

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000312-ME

A.P.

APPELLANT

v.

APPEAL FROM CAMPBELL FAMILY COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 13-J-00312 AND 13-J-00312-001

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

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, CHIEF JUDGE; JONES AND NICKELL, JUDGES.

ACREE, CHIEF JUDGE: Appellant, A.P. (Mother), appeals the November 22,

2013 Judgment of the Campbell Family Court determining that she abused her 13-

year-old-son, H.P (Child). Finding no error in the Family Court's determination, we affirm.

I. Background

This appeal stems from a domestic disturbance between Mother and Child that began outside a roller rink in Alexandria, Kentucky. The trouble started when Mother arrived at the rink to pick up Child. There, Mother discovered Child lying on the ground in the parking lot. Mother recalled seeing other juveniles running away from Child, leading her to believe that Child had been knocked to the ground during a fight with a gang of other children. When Child denied fighting, he and Mother got into a heated argument.

Mother and Child's argument soon turned violent; according to Child, Mother struck him in the face and mouth several times, causing his mouth to bleed. After the fight, Child walked to a nearby fire station and reported the incident to authorities. Child also reported that Mother was verbally abusive during their fight, that she had been drinking, and that he had witnessed Mother intoxicated on many occasions.

Child's report was eventually referred to the Kenton County prosecutor. The prosecutor requested to interview Child regarding the incident. During the interview, Child recanted his initial report.

The Cabinet for Health and Family Services (Cabinet) investigated the incident and filed a petition in the Campbell County Family Court. Cabinet's petition alleged that Mother committed domestic violence by striking Child during

their argument and that Child was an “abused or neglected child” within the meaning of KRS¹ 600.020(1).² The Family Court conducted a two-day hearing on the petition on October 23, 2013, and November 13, 2013.

Both Mother and Child testified, each offering different accounts of the incident. Mother denied all allegations of physical and verbal abuse, and claimed to never drink in excess in Child’s presence. Mother alleged she encountered child at the roller rink lying on the ground after a fight with other children. When Mother confronted Child about this, the two argued. According to Mother, Child became angry and emotional so as to provoke her. Mother said that despite Child’s goading, the argument remained only verbal in nature and that Child’s injured mouth resulted from a canker sore, not from her physical contact. During the hearing, Mother also explained that Child’s mouth injury could also have been caused by a fight with other juveniles at the roller rink. Finally, Mother denied coaching Child to recant his allegations during the meeting with the prosecutor. According to Mother, Child is manipulative, and constantly “tests the waters” to assert his will over her.

Child related a substantially different version of the incident. While on the stand, Child described in detail how he and Mother argued over whether he had been fighting with other children. According to Child, Mother used the back of her

¹ Kentucky Revised Statutes.

² KRS 600.020(1)(a)(1) defines, in relevant part an “[a]bused or neglected child” as a child “whose health or welfare is harmed or threatened with harm when [the child’s] guardian . . . [i]nflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means.”

hand to strike him in the mouth. Child recalled that Mother struck him there several times, and that one of Mother's blows drew blood from his lip. Child also discussed Mother's penchant for drinking alcohol, particularly whiskey. Child noted that Mother frequently mixed whiskey with Diet Coke and described the whiskey as dark in color and having a strong, musty smell. Throughout his testimony, Child became noticeably upset in response to several lines of questioning, particularly when describing how Mother hit him and her behavior when drinking. Child noted that Mother had been drinking on the night of the incident.

Child also explained why he recanted his story during his meeting with the prosecutor. According to Child, Mother spoke with him before the meeting. During their conversation, Mother allegedly told Child that if he did not recant, Mother would go to jail and Child would never see her again. Mother allegedly provided Child with advice on how to best recant his story, including specific instructions that Child should tell the prosecutor that his injuries were accidental. During this portion of Child's testimony, he became visibly distraught and his voice quavered as he told the family court that "he lied [to the prosecutor] because he was afraid of losing his mother." (Findings of Fact and Conclusions of Law, November 22, 2013, p. 2).

After hearing testimony, the family court determined that Child was "abused or neglected" within the meaning of KRS 600.020(1). The family court relied specifically on Child's testimony and found that Mother "slapped him in the mouth

three times and punched him in the mouth one time and caused bleeding as a result of being punched.” *Id.* The court noted Child’s emotional testimony was “very credible,” especially due to Child’s visible distress when describing the incident and his meeting with the Kenton County Prosecutor.

Mother now appeals, claiming the trial court’s findings of fact were clearly erroneous.

II. Standard of Review

We review the family court’s factual findings for clear error. CR³ 52.01. A finding supported by substantial evidence is not clearly erroneous. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (footnote omitted). Substantial evidence is that which is “sufficient to induce conviction in the mind of a reasonable person.” *Rearden v. Rearden*, 296 S.W.3d 438, 441 (Ky. App. 2009).

Furthermore, we must give due regard to the family court’s opportunity “to judge the credibility of the witnesses.” CR 52.01. In light of our deference to the trial court’s fact-finding, the mere doubt that a finding is correct does not justify reversal, so long as the trial court’s findings are supported by substantial evidence. *Ensor v. Ensor*, 431 S.W.3d 462, 468-69 (Ky. Ct. App. 2013).

III. Analysis

Mother argues the trial court’s findings of fact were clearly erroneous because they were not supported by substantial evidence. To bolster her contention, Mother points to inconsistencies between Child’s testimony at the

³ Kentucky Rules of Civil Procedure.

hearing and Child's report to authorities at the fire station on the night of the incident. Specifically, Child only reported to authorities that he had been slapped on the night of the incident, while Child claimed at the hearing that Mother slapped and punched him in the mouth. Mother also notes that an official police report from the night of the incident made no mention of Mother being intoxicated. However, Child testified at the hearing that Mother had been drinking before the fight. Put simply, Mother alleges these inconsistencies demonstrate that Child's testimony was so incredible as to render it insubstantial evidence for the court to rely upon during fact-finding. We disagree.

Child's testimony certainly constituted substantial evidence. On the stand, Child described in detail his fight with Mother, demonstrating specifically how Mother struck him in the face. Further, Child described Mother's whiskey, noting its color and smell and her behavior when drunk. Most compelling, in the family court's view, was that Child was very emotional while testifying, demonstrating his credibility as a witness.

Mother and Child presented conflicting testimony, each presenting his or her version of events to the family court. In such situations, the family court's assessment of witnesses' credibility is crucial, and we overturn such determinations only in the rare, even extreme, instance that a family court based its findings on evidence unfit to induce any reasonable belief in its accuracy. Here, despite Mother's assertions, Child's testimony was sufficiently credible, detailed, and compelling as to constitute the substantial evidence necessary for the family

court to accept Child's version of the incident. The family court was neither persuaded by Mother's testimony, nor by her attempt to portray Child as a manipulative, deceitful witness. After careful review of the record, we are also unpersuaded, particularly in light of the substantial deference we owe to the family court in its credibility determinations. Therefore, Mother's argument fails, leaving no reason for us to substitute our view of the evidence for that of the family court.

IV. Conclusion

The November 22, 2013 Judgment of the Campbell Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Christopher D. Roach
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BRIEF FOR APPELLEE, CABINET
FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
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