

RENDERED: JULY 14, 2023; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-1421-ME

S.J.

APPELLANT

v. APPEAL FROM POWELL CIRCUIT COURT
HONORABLE LARRY MILLER, JUDGE
ACTION NO. 20-J-00062-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES;
COMMONWEALTH OF KENTUCKY;
AND J.J., A MINOR CHILD

APPELLEES

AND

NO. 2021-CA-1426-ME

S.J.

APPELLANT

v. APPEAL FROM POWELL CIRCUIT COURT
HONORABLE LARRY MILLER, JUDGE
ACTION NO. 20-J-00063-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND

FAMILY SERVICES;
COMMONWEALTH OF KENTUCKY;
AND H.J., A MINOR CHILD

APPELLEES

AND

NO. 2021-CA-1428-ME

S.J.

APPELLANT

v. APPEAL FROM POWELL CIRCUIT COURT
HONORABLE LARRY MILLER, JUDGE
ACTION NO. 20-J-00064-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES;
COMMONWEALTH OF KENTUCKY;
AND S.J., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CETRULO, AND GOODWINE, JUDGES.

ACREE, JUDGE: Appellant, S.J. (Father), appeals the Powell Family Court order adjudicating his three children neglected and awarding temporary custody of the children to their relatives. After careful review, we affirm.

On December 7, 2020, the Cabinet for Health and Family Services (the Cabinet) filed a Dependency/Neglect or Abuse (DNA) Petition against Father and F.S. (Mother) regarding their three children. These appeals (Case Nos. 2021-CA-1421, -1426, and -1428) are a review of the family court's order as it relates to Father's claimed errors. Mother's appeals are addressed in Case Nos. 2021-CA-1431, -1432, and -1433. However, some of Mother's history is relevant here.

The Cabinet initiated this petition after Mother gave birth to her youngest child, and both Mother and her newborn infant tested positive for Suboxone, a drug used to treat opioid withdrawal. Amanda King, the social worker assigned to this case, soon learned Appalachian Wellness, a Suboxone clinic, dismissed Mother from the clinic several months prior in April 2020 for testing positive for methamphetamines. She also learned Father suffered from opioid addiction and received treatment at the clinic.

King explained that if Mother had taken her Suboxone medication as prescribed, she would have run out by the end of April 2020 and would not have tested positive when she did. Mother offered an explanation; she claimed she quartered each pill so that the medication would last longer. This explanation did not persuade King, who suspected Mother illegally acquired the Suboxone for which she tested positive in September 2020.

King repeated these facts as testimony during a hearing on the DNA petition. She is not a medical expert but received some training on substance abuse and worked for the Department of Community Based Services as a social worker for the previous six years. In her testimony, she said Suboxone generally stays in someone's system for three to seven days after consuming it.

Additional to King's testimony, the Cabinet also introduced Father's medical records from both before and after the DNA petition's filing date. These medical records indicated Father suffered from substance abuse. The bulk of the records introduced were Father's records from the Suboxone clinic after Mother gave birth. He objected to admission of these medical records as irrelevant, but the family court overruled his objection. Father also objected to King's testimony concerning how long it takes for drugs to leave one's system. He claims King's answer was nothing more than mere speculation, but the family court disagreed.

At the close of evidence, Father moved for a directed verdict, but the family court denied the motion. Instead, the family court adjudged the three children to be neglected pursuant to KRS¹ 600.020(1)(a)3., finding Father engaged in a pattern of conduct demonstrating his substance abuse. The family court granted the children's paternal aunt and uncle temporary custody. This appeal follows.

¹ Kentucky Revised Statutes.

Father argues the family court abused its discretion in three ways. We will address each argument in turn.

First, Father alleges the family court abused its discretion when it admitted Father's medical records from before and after the period described in the petition. Father argues under KRE² 401 and 402, the family court should not have admitted the medical records as they were not relevant to the claims of the petition. This argument is groundless.

