

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

NO. 2011-CA-000485-ME

M.L.H.

APPELLANT

v. APPEAL FROM CLAY CIRCUIT COURT  
HONORABLE GENE CLARK, JUDGE  
ACTION NO. 07-J-00013

J.H., CUSTODIAN;  
S.H., CUSTODIAN;  
AND A.H., CHILD

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: COMBS, STUMBO AND WINE, JUDGES.

STUMBO, JUDGE: This is an appeal from a final order of the Family Court of Clay County denying visitation of M.L.H. (hereinafter Mother), with her minor child A.H. (hereinafter Child).<sup>1</sup> Mother argues that visitation should have been

---

<sup>1</sup> Because this case involves a minor child, the names of the parties will not be used.

allowed and asks that we reverse the order of the trial court. We find the trial court did not err in denying visitation. We therefore affirm.

Child was removed from the custody of Mother on January 9, 2007, because Child had ingested a large amount of prescription drugs and was hospitalized due to being unresponsive. Child recovered and was placed in the custody of her sister.

On June 18, 2009, a hearing was held on Mother's motion for custody and visitation. The trial court found that visitation with Mother would cause Child emotional harm and overruled the motion. Subsequently, a neglect petition was filed against Child's sister. This led to the Child's removal from her sister's custody and being placed into the custody of the Cabinet for Health and Family Services.

Child was then placed in the temporary custody of J.H. and S.H. (collectively referred to as Cousins). On January 13, 2011, Cousins were granted permanent custody of Child. On January 21, 2011, Mother filed a motion for temporary custody and visitation. Following a hearing on January 27, 2011, Mother's motion for custody was overruled. On February 17, 2011, the trial court held a second hearing in regard to visitation. At this hearing Misha Smith, a social worker for the Cabinet for Health and Family Services, testified as to the history of the case. She also testified that visitation with Mother would endanger the mental, physical, and emotional well-being of Child.

Linda Teague, a licensed therapist, also testified at the hearing. She had been treating Child individually once a week for about two years. She testified that any time someone mentions visitation with Mother, Child has a lot of anxiety and attempts to harm herself. She also testified that visitation would endanger the mental, physical, and emotional well-being of Child.

The trial court found that visitation with Mother would pose a serious danger to Child's physical, mental, moral, and emotional health. It overruled Mother's motion for visitation. This appeal followed.

Mother raises two arguments on appeal. First, she argues that there were procedural errors that require reversal. This issue was not raised in the lower court; therefore, it is not preserved for review. *Skaggs v. Assad, By and Through Assad*, 712 S.W.2d 947 (Ky. 1986).

Mother next argues that there was a lack of evidence supporting the denial of Mother's motion.

The Court of Appeals, however, [is] entitled to set aside the trial court's findings only if those findings are clearly erroneous. And, the dispositive question that we must answer, therefore, is whether the trial court's findings of fact are clearly erroneous, i.e., whether or not those findings are supported by substantial evidence. "[S]ubstantial evidence" is "[e]vidence that a reasonable mind would accept as adequate to support a conclusion" and evidence that, when "taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in the minds of reasonable men." Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, "due regard shall be given to the opportunity of the trial court to judge the credibility of

the witnesses” because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court. Thus, “[m]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal,” and appellate courts should not disturb trial court findings that are supported by substantial evidence.

*Moore v. Asente*, 110 S.W.3d 336, 353-354 (Ky. 2003)(citations omitted).

We believe that there was substantial evidence to support the trial court’s denial of Mother’s motion. The trial court’s findings of fact are not clearly erroneous. As stated above, both Misha Smith and Linda Teague opined that it would be detrimental to Child for Mother to have visitation. Additionally, the trial court heard testimony that Mother had other children who were all removed from her care, that Mother had been incarcerated numerous times, and that Mother had a substantial and ongoing drug habit. The trial court also heard that Child had greatly improved since being in the custody of Cousins.

Based on the above, we affirm the order of the trial court overruling Mother’s motion for visitation.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Kenneth S. Stepp  
Manchester, Kentucky

BRIEF FOR APPELLEES,  
J.H. CUSTODIAN AND S.H.  
CUSTODIAN:

Raleigh P. Shepherd  
Manchester, Kentucky

NO BRIEF FOR APPELLEE,  
A.H., CHILD