RENDERED: AUGUST 10, 2007; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001989-ME

C.R.S. APPELLANT

v.

APPEAL FROM GRAYSON CIRCUIT COURT
HONORABLE ROBERT MILLER, JUDGE
ACTION NO. 06-XX-00001

COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES APPELLEE

OPINION
REVERSING AND REMANDING

** ** ** ** **

BEFORE: DIXON AND VANMETER, JUDGES; GRAVES,[1] SENIOR JUDGE.

GRAVES, SENIOR JUDGE: C.R.S. appeals from an order of the Grayson Circuit Court which upheld an order of Grayson District Court committing C.R.S. to the custody of the Cabinet for Health and Family Services. For the reasons stated below, we reverse.

[1] Senior Judge J. William Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

FACTUAL AND PROCEDURAL BACKGROUND

C.R.S. was born in November 1990. Shortly thereafter he was removed from his mother's (S.G.)[2] custody and, it appears, has been placed since that time primarily with his paternal grandparents (A.H. and J.H.). In December December 2005 C.R.S. was residing with his grandparents, who were his guardians.

On December 2, 2005, J.H. filed a Juvenile Complaint in Grayson District Court alleging that C.R.S. was beyond her reasonable control in violation of KRS 630.020(2). More specifically, the complaint alleged

> that during the period of 11/15/2005 through 12/02/2005, [C.R.S.] has become beyond control of his grandparents. He yells and curses his grandmother, and will not follow the rules of his home. He kicks and punches the walls when he doesn't get his way. On 12/1/05 he skipped school with another student and was picked up by the police at 12:00 p.m. and was returned to school.

It appears that C.R.S. was taken into detention on December 2, 2005, but was released and placed in the custody of the Cabinet the same day.

Following several delays, an adjudication hearing was held on January 11, 2006, at which time C.R.S. admitted to the allegation contained in his grandmother's petition that he was beyond his guardians' reasonable control. The district court ordered that C.R.S. remain in the Cabinet's custody pending the disposition hearing, and, at C.R.S.'s counsel's request, ordered the Cabinet to do a home evaluation of C.R.S.'s mother's home in Jefferson County.

[2] C.R.S.'s father is W.H., Jr.

It appears that a disposition hearing was convened on January 18, 2006; however, a recording of that proceeding is not included in the case record, and it appears that the hearing was continued until January 25, 2006. Also on January 18, 2006, the district court entered a written order directing the Cabinet to conduct a home evaluation of C.R.S.'s mother and supply the report to the court by January 25, 2006, the next scheduled hearing date.

At the January 25, 2006, hearing the Cabinet failed to produce the home evaluation report. It did, however, produce a pre-dispositional report containing a case-history and the Cabinet's recommendations. Among those recommendations was that C.R.S. be committed to the custody of the Cabinet.

At the January 25, 2006, disposition hearing the county attorney agreed with the Cabinet's recommendation that C.R.S. be committed to the custody of the Cabinet. C.R.S., however, strenuously objected to placement with the Cabinet, arguing that it was not the least restrictive alternative; that a home evaluation of the mother had not been conducted as ordered; that three of C.R.S.'s uncles were now living in the immediate vicinity of the grandparents to help with the care of the grandfather and who could help supervise C.R.S.; and that Cabinet placement would be inappropriate for a first-time status offender.

Using a pre-printed Administrative Office of the Court (AOC) order form, on February 20, 2006, the district court issued a disposition order. The order determined, by checking the appropriate boxes, inter alia, that C.R.S. was a beyond control status

offender; that reasonable efforts were made to prevent the child's removal from the home; and that continuation in the home was contrary to the welfare of the child and/or removal was in the best interest of the child. The order directed that C.R.S. be placed in the custody of the Cabinet.

C.R.S. subsequently appealed the district court's decision to the circuit court insofar as the decision ordered his placement with the Cabinet. On August 17, 2006, the circuit court entered an order upholding the district court's decision. This appeal followed.

STANDARD OF REVIEW

We begin with a general statement of our standard of review. Under Kentucky Rules of Civil Procedure (CR) 52.01, in an action tried without a jury, "[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. A factual finding is not clearly erroneous if it is supported by substantial evidence." *Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998); *Uninsured Employers' Fund v. Garland*, 805 S.W.2d 116, 117 (Ky. 1991). Substantial evidence is evidence, when taken alone or in light of all the evidence, which has sufficient probative value to induce conviction in the mind of a reasonable person. *Golightly*, 976 S.W.2d at 414; *Sherfey v. Sherfey*, 74 S.W.3d 777, 782 (Ky.App. 2002). An appellate court, however, reviews legal issues de novo. *Carroll v. Meredith*, 59 S.W.3d 484, 489 (Ky.App. 2001); *Hunter v. Hunter*, 127 S.W.3d 656 (Ky.App. 2003).

DISCUSSION

Before us, C.R.S. contends, in summary, (1) that the information contained in the Cabinet's predisposition report was insufficient to support the district court's finding that reasonable efforts were made to prevent his removal from the home, and (2) that commitment to the Cabinet was not the least restrictive alternative, as relative placement was an available alternative. We agree.

