RENDERED: OCTOBER 30, 2020; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-1878-ME

S.T. APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE DAWN M. GENTRY, JUDGE
ACTION NO. 19-J-00567-001

B.F. (NOW S.); A.F.; CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY; KENTON COUNTY ATTORNEY; AND C.F., A MINOR CHILD APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CALDWELL, MAZE, AND MCNEILL, JUDGES.

MCNEILL, JUDGE: S.T. appeals from the Kenton Family Court's November 19, 2019 disposition order[1] finding that C.F. was an abused child, and more

[1] The November 19, 2019 disposition order incorporated the family court's September 25, 2019 findings of fact, conclusions of law, and adjudication order.

specifically, that S.T. was a responsible party to the abuse. Finding no error, we affirm.

B.S. (formerly B.F., hereafter "mother") and A.F. (hereafter "father") are the parents of five children: H.F., K.F., J.F., Ca.F., and C.F. At the time of the alleged abuse, the children resided primarily with mother and would visit father every other weekend. While visiting, the children would stay at the home of father's paramour, S.T. On June 9, 2019, after one such visit, mother alleged that she observed bruising to C.F.'s body. Mother contacted a social worker for the Cabinet for Health and Family Services and on June 27, 2019, the Cabinet filed a dependency, neglect, and abuse ("DNA") petition in Kenton Family Court, alleging that C.F. was an abused child and listing father and S.T. as responsible parties.[2]

An adjudication hearing was held on September 25, 2019. Mother testified that when C.F. returned from visiting father, she noticed bruising to C.F.'s head, eye, back, stomach, and legs, as well as scratches on C.F.'s neck. She contacted the Cabinet and took C.F. to the hospital. No medical records were entered into evidence at the adjudication hearing.

Father testified that on the morning of Saturday, June 8, 2019, C.F. urinated on the bedroom floor and was put in the corner as punishment. After

[2] Petitions were also filed regarding the other four children but are not relevant to this appeal.

lunch, the other children went outside to play while C.F. stayed inside in the corner. S.T. went to work in the afternoon for several hours and father was in and out of the home watching the children. While unsupervised, C.F. defecated in his pull-up and wiped feces on the kitchen wall. Father testified that when he discovered the feces, he put C.F. back in the corner and yelled at him. In total, father stated that C.F. was in the corner for several hours that day. Father left the feces on the wall for S.T. to see when she returned home.

Father testified that several hours later the family was in the living room watching a movie and C.F. was being bad so he took him down the hall into a room and whipped him with a leather belt with a metal belt buckle. However, father contradicted this statement when he later testified that he whipped C.F. to teach him to not defecate in his pull-up and wipe feces on the wall. Father stated he struck C.F. twice with the belt and that C.F. was crying. Father claimed he was trying to hit C.F. on the buttocks but C.F. turned, and the belt hit C.F.'s leg both times. Father stated C.F. was still crying when they returned to the living room.

S.T. testified she was involved in disciplining father's children and that she and father had set up rules regarding discipline. This was corroborated by father, who testified that S.T. also disciplines the kids by putting them in the corner and that she participated in putting C.F. in timeout that day. However, S.T. denied knowing about the belt whipping incident or having any part in it. She further

stated she did not notice C.F. crying when he returned to the living room after being hit with the belt. When asked what led to the belt incident, father said, "It was just a bad day . . . *we* were just trying to get through to him." (Emphasis added.)

Following the hearing, the family court entered an adjudication order along with written findings of fact and conclusions of law finding that C.F. was an abused child pursuant to KRS[3] 600.020(1). Specifically, the court found: "Father, [A.F.], intentionally inflicted physical injury and emotional injury upon [C.F.]" The court further found that "[S.T.] created a risk of physical and emotional injury to [C.F.], by other than accidental means." On November 19, 2019, the family court entered a disposition order adopting its previous finding of abuse and the Cabinet's dispositional report which recommended that S.T. have no contact with C.F.

On appeal, S.T. argues that the family court's finding of abuse, and more specifically, that S.T. "created a risk of physical and emotional injury to C.F., by other than accidental means," is not supported by substantial evidence. We disagree. "A trial court has broad discretion in its determination of whether a child is dependent, neglected, or abused." *Cabinet for Health & Family Servs. on behalf of C.R. v. C.B.*, 556 S.W.3d 568, 573 (Ky. 2018) (citation omitted). "A

[3] Kentucky Revised Statutes.

'trial court's findings regarding the weight and credibility of the evidence shall not be set aside unless clearly erroneous.'" *Id.* at 574 (quoting CR[4] 52.01). "Under this standard, an appellate court is obligated to give a great deal of deference to the trial court's findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them." *Id.* (citation omitted). "Substantial evidence has been defined as some evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable people." *Id.* (citation omitted).

