

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001646-ME

A.F.

APPELLANT

v.

APPEAL FROM WEBSTER FAMILY COURT
HONORABLE BRANDI ROGERS, JUDGE
ACTION NO. 10-J-00023-002

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; AND W.R.T. (MINOR CHILD)

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: KRAMER, CHIEF JUDGE; ACREE AND MAZE, JUDGES.

MAZE, JUDGE: A.F. appeals from an order of the Webster Family Court finding that she neglected her six-year-old daughter, W.R.T., when she left her in her home alone without supervision. A.F. argues that the Cabinet for Health and Family Services (hereinafter “the Cabinet”) did not present sufficient evidence to establish by a preponderance of the evidence that she neglected W.R.T. After reviewing the

record and the findings of the Webster Family Court, we agree that the Cabinet presented sufficient evidence to support its finding that A.F. neglected her daughter. Hence, we affirm.¹

Background

Deputy Roy Scott Starkey of the Webster County Sheriff's Office provides security services for the apartment complex in Webster County, Kentucky where A.F. and her daughter live. As part of his employment, he resides at these apartments and is acquainted with many of its tenants. On May 14, 2015, at approximately 10:00 p.m., Deputy Starkey received a call from A.F.'s neighbor, Ms. Lori Richmond. Ms. Richmond informed Deputy Starkey that she heard a thump from A.F.'s apartment, which shares a wall with Ms. Richmond's unit.

Deputy Starkey met Ms. Richmond and her husband, Johnny Richmond, outside A.F.'s apartment within a few minutes. Deputy Starkey checked the doors and windows of A.F.'s apartment and found them all to be locked. The Richmonds informed Deputy Starkey that they believed A.F.'s

¹ Pursuant to CR 73.08, CR 76.03, CR 76.12, and the policy of this Court, cases concerning child custody, dependency, neglect, abuse, and support, as well as domestic violence, are to be given priority, placing them on an expedited track through our Court. That did not occur in this case. Both human error and obsolete case management software resulted in an administrative delay in assigning this case to a merits panel for decision.

On June 24, 2016, after discovering the administrative error, the Clerk of the Court informed the Chief Judge and Chief Judge-elect who, together, assigned the case to a special merits panel of Court of Appeals Judges who have given it the highest priority to offset any delay to the greatest extent possible. Additionally, the Court has sent a letter of explanation and apology to the parties and placed that letter in the record.

Finally, the Court has undertaken efforts to put into effect procedures to ensure that such an error is not repeated.

daughter was alone inside the apartment and that A.F. had left to drive her boyfriend to work in Madisonville.

Deputy Starkey called A.F. on her cell phone and confirmed that W.R.T. was alone inside the apartment. He received permission to enter the unit and called the apartment complex's maintenance worker to bring a spare key. Upon entering the apartment, Deputy Starkey found W.R.T. asleep in her bed in the back bedroom. Deputy Starkey stayed outside the apartment until A.F. returned sometime around 11:00 p.m. Testimony indicates that A.F. was gone for approximately forty-five minutes.

The next day, Deputy Starkey reported the incident to the Cabinet. Social Worker Donna McCarthy then filed a Juvenile Dependency/Neglect or Abuse Petition on May 27, 2015. Ms. McCarthy asserted that W.R.T. was neglected pursuant to KRS² 600.020 based upon her interviews with W.R.T., Deputy Starkey, Ms. Richmond, and A.F.

Following a Temporary Removal Hearing on June 1, 2015, the trial court ordered that W.R.T. remain in her home and that A.F. ensure that W.R.T. be appropriately supervised at all times. At trial on October 5, 2015, A.F., Ms. Richmond, Deputy Starkey, Ms. McCarthy, and the apartment maintenance worker each testified.

A.F. testified that on the afternoon of May 14, she talked to Ms. Richmond and asked her to watch W.R.T. later that night when she took her

² Kentucky Revised Statutes.

boyfriend to work. She claimed she told Ms. Richmond that W.R.T. would be asleep at that time and that she did not want her daughter to be woken up. A.F. further alleged that before leaving, she entered the Richmonds' apartment and told Mr. Richmond she was leaving. She also claimed that she saw Ms. Richmond peek her head around the corner of the apartment and made eye contact with her at this time. Lastly, A.F. testified that she left her apartment unlocked and that as she was leaving, she saw Ms. Richmond coming out of her apartment, presumably to watch W.R.T.

