

RENDERED: JANUARY 22, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000559-ME

S.M.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN GEORGE, JUDGE
ACTION NO. 08-J-508924

CABINET FOR HEALTH AND FAMILY
SERVICES AND C.P., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, CHIEF JUDGE; TAYLOR, JUDGE; HENRY, SENIOR
JUDGE.

COMBS, CHIEF JUDGE: The sole issue in this case is a finding of neglect of a
child by the Jefferson Family Court, which determined that S.M. (Mother) had
neglected her child, C.P. (Child), by leaving him with his maternal grandmother
(Grandmother). Mother now appeals. We have reviewed the record and affirm.

In November 2008, a dependency, neglect, and abuse (DNA) petition was filed in the Jefferson Family Court alleging that Mother had begun using drugs and refusing drug screens. It stated that the child was being cared for by his maternal grandmother and that his mother could not be found.

A hearing was held in February 2009 at which both the mother and the grandmother testified. It was undisputed that Mother and Child had lived with Grandmother until September 2008 when Grandmother evicted Mother from the home. The child, however, remained in Grandmother's home. Mother provided Grandmother with her food stamp card and a medical release to seek care for Child. However, Mother did not provide Grandmother with her contact information. Instead, Grandmother's only means of communication was to leave a message with Mother's friend. Mother made only short, unannounced visits to Grandmother and Child.

In her testimony, Mother admitted that she had violated the terms of her probation, physically absconding from required drug screenings and not revealing where she was living because she was afraid that her mother would contact the police. She also acknowledged that she had smoked crack cocaine. Mother said that she was unemployed and left Child with Grandmother because she did not have any other safe place to take him. Although she claimed that she provided Grandmother with financial resources to care for the child, Mother acknowledged that her only income was twenty or thirty dollars per week – money not earned by her but provided by a friend.

The trial court found that Mother had neglected the child and decided to follow the recommendations of the Cabinet of Family Health and Services. The Cabinet had advised the court that Child should remain with Grandmother and receive counseling. It further recommended that Mother receive a JADAC (Jefferson Alcohol/Drug Abuse Center) assessment, submit to random drug screens, remain clean and sober, and be allowed supervised visitation with Child.¹ Mother does not object to any of the Cabinet's recommendations, including the temporary custody assignment. Thus, there is no issue of termination of parental rights. The sole issue of this appeal is whether the court correctly determined that Child had been neglected.

Kentucky Revised Statute[s] (KRS) 620.100 provides guidelines for DNA adjudications. It provides that “a determination of dependency, neglect, and abuse shall be made by a preponderance of the evidence.” KRS 620.100(3). The trial court relied on KRS 600.020(1)(c), which provides that a parent has abused or neglected a child when she “engages in a pattern of conduct that renders [her] incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse[.]”

After reciting this statute, the trial court addressed Mother's pattern of absconding and being subject to arrest and using drugs. It specifically found that this pattern of conduct had rendered her incapable of caring for the child. It further

¹ The same recommendations were made for the child's father; however, he is not a party to this appeal.

observed that Mother's conduct had been voluntary. She chose to abscond, placing herself in constant risk of arrest and living without a stable home.

Mother argues that the child never actually suffered abuse or neglect because he was in Grandmother's care. However, her argument is misdirected as to the impact of the statute. The statutory language does not focus on ultimately harmful consequences to a child resulting from a parent's behavior. Instead, the statute wisely is directed at the conduct of a parent from which jeopardy to a child **is likely to result** rather than waiting until actual harm occurs. The trial court carefully listened to testimony concerning Mother's course of conduct and found that her conduct satisfied the elements of KRS 600.020(1)(c). Thus, it found that she had neglected her child.

On appeal, we may not overrule a trial court unless its findings of fact were clearly erroneous. *Dull v. George*, 982 S.W.2d 227, 230 (Ky. App. 1998); Kentucky Rule of Civil Procedure (CR) 52.01. Clear error only occurs when there is no substantial evidence in the record to support the court's findings. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998).

We have searched the record in detail. It reveals only minor discrepancies in the testimony presented to the court. The facts upon which the trial court based its decision were undisputed. Because the facts amply satisfy the statutory definition of an abused and neglected child, we cannot conclude that the trial court erred.

We affirm the Jefferson Family Court.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT
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