

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2009-CA-000525-MR

MARLA ROBERSON

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE IRV MAZE, JUDGE  
ACTION NO. 07-CI-004839

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND FAMILY SERVICES,  
DEPARTMENT FOR COMMUNITY BASED SERVICES

APPELLEE

OPINION  
AFFIRMING

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BEFORE: NICKELL, MOORE, AND WINE, JUDGES.

NICKELL, JUDGE: Marla Roberson appeals from an order affirming an administrative determination that she neglected a child in her care. Roberson argues the Cabinet for Health and Family Services, Department for Community Based Services, failed to prove she caused harm or injury to the child. We affirm.

Roberson was the foster mother of D.N.<sup>1</sup> D.N. was seven years of age at the time of this incident and has a medical condition which interferes with her control of bodily functions and requires her to wear a diaper. On February 10, 2006, Roberson prepared a bath for D.N. D.N. told Roberson the bath was too hot, but Roberson refused to allow the child to get out of the water and instead ran cold water into the tub. Roberson continued to prepare D.N. for school without further incident and failed to notice D.N. had been burned by the hot water. At breakfast that morning, D.N. complained of chills and was feeling ill. D.N. was sent to bed. Instead of going to school, Roberson dropped D.N. off at the house of Fanny McDaniel, the babysitter. During a diaper change, McDaniel noticed oozing silver dollar sized blisters on the child's upper inner thighs. McDaniel treated the wounds with hydrogen peroxide and Neosporin. When Roberson picked up D.N., McDaniel notified her of D.N.'s injuries and the treatment she administered.

The next day, D.N. vomited as a result of her injuries. Roberson continued treating the child with hydrogen peroxide and Neosporin as well as changing her bandages. Despite Roberson's efforts, D.N.'s injuries worsened. On February 12, 2006, Roberson informed her husband of the child's injuries. D.N. was then taken to the hospital for proper treatment. Roberson admitted she had not told her husband about the child's injuries sooner nor had she sought medical attention because of her own guilt and fear.

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<sup>1</sup> D.N.'s initials are used in conformity with our practice of protecting the identity of juvenile abuse victims.

The hospital examination revealed D.N. suffered second-degree burns to her perineum and heel. During a three-day hospital stay, D.N. was treated with a narcotic painkiller, a topical antibiotic cream, debriding of the blisters, dressing changes, and physical therapy. D.N. was in the hospital for three days. A forensic medical evaluation was also conducted. The forensic examiners concluded medical neglect occurred when Roberson delayed seeking medical attention for two days after D.N. was scalded. The forensic examiners concluded the delay in seeking medical attention predisposed D.N. to infection and improper healing of her burns. The examiners concluded the degree of burn D.N. suffered would be painful.

The child's injuries were determined to be accidental and no criminal charges were filed. However, the Cabinet conducted a hearing to determine whether Roberson had abused or neglected D.N. The hearing officer determined Roberson had neglected D.N. by failing to seek medical attention in a timely fashion and recommended Roberson's name be placed on the central registry of those who have neglected children. The commissioner of the Cabinet affirmed and adopted the recommended decision of the hearing officer. Roberson appealed to the Jefferson Circuit Court which entered a memorandum and order affirming the decision of the Cabinet. This appeal followed.

Roberson argues the Cabinet failed to sustain its burden of proving neglect because it failed to prove she caused injury to the child. Appellate review of administrative decisions is limited to the issue of arbitrariness. *American*

*Beauty Homes Corp. v. Louisville & Jefferson County Planning & Zoning Comm'n*, 379 S.W.2d 450 (Ky. 1964). In determining whether an action was arbitrary, the reviewing court must decide whether: 1) the agency's action was in excess of the powers granted to it; 2) there was a lack of procedural due process; and 3) the action was supported by substantial evidence. *Id.* Substantial evidence is defined as “that which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person.” *Bowling v. Natural Res. & Env'tl. Prot. Cabinet*, 891 S.W.2d 406, 409 (Ky. App. 1994).

Roberson has neither alleged the Cabinet acted outside its statutory authority nor that she was denied procedural due process. Therefore, we turn to the issue of whether the determination of neglect was supported by substantial evidence.

KRS<sup>2</sup> 600.020(1)(h) states in pertinent part:

“Abused or neglected child” means a child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child:

(h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child’s well-being.

Roberson admitted she knew the extent of the child’s injuries and she did not seek medical attention for over two days. Although Roberson treated some of the child’s burns with Neosporin, she did not treat all of the burns, nor did she provide

<sup>2</sup> Kentucky Revised Statutes.

any pain relief. The evidence showed that medical attention was necessary to prevent infection and improper healing. The delay in seeking treatment exposed the child to potential infection and caused needless pain. The decision of the Cabinet was supported by substantial evidence and was not arbitrary.

Accordingly, the order of the Jefferson Circuit Court is affirmed.

WINE, JUDGE, CONCURS.

MOORE, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

Matthew W. Stein  
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BRIEF FOR APPELLEE:

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