S.T. first contends that there is no evidence to support the family court's finding of abuse other than mother's testimony. She notes that no cabinet worker testified, and no photos of the alleged injuries or medical records were introduced into evidence. However, nothing in KRS Chapter 620 *et seq.* requires that findings of abuse be supported by medical records or other documentary evidence. While S.T. questions the credibility of mother's testimony, "the trial court, as the finder of fact, has the responsibility to judge the credibility of all testimony, and may choose to believe or disbelieve any part of the evidence presented to it." *Cabinet for Health & Family Servs. v. P.W.*, 582 S.W.3d 887, 896 (Ky. 2019) (citation omitted).

> Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have

[4] Kentucky Rules of Civil Procedure.

> 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, 354 (Ky. 2003) (footnotes omitted).

The family court found that C.F. was an abused child, based in part on its finding that "Father, [A.F.], intentionally inflicted physical injury and emotional injury upon [C.F.]" These findings are supported by substantial evidence. KRS 600.020(1) provides in relevant part:

> "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when:
>
> > (a) His or her parent . . . or other person exercising custodial control or supervision of the child:
> >
> > > 1. Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in the section by other than accidental means;
> >
> > > 2. Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means[.]

KRS 600.020(49) further defines "[p]hysical injury" as "substantial physical pain or any impairment of physical condition[.]" Here, mother testified

that C.F. had bruising on his leg following his visit with father and that the bruising was not present prior to the visit. Father admitted to hitting C.F. on the leg with a belt that had a metal belt buckle, two times, in the same spot, and that C.F. cried. According to the DNA petition, the children's hospital reported that the bruising on C.F.'s knee could be consistent with a belt mark. Neither father or S.T. offered any other explanation for the bruising on C.F.'s leg. This evidence alone is enough to induce the minds of reasonable people to believe that C.F. was abused pursuant to KRS 600.020(1).

While the language of the family court's order is ambiguous as to what evidence it relied upon in finding that father intentionally abused C.F.,[5] it is axiomatic that an appellate court may affirm a lower court for any reason supported by the record. *Kentucky Farm Bureau Ins. Co. v. Gray*, 814 S.W.2d 928, 930 (Ky. App. 1991). Based upon the evidence of record, the family court's finding that C.F. was abused was not clearly erroneous.

The crux of S.T.'s appeal appears to be the family court's finding she "created a risk of physical and emotional injury to [C.F.], by other than accidental means." S.T. asserts that "[t]he uncontroverted testimony is that [S.T.] played no

[5] While the order references father's admission he hit C.F. with a belt, it also finds father's and S.T.'s testimony concerning the incident not credible. It is unclear whether this finding relates only to father's and S.T.'s denial of S.T.'s involvement in the whipping incident or to their testimony entirely.

decision-making role in [father's] decision to whip C.F., which necessarily means that she cannot be said to have created a risk of physical or emotional injury to C.F. by other than accidental means." Essentially, S.T. again takes issue with the family court's weighing of the evidence and credibility determinations of the witnesses.

While S.T. testified that she was unaware of the whipping incident and was not involved in the decision to whip C.F., the family court found S.T.'s testimony concerning the incident not credible. In its findings of fact, the family court noted S.T.'s statement that she saw father and C.F. leave the room during the movie but did not recognize anything out of the ordinary when C.F. returned, despite father's testimony that C.F. cried when he was hit with the belt.

The family court also found telling S.T.'s and father's testimony that S.T. was involved in the decision-making regarding discipline of the children but disclaimed her knowledge of this singular incident. This despite testimony that S.T. disciplined C.F. earlier in the day for urinating on the floor, that S.T. was aware of the defecation incident, and that C.F. was, in fact, whipped for defecating in his pull-up.

"A 'trial court's findings regarding the weight and credibility of the evidence shall not be set aside unless clearly erroneous.'" *C.B.*, 556 S.W.3d at 574 (quoting CR 52.01). The test is not whether we as an appellate court would have

decided the matter differently, but whether the trial court's rulings were clearly erroneous or constituted an abuse of discretion. *Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982). We are satisfied from the record that the family court's finding that S.T. "created a risk of physical and emotional injury to [C.F.], by other than accidental means" is supported by substantial evidence and, thus, not clearly erroneous.

Accordingly, we affirm the orders of the Kenton Family Court finding C.F. an abused child pursuant to KRS 600.020(1)(a).

ALL CONCUR.

BRIEF FOR APPELLANT:

Marvin A. Knorr, III
Covington, Kentucky

BRIEF FOR APPELLEE:

Daniel Cameron
Attorney General of Kentucky

Christopher S. Nordloh
Special Assistant Attorney General
Covington, Kentucky