

RENDERED: JANUARY 7, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000383-MR

BRENDA L. MOORE

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE CHARLES L. CUNNINGHAM JR., JUDGE
ACTION NO. 08-CI-010425

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

APPELLEES

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; CLAYTON AND THOMPSON, JUDGES.

TAYLOR, CHIEF JUDGE: Brenda L. Moore asks us to review a February 3,
2009, Opinion and Order of the Jefferson Circuit Court upholding the Cabinet for
Health and Family Services' (Cabinet) substantiation of child neglect and

placement of Moore's name upon the Cabinet's central registry under 922 Kentucky Administrative Regulations (KAR) 1:470. We vacate and remand.

Moore was custodian of L.G., her fourteen-year-old nephew, and D.M., her four-year-old granddaughter. On July 12, 2007, Moore's husband reported that he observed L.G. sexually abusing D.M. Based upon this incident, the Jefferson Family Court ordered that Moore would continue to exercise custody of D.M. but that L.G. must "remain . . . out of Moore's home." The court emphasized that "[t]here . . . [was] to be absolutely no contact of [D.M.] with [L.G.]."

After the abuse, L.G. was criminally charged for his actions. L.G. was placed in the physical custody of a friend of Moore's, Everett King, and was placed on a home incarceration program. Later, on September 4, 2008, L.G. was found incompetent to stand trial upon the abuse charge and was released from the home incarceration program. Thereupon, King relinquished physical custody of L.G. Moore resumed her physical custody of L.G. and took him to her home where D.M. was also residing. One day later, on September 5, 2008, the Cabinet obtained an Emergency Custody Order and removed D.M. from Moore's custody.

As a consequence of Moore's actions, the Cabinet alleged that Moore placed D.M. at a risk of sexual abuse by L.G., thereby committing child neglect under Kentucky Revised Statutes (KRS) 610.020(1). The Cabinet also sought to place Moore on its central registry for individuals who have committed child abuse or neglect. *See* 922 Kentucky Administrative Regulations (KAR) 1:470.

Eventually, by final order, the Cabinet determined that child neglect had been properly substantiated and that Moore's name should be placed on the central registry. Moore sought review of the Cabinet's final order with the Jefferson Circuit Court by filing a petition for judicial review on October 8, 2008. By Opinion and Order entered February 3, 2009, the circuit court dismissed Moore's petition for review. This appeal follows.

Moore contends the circuit court erred by dismissing her petition for review. A hearing on her petition was scheduled for December 23, 2008, by the Jefferson Circuit Court. Moore who was proceeding *pro se*, alleges that a representative of the court¹ verbally informed Moore that the previously ordered hearing date of December 23, 2008, was rescheduled to January 12, 2009. As a consequence of this information, Moore did not appear on December 23, 2008, but rather appeared on January 12, 2009. Unbeknownst to Moore, an order rescheduling the hearing was never entered, and the hearing actually took place as originally ordered on December 23. Moore alleges that she appeared on January 12 and was then informed that the hearing had been conducted on December 23, 2008.

In its brief, the Cabinet essentially confirms Moore's statements of events:

¹ The record is not clear as to whether a representative from the circuit court clerk's office or the judge's office informed Brenda L. Moore of the change in hearing date. The change in the hearing date was necessitated due to the unavailability of the Commonwealth of Kentucky, Cabinet for Health and Family Services' attorney to attend the December 23 hearing date, which he so acknowledges in the Cabinet's Brief at 21.

When undersigned counsel contacted the Division Four secretary as directed, he was told that the Appellant already had contacted the Court and a date had been set for December 23, 2008, the order for which the undersigned should be receiving shortly. Undersigned counsel advised the secretary that he was unavailable on December 23, 2008[,] and was then given a date of January 12, 2009[,] and told that a new order would be issued rescheduling the hearing for that date. However, although Appellee's undersigned counsel eventually received the order scheduling the hearing date for December 23, 2008, the undersigned never received an order rescheduling a hearing for January 12, 2009. Therefore, undersigned counsel asked a colleague, Brenda Bourgeois, CHFS Assistant Counsel, to attend the December 23, 2008[,] hearing for him, to which she graciously agreed, and asked her to ascertain whether the administrative hearing record had been forwarded to the Court. Ms. Bourgeois attended the hearing and subsequently advised undersigned counsel that the Appellant had failed to appear at the hearing, that the administrative hearing record had been received by the Court, and that the Cabinet's motion to dismiss had been granted. There being no order for a hearing on January 12, 2009, nor any motion rescheduled for that date, and having been advised that the action was dismissed, undersigned counsel had no reason to appear before the Jefferson Circuit Court, Division Four (4), on that date.

Cabinet's Brief at 21-22.

It is uncontroverted that a court employee verbally informed each party that the hearing date of December 23 was rescheduled to January 12. Moore was proceeding *pro se* and relied upon this verbal representation. Consequently, Moore did not appear at the December 23 hearing, and her petition was orally dismissed by the circuit court at the December 23 hearing. The circuit court later reduced its oral ruling to writing in its February 3, 2009, opinion and order.

Although a court generally speaks only through its written orders, we think that fundamental fairness mandates that Moore be given an opportunity to be heard on her petition before the circuit court as well as be present on the Cabinet's motion to dismiss. *See Midland Guardian Acceptance Corp. of Cincinnati, Ohio v. Britt*, 439 S.W.2d 313 (Ky. 1968); *Com. v. Wilson*, 280 Ky. 61, 132 S.W.2d 522 (1939). By so ruling, we express no opinion upon the ultimate merits of Moore's appeal. We merely give credence to the right of every party to receive a full, fair and impartial review before any judicial tribunal in this Commonwealth.

Upon remand, the circuit court shall reconsider its dismissal and give Moore an opportunity to be heard at a hearing before the court, upon written notice to the parties.

We view Moore's remaining arguments as moot since a hearing on the merits of her petition and the Cabinet's motion to dismiss has been ordered.

For the foregoing reasons, the Opinion and Order of the Jefferson Circuit Court is vacated and remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE
COMMONWEALTH OF
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