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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001852-ME

HELEN MAE SCHOENBORN

APPELLANT

v. APPEAL FROM LOGAN CIRCUIT COURT
HONORABLE TYLER L. GILL, JUDGE
ACTION NO. 14-CI-00157

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
SHAWN ANTHONY SCHOENBORN
VICTORIA LYNN HARPER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: D. LAMBERT, MAZE AND VANMETER, JUDGES.

D. LAMBERT, JUDGE: This is an appeal from the Logan Circuit Court's

September 11, 2014 order denying a grandmother's petition to assume custody of

three of her grandchildren. After reviewing the record, we find no error and affirm.

I. BACKGROUND

The three children involved in this case are the offspring of Victoria Harper and Shawn Schoenberg. Helen Schoenberg is their paternal grandmother. In 2013, the Logan District Court placed the children with the Cabinet for Health and Family Services (the Cabinet). This action came after two of the children received serious physical injuries at Helen's home while under Shawn's supervision. The incident and resulting injuries convinced the district court that the children had been abused.

By placing the children with the Cabinet, the district court disregarded Victoria and Shawn's wishes; they wanted their children to stay with Helen. As a result, Helen petitioned the Logan Circuit Court to overturn the district court's decision.

After hearing evidence from both Helen and the Cabinet, the circuit court agreed that Helen was not a suitable relative placement. During the hearing, the circuit court learned that Helen's daughter was sexually abused by Eric Schoenborn, Helen's husband and the children's paternal grandfather, and that Eric currently lives with Helen. Because of these facts, the circuit court decided that Helen was incapable of making prudent decisions on behalf of her grandchildren. The circuit court also concluded from Helen's testimony that she would not prevent Shawn, who is under criminal investigation for allegedly injuring the

children during the incident, from visiting the children. The circuit court ultimately entered an order upholding the district court's decision to deny Helen custody, opining that the district court "made a good call." This appeal followed.

II. STANDARD OF REVIEW

Kentucky Revised Statutes (KRS) 620.090 sets forth the following procedure in a case of dependency, neglect, or abuse:

- (1) If, after completion of the temporary removal hearing, the court finds there are reasonable grounds to believe the child is dependent, neglected or abused, the court shall issue an order for temporary removal and shall grant temporary custody to the cabinet or other appropriate person or agency. Preference shall be given to available and qualified relatives of the child considering the wishes of the parent or other person exercising custodial control or supervision, if known. The order shall state the specific reasons for removal and show that alternative less restrictive placements and services have been considered. The court may recommend a placement for the child.
- (2) In placing a child under an order of temporary custody, the cabinet or its designee shall use the least restrictive appropriate placement available. Preference shall be given to available and qualified relatives of the child considering the wishes of the parent or other person exercising custodial control or supervision, if known.

Under this statute, relative placement is not required if it is not in the best interests of the child. *P.W. v. Cabinet for Health and Family Services*, 417 S.W.3d 758, 761 (Ky. App. 2013); *see also J.M. v. Commonwealth, Cabinet for Health and Family Services*, 325 S.W.3d 901, 903 (Ky. App. 2010)(observing that a relative must be "qualified" under the statute). Whether relative placement is in the child's best

interests is left to the sound discretion of the court and will not be disturbed on appeal unless the determination was manifestly unjust. *See L.D. v. J.H.*, 350 S.W.3d 828, 830 (Ky. App. 2011). The trial court also evaluates the credibility of witnesses and due regard is given to that evaluation. *P.W.*, 417 S.W.3d at 760 (Ky. App. 2013)(quoting *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003)).

III. DISCUSSION

On appeal, Helen contends that the circuit court's decision to deny relative placement was reversible error because she is a qualified relative with whom the children's parents want the children to live. Based on the circuit court's findings, however, the circuit court properly determined that Helen is not a qualified relative under the statute and that placement in her home would not serve the children's best interests. *See P.W.*, 417 S.W.3d at 761 (observing that "while relative placement is certainly preferred [under KRS 620.090], at some point the best interests of the children outweigh that factor").

First, based on the circuit court's finding that Helen was unable to protect her grandchildren from sustaining severe injuries in her home during the initial abuse incident, we similarly doubt her ability to protect her grandchildren in the future, especially considering her husband's presence in the home. Second, from the circuit court's determination at trial that Helen was not a credible witness, we agree that Helen failed to demonstrate a willingness to keep her son from contacting the children despite the role he potentially played in harming them. Accordingly, the circuit court properly determined that it was not in the children's

best interests to live with Helen. The children were correctly placed with the Cabinet. The judgment of the Logan Circuit Court is hereby affirmed.

ALL CONCUR.

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