Ms. Richmond testified that she had a discussion with A.F. during the afternoon of May 14 about watching W.R.T. in the evening, but stated that no particular arrangements were made beyond this discussion. She claimed that she was in the back of her apartment folding laundry when she heard A.F. enter her apartment and tell Mr. Richmond she was leaving. Ms. Richmond testified that she was in her kitchen when she heard a thump coming from A.F.'s apartment and went to check on W.R.T., which is when she found the door to A.F.'s apartment locked. A.F. remained adamant throughout the proceedings that she did not lock the door on May 14. However, Deputy Stark testified that A.F. told him on the night of the incident that she had not thought about how anyone could check on the child if the door was locked.

The court entered a finding of neglect on the grounds that A.F. "created or allowed to be created a risk of physical or emotional injury by other than accidental means," KRS 600.020(1)(a)(2), and that A.F. "continuously or

repeatedly failed or refused to provide essential parental care and protection for the child, considering the age of the child.” KRS 600.020(1)(a)(4). The court found that it was not contrary to W.R.T.’s welfare to remain in her home with her mother. A.F. now appeals from the trial court’s finding of neglect.

Standard of Review

In reviewing decisions of the family court, the appellate standard of review is abuse of discretion. *Coffman v. Rankin*, 260 S.W.3d 767, 770 (Ky. 2008). Abuse of discretion implies that the decision of the court was unreasonable or unfair. *Id.* Under this standard, factual findings will not be disturbed absent clear error. *See R.C.R. v. Commonwealth, Cabinet for Human Resources*, 988 S.W.2d 36, 39 (Ky. App. 1998) (“In a trial without a jury, the findings of the trial court, if supported by sufficient evidence, cannot be set aside unless they are found to be clearly erroneous.”). Therefore, the test on appellate review is whether the court’s findings are clearly erroneous, whether the trial court applied the correct law, or whether it abused its discretion. *Coffman*, 260 S.W.3d at 770.

Analysis

A.F. alleges that the Cabinet did not establish by a preponderance of the evidence that A.F. neglected her daughter. KRS 600.020 defines a neglected child as “a child whose health or welfare is harmed or threatened with harm when: (a) His or her parent, guardian, person in a position of authority or special trust...” engages in any of nine enumerated actions. These actions include, in relevant part: “Creat[ing] or allow[ing] to be created a risk of physical or emotional injury”

(KRS 600.020(1)(a)(2)) and “Continuously or repeatedly fail[ing] or refus[ing] to provide essential parental care and protection for the child, considering the age of the child.” KRS 600.020(1)(a)(4). During trial, Ms. McCarthy testified that the Cabinet regards leaving a child under the age of seven alone and unsupervised to be a “high risk factor.”

While there is some dispute as to the parties’ understanding of Ms. Richmond’s supervisory duties of W.R.T. on May 14, and some argument as to whether or not A.F. locked the front door, either intentionally or accidentally, the following facts are undisputed: A.F. drove her boyfriend to Madisonville the night of May 14; when A.F. left her apartment she knew that her daughter was alone and unsupervised; the door to A.F.’s apartment was locked; and Ms. Richmond did not have a key. It is upon these material facts that the court found that A.F. intentionally created a risk of harm and that there was a reasonable potential of harm to her daughter. Furthermore, these undisputed facts constitute substantial evidence to support the trial court’s finding of neglect.

A.F.’s allegations that any risk of harm was created accidentally, was merely theoretical, or that Ms. Richmond feigned uncertainty about her agreement to supervise A.F.’s daughter due to bias against A.F. do not negate A.F.’s admission that she drove away on the night of May 14 knowing her daughter was alone. Therefore, we conclude that there was sufficient proof to find that W.R.T. was neglected pursuant to KRS 600.020.

Conclusion

The decision of the Webster Family Court did not constitute an abuse of discretion. Hence, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Mary E. Rohrer
Providence, Kentucky

BRIEF FOR APPELLEES:

Julie A. Wallace
Dixon, Kentucky