Under KRE 402, all evidence is admissible unless the evidence is not relevant. KRE 402. Pursuant to KRE 401, evidence is relevant if the evidence in question has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." KRE 401.

At issue in the Cabinet's DNA petition is whether the children were neglected pursuant to KRS 600.020(1)(a)3. Under this statute: " 'Abused or neglected child' means a child whose health or welfare is harmed or threatened with harm when . . . [h]is or her parent . . . [e]ngages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child, including but not limited to parental incapacity due to a substance use disorder as defined in KRS 222.005" KRS 600.020(1)(a)3. Thus, at the heart

² Kentucky Rules of Evidence.

of the Cabinet's claims was whether Father engaged in a pattern of substance abuse which, by statute, would render the children neglected, if proven.

Here, the evidence in question is Father's medical records from before and after Mother gave birth. Medical records serve as reliable relevant evidence if they bear on the question whether there is a pattern of drug abuse; typically, medical records reveal the substances in one's physiological system. The medical records would tend to show, one way or the other, the existence of the proscribed pattern of drug abuse if admitted into evidence. The records here indicate Father experienced a continued substance abuse problem. Accordingly, there is no error in admitting the medical records.

Second, Father contends the family court abused its discretion when it admitted the social worker's testimony on drug screening results. Father argues King was not competent under KRE 601 to testify to the drugs screening results or the timeframe in which Suboxone typically leaves a person's system. Father claims King's testimony on this topic was impermissible layperson opinion under KRE 701 and amounted to mere speculation, which is inadmissible under KRE 602.

While it is true the typical layperson likely does not know the timeframe in which a specific drug leaves one's system, it is not clearly erroneous for the family court, in its discretion, to determine King, a social worker of six

years, would be familiar with this information. Under KRE 602, witnesses are only able to testify on matters of which they have personal knowledge. King testified to receiving some training on drug screenings and drug abuse. Based on King's experience and testimony, it would not be clearly erroneous, nor arbitrary, for the family court to permit her testimony on this matter. Thus, the family court did not err as to King's testimony.

Lastly, Father argues the family court's finding of neglect lacked support by substantial evidence in the record. "The trial court has broad discretion in determining whether the child fits within the abused or neglected category and whether the abuse or neglect warrants termination." *R.C.R. v. Cabinet for Hum. Res.*, 988 S.W.2d 36, 38 (Ky. App. 1998) (citing *Dep't for Hum. Res. v. Moore*, 552 S.W.2d 672, 675 (Ky. App. 1977)).

As stated above, for our purposes here, a child can be adjudged abused or neglected if the child's parent engages in a pattern of conduct that involves substance abuse. KRS 600.020(1)(a)3. Here, it was not an abuse of discretion for the family court to determine Father engaged in a pattern of drug abuse. The family court heard an array of substantial evidence, including testimony from Mother and King. The family court decided the disputed factual issues as factfinder based on substantial evidence. Nothing in the records indicates the family court's decision was clearly erroneous. It was the family court's

prerogative as the fact finder to weigh the evidence and the credibility of the witnesses presenting it. *See M.P.S. v. Cabinet for Human Res.*, 979 S.W.2d 114 (Ky. App. 1998). It is well settled that a family court's findings of fact in this arena will not be disturbed unless no substantial evidence exists in the record to support its findings. *Id.* at 116; *V.S. Cabinet for Human Res.*, 706 S.W.2d 420, 423 (Ky. App. 1986). Substantial evidence supports the family court's order here.

Accordingly, we affirm the Powell Family Court's order adjudicating his three children neglected and awarding temporary custody of the children to their relatives. We affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

S.J., *pro se*
Clay City, Kentucky

BRIEF FOR APPELLEE
COMMONWEALTH OF
KENTUCKY, CABINET FOR
HEALTH AND FAMILY
SERVICES:

Dilissa G. Milburn
Mayfield, Kentucky