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Commonwealth of Kentucky

Court of Appeals

NO. 2021-CA-0918-ME

A.P. APPELLANT

APPEAL FROM OLDHAM CIRCUIT COURT
v. HONORABLE DOREEN S. GOODWIN, JUDGE
ACTION NO. 21-J-00011-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; AND D.S.A., A
MINOR CHILD APPELLEES

AND

NO. 2021-CA-0919-ME

A.P. APPELLANT

APPEAL FROM OLDHAM CIRCUIT COURT
v. HONORABLE DOREEN S. GOODWIN, JUDGE
ACTION NO. 21-J-00012-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND

FAMILY SERVICES; AND J.J.A., A
MINOR CHILD APPELLEES

AND

NO. 2021-CA-0920-ME

A.P. APPELLANT

APPEAL FROM OLDHAM CIRCUIT COURT
v. HONORABLE DOREEN S. GOODWIN, JUDGE
ACTION NO. 21-J-00013-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; AND R.N.G., A
MINOR CHILD APPELLEES

AND

NO. 2021-CA-0921-ME

A.P. APPELLANT

APPEAL FROM OLDHAM CIRCUIT COURT
v. HONORABLE DOREEN S. GOODWIN, JUDGE
ACTION NO. 21-J-00014-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND

FAMILY SERVICES; AND G.J.P., A MINOR CHILD APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: GOODWINE, JONES, AND MAZE, JUDGES.

JONES, JUDGE: This consolidated appeal arises out of a series of dependency, neglect, and abuse ("DNA") actions filed by Eric Davis, an employee of Oldham County Schools ("OCS"), on behalf of four minor children: G.P., R.G., J.A., and D.A. Appellant, A.P., is the biological mother of G.P. and R.G. and the legal custodian of J.A. and D.A. As part of the above-styled DNA actions, A.P. was determined to have neglected all four children.

Following entry of the family court's disposition orders, in accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), counsel for A.P. filed *Anders*[1] briefs, which were accompanied by motions to withdraw in each of the four appeals. Thereafter, this Court advised A.P. of her right to continue these appeals *pro se* and she was provided with additional time to file briefs of her own choosing. A.P. did not file *pro se* briefs or otherwise take any action in relation to these appeals. Following careful review of

[1] *Anders v. State of California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

the record, and all applicable law, we grant counsel's motions to withdraw by separate order and affirm the family court's adjudication and disposition orders.

I. BACKGROUND

The four children at issue were enrolled in OCS during the 2020-21 school year. Each child was documented with an excessive amount of unexcused absences and tardy arrivals. The children's attendance problems mostly occurred during non-traditional instruction, which OCS utilized during various periods of the COVID-19 pandemic, but their attendance remained erratic even after the resumption of regular in-person classes. Citing the children's excessive absences as well as a myriad of other concerns about A.P.'s care of the children (ill-fitting clothes, behavioral problems, and noncompliance with medication), Eric Davis, an OCS employee, filed DNA petitions on behalf of the four children on or about March 26, 2021. A.P. was served with the petitions. Thereafter, the family court appointed counsel to represent A.P. and a guardian *ad litem* to represent the children.

After an initial hearing, the family court decided that the children could safely remain in A.P.'s care with the caveat that she was to make sure they attended school and she was to work with the Cabinet for Health and Family

Services ("the Cabinet").[2] The family court conducted an adjudication hearing on June 9, 2021. Records of the children's absences were introduced into evidence during the hearing. The records showed that the children have long suffered with attendance issues, though these issues escalated during the 2020-21 school year.[3] The records showed that in 2020-21: (1) D.A. had 46 unexcused absences and was marked tardy-unexcused 11 times; (2) J.A. had 79 unexcused absences and was marked tardy-unexcused 36 times; (3) R.G. had 54 unexcused absences and was marked tardy-unexcused 14 times; and (4) G.P. had 113 unexcused absences and was marked tardy-unexcused once. A.P. admitted the attendance records for the children appeared to be accurate. A.P. denied that she purposefully neglected the children and testified that she was caring for them to the best of her ability. She blamed their poor attendance on the fact that she suffers from a variety of medical issues, had an infant child in her care in addition to the four older children, and the various difficulties she faced during the COVID-19 pandemic. She additionally cited the fact that the children had many doctors' appointments; however, she rarely supplied a doctor's note for their medical appointments.

[2] It appears from the record that the Cabinet may have already been involved with the family when the instant petitions were filed.

[3] The records showed that in 2018-19, encompassing both unexcused absences and tardies: (1) R.G. had 24 total events; (2) D.A. had 11 total events; (3) J.A. had 10 events; and (4) G.P. had 25 events. In the 2019-20 school year: (1) R.G. had 18 events; (2) D.A. had 11 events; (3) J.A. had 9 events; and (4) G.P. had 21 events.

Following the adjudication hearing, the family court found the children were educationally neglected while in A.P.'s care. The children were committed to the Cabinet's custody and temporarily removed from A.P.'s care. The Cabinet later elected to return the children to A.P.'s physical care, but per the final disposition order entered by the family court the children remained in the Cabinet's legal custody. A.P. was ordered to continue working with the Cabinet, including completing parenting classes, undergoing a psychiatric evaluation, and enrolling the children in summer school.

