

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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000118-ME

C.H.

APPELLANT

v.

APPEAL FROM CLARK CIRCUIT COURT
HONORABLE NORA J. SHEPHERD, JUDGE
ACTION NO. 07-J-00188

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

APPELLEES

AND

NO. 2011-CA-00119-ME

C.H.

APPELLANT

v.

APPEAL FROM CLARK CIRCUIT COURT
HONORABLE NORA J. SHEPHERD, JUDGE
ACTION NO. 07-J-00189

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; AND N.H., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, MOORE AND NICKELL, JUDGES.

NICKELL, JUDGE: C.H.¹ (Mother) has appealed from two orders of the Clark Circuit Court, Family Division, finding educational neglect of her children, S.H. and N.H. (Children). We affirm.

In April of 2010 a dependency, neglect and abuse petition was filed in the Clark Circuit Court against Mother alleging N.H. had fourteen unexcused absences and three unexcused tardies during the school year and that S.H. had twelve unexcused absences and three unexcused tardies. An adjudication hearing was held on the two petitions on October 21, 2010, where the Commonwealth introduced testimony and records from the school attendance clerk. The records indicated N.H. had been absent thirty days and had been tardy on three days during the educational year, while S.H. had been absent twenty-one days and been tardy on three occasions. Three letters regarding S.H.'s attendance had been mailed to C.H., two attempts at home visits were made, and the school principal had discussed the matter personally with C.H. It was further noted during the hearing that six of N.H.'s absences were due to head lice.

Following the hearing, the trial court concluded that Mother had neglected the children's education. Mother timely appealed the decisions to this

¹ Pursuant to the policy of this Court, to protect the privacy of minor children, we refer to the parties in dependency, neglect and abuse cases only by their initials.

Court. For the sake of judicial economy, the two appeals will be decided in a single opinion. The sole issue presented on appeal is whether the trial court correctly concluded the children's educational needs had been neglected.

The precise issue before us was recently decided by another panel of this Court in *M.C. v. Commonwealth*, 347 S.W.3d 471 (Ky. App. 2011), a factually similar case also arising from a decision of the Clark Circuit Court, Family Division. Because the facts and legal arguments presented in *M.C.* mirror those at bar,² we shall quote extensively from that opinion and adopt the language as our own.

Mother argues the Commonwealth failed to satisfy its burden of proof because it failed to introduce evidence that Child suffered actual harm as a result of Mother's conduct. . . . Mother cites a termination of parental rights case, *V.S. v. Commonwealth, Cabinet for Health and Family Services*, 194 S.W.3d 331 (Ky. App. 2006), for the proposition that the Commonwealth must establish actual harm to the child correlated to conduct by the parent. The Commonwealth asserts that Mother's interpretation of *V.S.* is inaccurate, as KRS 600.020(1) plainly provides that neglect occurs if the child's welfare is "harmed or threatened with harm." Accordingly, the Commonwealth contends that the evidence established that Mother's repeated failure to ensure Child attended school threatened the welfare of Child by denying Child access to classroom instruction. To support its interpretation of the statute, the Commonwealth points to *Z.T. v. M.T.*, 258 S.W.3d 31, 36 (Ky. App. 2008), where a panel of this Court concluded that the statute permits a finding of neglect if the parent's conduct creates a risk of harm to the child.

² We note that counsel for Mother also represented M.C. in her appeal, and the same Assistant County Attorney has prosecuted both cases.

We are mindful that the trial court has broad discretion in its determination of whether a child is neglected. *Department for Human Resources v. Moore*, 552 S.W.2d 672, 675 (Ky. App. 1977). On appeal, we may not reverse the trial court unless its decision was clearly erroneous. *C.R.G. v. Cabinet for Health and Family Services*, 297 S.W.3d 914, 916 (Ky. App. 2009).

One of the legislative purposes of the dependency, neglect, and abuse statutes is to protect a child's fundamental right to educational instruction. KRS 620.010. In *Brown v. Board of Education*, 347 U.S. 483, 493, 74 S.Ct. 686, 98 L.Ed. 873 (1954), the United States Supreme Court observed the vital role education plays in a child's life:

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later

professional training, and in helping him to adjust normally to his environment.

M.C., 347 S.W.3d at 472-73.

In the case *sub judice*, as in *M.C.*, the evidence presented tended to show that by allowing her children to amass a significant number of absences and tardies, C.H. hampered the Children's abilities to "benefit from the instruction, structure, and socialization provided in a classroom setting." *Id.* We are

unpersuaded by Mother's contention that the Commonwealth is required to produce evidence of actual harm to the Children to sustain a finding of educational neglect. Likewise, we are not persuaded that a "technical violation" of the school's attendance policy is insufficient to support an educational neglect ruling.

"[R]ather, we conclude that providing an adequate education for a child's well-being necessarily requires a parent to ensure the child attends school each day to participate in educational instruction. Here, Mother's repeated inability to ensure [the Children] attended school each day presented a threat of harm to [the Children's] welfare by denying [them] the right to educational instruction." *Id.*

There was substantial evidence presented here to support the trial court's finding of educational neglect. Thus, the decision will not be disturbed.

For the foregoing reasons, the decision of the Clark Circuit Court, Family Division, is affirmed.

ALL CONCUR.

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