer of said Court concerning the change of custody of the three children and by order entered on August 23, 1972, the temporary care and custody of the said children was awarded to the petitioner, Esther Blackburn, the natural mother, until further order of this Court. However, no Guardians ad Litem were appointed by the Court for the three children during the proceedings.

(5) That thereafter, upon the request of Suzanne G. Glass, Director of the Department of Public Welfare and upon the request of the Board of Public Welfare of the City of Radford, Virginia, an appeal was noted by Marshall L. Ellett, co-counsel for the Board of Public

Welfare of the City of Radford, Virginia.

(6) That on September 11, 1972, L. Harvey Neff, Jr., counsel for Esther Blackburn, filed motions in the Circuit Court of the City of Radford, Virginia, requesting the Court to dismiss the appeals of the three cases in that the Board of Public Welfare of the City of Radford, Virginia, was not a person and did not have a right to appeal to the Circuit Court under Section 16.1-214 of the Code of Virginia of 1950.

(7) That thereafter, the Judge of the Circuit Court of the City of Radford, as is more fully set forth by its order entered September 11, 1972, but without a hearing on the merits on the custody issue, did sustain the motions and set forth that the Board of Public Welfare of the City of Radford, Virginia, was not a person within Section 16.1-214 of the Code of Virginia of 1950 and, therefore, had no right of appeal, to which order the said John M. Goldsmith, co-counsel for the Board of Public Welfare of the City of Radford, Virginia, duly excepted.

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JUN 1 1 1973
RECEIVED
RICHMOND, VIRGINIA