We address C.R.S.'s arguments by way of a general discussion. KRS 600.010(2)(c) provides "[t]he court shall show that other less restrictive alternatives have been attempted or are not feasible in order to insure that children are not removed from families except when absolutely necessary[.]" "The Commonwealth shall direct its efforts to promoting protection of children; to the strengthening and encouragement of family life for the protection and care of children; to strengthen and maintain the biological family unit; and to offer all available resources to any family in need of them" KRS 600.010(2)(a). "The court shall affirmatively determine that all appropriate remedies have been considered and exhausted to assure that the least restrictive alternative method of treatment is utilized." KRS 630.120(4). However, "[w]hen all appropriate resources have been reviewed and considered insufficient to adequately address the needs of the child and the child's family, the court may commit the child to the cabinet for such services as may be necessary." KRS 630.120(6).

Upon the record as a whole, we do not believe that the foregoing statutory obligations were complied with in this case.

The district court made no findings beyond checking the applicable boxes on the AOC dispositional form order, and appears to have relied significantly upon the pre-dispositional report provided by the Cabinet. The Cabinet's predispositional report stated, in relevant part, as follows:

> The petition was taken on 12/2/2005. [J.H.] was the custodian of [C.R.S.]. [J.H.] and [C.R.S.] were at the Hospital with her husband, [A.H.]. [C.R.S.] spent the night in the hospital lobby with D.H. The boys left the hospital, and went to a girlfriend's house, and skipped school. [C.R.S.] admitted to the charge of Beyond Control and was adjudicated as such. . . .
>
> [C.R.S.] has been living with his grandmother for many years. This was due to his mother not having a stable home environment. According to the court record, there was a time that [C.R.S.] was placed with relatives because his mother was incarcerated. He has spent most of his life in relative placements.
>
> [C.R.S.] is generally a well-behaved young man. He is, however, easily influenced by peers. [C.R.S.] has made some poor decisions that have placed him at risk of harm. While SSW understands that [C.R.S.] is well bonded to his grandmother and grandfather, at this time it is not in [C.R.S.]'s best interest to return to their care. [A.H.] suffers from Alzheimer's disease and [J.H.] is trying her best to take care of him. It is the opinion of the Cabinet that [C.R.S.] is at a stage in his life where he needs to be the primary focus of his caretakers. [C.R.S.]'s decisions, thus far, [have] not led him to the kind of trouble that this court is very familiar with. However, the Cabinet would like to see [C.R.S.] make improvements towards a successful life, rather than finding himself in even greater danger.
>
> The Cabinet is interested in exploring relative placements, but it has been difficult to make these arrangements, as [J.H.] does not have a telephone and the Cabinet does not have telephone numbers of any relatives.

. . . .
[The Cabinet] recommends that C.R.S. be committed to [the Cabinet].

We agree with C.R.S. that the record fails to support the family court's finding that reasonable efforts were made to prevent his removal from the home. The predisposition report reflects no efforts undertaken by way of, for example, treatment or counseling to address the underpinning of the grandmother's original complaint - that C.R.S. had an obedience problem. Further, it appears that C.R.S. is a good prospect for such alternative measures because, by the Cabinet's own assessment, he is a "generally a well-behaved young man," and the root of his problem appears to be, more than anything, his susceptibility to peer pressure. Clearly there are treatment and counseling programs available to address adolescents with these types of problems. Further, KRS 630.120(5), which states "[t]he court may order the child and the child's family to participate in any programs which are necessary to effectuate a change in the child and the family[,]" anticipates that such measures will be tried before removing a child from his home.

Moreover, the report reflects that the Cabinet "considered" relative placement but gave up on the efforts because it did not have phone numbers available to pursue the possibility. As previously noted, KRS 600.010(2)(c) contemplates that children will "not [be] removed from families except when absolutely necessary[.]" (Emphasis added). We do not believe that abandoning the idea of relative placement based upon the unavailability of telephone contact information fulfills the legislative purposes of KRS 600.010. In the case sub judice, the grandparents, for example, could

have provided means of locating potential relatives for placement. The record discloses that C.R.S.has three uncles living in the immediate vicinity of his grandparents' home, and yet the record fails to disclose that these relatives were pursued for possible placement. In addition, the district court's order directing the Cabinet to perform a home evaluation on the mother's home (which was never done) contained contact information for her.

Finally, we note that, as far as the record discloses, C.R.S. is a first-time status offender for the status offense of being beyond the control of his guardians. The underlying conduct is having left the hospital without permission and skipping school the next day. Further, the record discloses that the 15 year-old teen has a problem with obeying his guardians and bangs the walls and curses his grandmother if he doesn't get his way. However, there are no allegations that C.R.S. has engaged in drug or alcohol abuse or in criminal conduct. There is also no allegation that he is abused or neglected by his grandparents. And there is no indication in the record that the grandparents have expressed that they seek placement of C.R.S. with the Cabinet, and C.R.S. strenuously objects to such placement.

Upon the record as a whole, and based upon the factors stated above, we believe that C.R.S.'s removal from the home without proper consideration of treatment programs or relative placement was inconsistent with the objectives of the Juvenile Code and, accordingly, an abuse of discretion. In short, the record does not support that

removal was the least restrictive alternative or that relative placement was properly considered.

CONCLUSION

For the foregoing reasons the order of the circuit court affirming the district court's removal order is reversed, and the cause is remanded for further proceedings consistent with this opinion.

DIXON, JUDGE, CONCURS.

VANMETER, JUDGE, CONCURS IN RESULT ONLY.

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