Following entry of the final disposition orders, A.P.'s counsel filed a notice of appeal in each of the four DNA cases. A.P.'s counsel then filed *Anders* briefs in compliance with *A.C.*, in which counsel certified that there are no meritorious issues on which to base an appeal. Counsel pointed out that per *A.C.*, it is incumbent upon this Court to independently review the record to decide whether the appeal is frivolous. To assist the Court, counsel identified three possible areas of concern: (1) whether a finding of dependency was more appropriate than a finding of neglect where A.P. testified she did not intend to harm the children; (2) the Cabinet's lack of involvement in filing the petitions; and (3) A.P.'s expressed dissatisfaction with her appointed counsel.

II. ANALYSIS

"One of the legislative purposes of the dependency, neglect, and abuse statutes is to protect a child's fundamental right to educational instruction." *M.C. v. Commonwealth*, 347 S.W.3d 471, 473 (Ky. App. 2011). An abused or neglected child includes one whose parent, guardian, or custodian "[d]oes not provide the child with adequate care, supervision, food, clothing, shelter, and *education* or medical care necessary for the child's well-being when financially able to do so or offered financial or other means to do so." Kentucky Revised Statute ("KRS") 600.020(1)(a)8. (emphasis added).

In *M.C.* we upheld the family court's finding of educational neglect where the child in question had thirty absences and sixteen tardies notwithstanding the fact that the child had acceptable grades. We held:

> In the case at bar, the facts and evidence permitted an inference that, by incurring thirty absences and sixteen tardies, Child was unable to benefit from the instruction, structure, and socialization provided in a classroom setting. Despite Mother's argument to the contrary, we are not persuaded that "good" grades precluded a finding of educational neglect in this case; rather, we conclude that providing an adequate education for a child's well-being necessarily requires a parent to ensure the child attends school each day to participate in educational instruction. *Here, Mother's repeated inability to ensure Child attended school each day presented a threat of harm to Child's welfare by denying Child the right to educational instruction*.

> After careful review, we conclude the trial court's finding of educational neglect is supported by substantial evidence; accordingly, we affirm.

M.C., 347 S.W.3d at 473 (emphasis added).

Each of these children had a far worse attendance record than the child in *M.C.* as documented by the attendance records introduced into evidence. Moreover, A.P. failed to contest the attendance records or offer the family court with any credible evidence that would even partially excuse the children's poor attendance records. At best, A.P. demonstrated that she did not intend to harm the children and that she was simply overwhelmed by her parenting duties and the COVID-19 pandemic. However, "a parent need not intend to abuse or neglect a child in order for that child to be adjudged an abused or neglected child." *Cabinet for Health and Family Services v. P.W.*, 582 S.W.3d 887, 895 (Ky. 2019). In light of the testimony and evidence presented to the family court, we can discern no manifest error with respect to the family court's conclusion that these children were educationally neglected while in A.P.'s care due to their excessive absences during the 2020-21 school year. *M.C.*, 347 S.W.3d at 473.

Next, we consider the fact that the Cabinet did not file the DNA petitions at issue. "Any person who knows or has reasonable cause to believe that a child is dependent, neglected, or abused shall immediately cause an oral or written report to be made to a local law enforcement agency or to the Department

of Kentucky State Police, the cabinet or its designated representative, the Commonwealth's attorney, or the county attorney by telephone or otherwise." KRS 620.030. It is unclear from the record before us whether a report was initially made to the Cabinet by any OCS employee. It is clear, however, that Mr. Davis or someone else from OCS contacted the Oldman County Attorney. With the assistance of the county attorney, Mr. Davis filed the petitions at issue. The fact that the petitions were not filed by the Cabinet is of no consequence. KRS 620.070(1) ("A dependency, neglect, or abuse action may be commenced by the filing of a petition by any interested person[.]"). The Cabinet was provided notice of the proceedings and became actively involved once the children were committed to its custody. We can discern no manifest injustice regarding the Cabinet's involvement (or initial lack thereof).

Lastly, according to her counsel, A.P. was not satisfied with his appointment as her attorney. As a poor person, A.P. was entitled to the appointment of counsel to assist her in these DNA cases. KRS 620.100(1)(b). The right to the appointment of counsel, however, does not include the right to select a particular attorney. *Deno v. Commonwealth*, 177 S.W.3d 753, 759 (Ky. 2005). A person who is dissatisfied with appointed counsel "is not entitled to have that counsel substituted unless adequate reasons are given." *Id.* Based on the record before us, we can discern no adequate reason for A.P. to have been appointed

different counsel to assist her. There is no apparent conflict of interest and these were relatively straightforward DNA cases that counsel was qualified to practice. Additionally, based on our review of the record, we can appreciate no delinquency in counsel's representation of A.P. To the contrary, counsel zealously represented A.P. He attended all court proceedings, questioned witnesses, and presented a defense to the charge of neglect to the best of his ability given the facts of these cases.

III. CONCLUSION

For the reasons set forth above, we affirm the adjudication and disposition orders entered by the family court in these four DNA cases.

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert A. Riley
LaGrange, Kentucky

BRIEF FOR APPELLEE COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES:

Walter M. "Matt" Hudson
LaGrange, Kentucky