

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001216-ME

J.L.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN M. GEORGE, JUDGE
ACTION NO. 12-J-506356

JEFFERSON COUNTY ATTORNEY'S OFFICE;
V.D., natural mother; AND
V.L., a minor¹

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MOORE, AND NICKELL, JUDGES.

DIXON, JUDGE: J.L. (Father) appeals an order of the Jefferson Circuit Court finding his child, V.L. (Child), was neglected. After careful review, we affirm.

¹ Although the Amended Notice of Appeal named the guardian ad litem for V.L. as an appellee, we have substituted V.L.'s initials for clarity.

In December 2012, the Cabinet for Health and Family Services filed a neglect petition against Father in Jefferson Circuit Court. The petition alleged Father allowed inappropriate sleeping arrangements and punished Child, age four, by isolating her in a closet. Father was divorced from Child's mother, V.D. (Mother), and they shared split custody of Child. Father waived a temporary removal hearing, and the court ordered temporary custody of Child to Mother.

In March 2013, an adjudication hearing was held where the Commonwealth presented the testimony of Father's former girlfriend, Lauren Hawkins, and the testimony of Tunice Masden, the social worker assigned to the case. Hawkins testified that, on several occasions, she was intimate with Father while Child was in the same bed with them. She further asserted that the house was littered with pet waste, dirty dishes, and cigarette butts. Hawkins also testified that, to discipline Child, Father isolated her in a darkened walk-in closet. Masden testified that Father refused to cooperate with the Cabinet's case plan. When Masden conducted a home visit, Father limited her access to certain rooms, and Masden noted the overwhelming odor of pet urine in the house. Father testified on his own behalf, asserting that he did not punish Child by forcing her to sit in the closet. He admitted Child slept in the bed with him; however, he denied that Hawkins was there at the same time. At the conclusion of the trial, the court left the record open for Father to submit the deposition of his expert witness, Dr. Sandra Graves.

In its final judgment, the trial court found that Child had been abused or neglected. The court found the testimony presented by the Commonwealth's witnesses to be the most compelling as to the sleeping arrangements and discipline imposed by Father. The court ordered that custody would remain with Mother and that Father was allowed supervised visitation. Father now appeals.

At the outset, Father contends three procedural rulings made by the court were erroneous. First, Father contends the court erred by refusing to hold a temporary custody hearing after Child was placed in Mother's custody. Father contends he agreed to waive the temporary removal hearing because he believed custody would revert to the previous overnight custody arrangement once in-home services were established by the Cabinet. The circuit court denied Father's motion, noting that a review of the record indicated Father's supervised visitation would increase as needed to accommodate the Cabinet's scheduling of in-home services. The court concluded the record did not reflect any agreement that Father's overnight split custody arrangement would be reinstated. Despite Father's argument to the contrary, the court's ruling was clearly supported by the record.

Father next contends the court improperly denied his request for a continuance. On the day of trial, Father sought to continue the proceedings when he learned Child was not going to be called as a witness by the Commonwealth. The court denied Father's motion, noting that the Commonwealth had secured its witnesses and was ready to proceed with trial as scheduled.

“A continuance motion is a general motion, and a trial court has broad discretion in granting or refusing to grant a continuance and that ruling will not be disturbed absent an abuse of discretion.” *Pelfrey v. Commonwealth*, 842 S.W.2d 524, 525 (Ky. 1992).

Although Father speculates that Child’s testimony was essential to his case because it could have refuted the allegations, the record reflects that Father had approximately seven weeks to prepare for trial. On the day of trial, Father orally requested a continuance, expressing surprise that Child was not going to testify and asserting the court should interview Child. Noting Child was only four years old, the Commonwealth explained that Child’s presence at trial was unnecessary. In addition to the records and interviews compiled by the Cabinet, the Commonwealth presented Hawkins’s testimony regarding her direct observations of Father and Child. A review of the proceedings indicates Father effectively cross-examined the Commonwealth’s witnesses and testified in his own defense. After reviewing the record, we conclude the court did not abuse its discretion by denying the request for a continuance.

Father also contends the court erred by denying his motion for Child to be interviewed by his expert, Dr. Graves, prior to Dr. Graves’s deposition. Father asserts that Dr. Graves could have provided a specific analysis of Child’s well-being in relation to the disciplinary measures imposed by Father.

Pursuant to CR 35.01, a court may order a mental or physical examination of a party only for “good cause.” In this case, Child received

counseling from Seven Counties Services as part of the Cabinet's case plan. Throughout the proceedings, Father expressed distrust in the Cabinet, and he attempted to avoid relying on any of the services offered by the Cabinet. Further, he hired Dr. Graves, who testified regarding the propriety of Father's disciplinary procedures. Although Dr. Graves did not interview the Child, the court was capable of weighing Dr. Graves's opinions in its consideration of the totality of the evidence. We are not persuaded that Father suffered undue prejudice, and we conclude the court's ruling was not an abuse of discretion.

Finally, Father challenges the sufficiency of the evidence supporting the court's finding that Child was neglected.

We are mindful that the trial court has broad discretion in its determination of whether a child is neglected. *Dept. 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).

Pursuant to KRS 620.100(3), the Commonwealth, as the complaining party, bears the burden of proof, "and a determination of dependency, neglect, and abuse shall be made by a preponderance of the evidence." KRS 600.020(1)(a)(2) provides for a finding of neglect when a child's welfare is threatened with harm because a parent has created a risk of physical or emotional injury to the child.

The trial court found the testimony of the Commonwealth's witnesses to be the most compelling. Based on the evidence presented, the court made

specific findings that Father engaged in intimate relations in the presence of Child, that Father allowed Child to live in unsanitary conditions, and that Father isolated Child in a dark closet as punishment. Although Father cites testimony that could have supported a finding in his favor, the record reflects the trial court's findings of neglect were supported by substantial evidence. We find no error in the court's ruling.

For the reasons stated herein, the order of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Angela J. Fowler
Thomas A. McAdam, III
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BRIEF FOR APPELLEE:

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