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Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-1443-ME

E.B., MOTHER

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE ELISE GIVHAN SPAINHOUR, JUDGE
ACTION NO. 21-J-00123-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; BULLITT
COUNTY ATTORNEY'S OFFICE;
AND C.B., A MINOR CHILD

APPELLEES

AND

NO. 2021-CA-1471-ME

J.B.

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HONORABLE ELISE GIVHAN SPAINHOUR, JUDGE
ACTION NO. 21-J-00123-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND

FAMILY SERVICES; BULLITT
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APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; CALDWELL, AND K. THOMPSON,
JUDGES.

CALDWELL, JUDGE: The natural parents of C.B., a minor child, appeal from the Bullitt Family Court's disposition order ordering the child remain in the custody of the Cabinet for Health and Family Services ("the Cabinet"), and also from subsequent findings of fact issued in response to a motion pursuant to Kentucky Rules of Civil Procedure ("CR") 52.02 filed by the father. Having reviewed the findings, the order, the accompanying record, and the briefs of the parties, we affirm.

FACTS

On June 9, 2021, a friend ("Friend") of the mother of twelve-year-old C.B. filed a petition with the Bullitt Family Court alleging that the father of the child had threatened to break the child's fingers and pushed the child down on the ground and held him down. The petition also alleged that the mother had asked the petitioner for assistance and had visible wounds and bruising that the mother

alleged were caused by her husband, the child's father. The petition also alleged that the father had been abusive towards the child and his mother for several years. Friend was granted temporary custody of C.B. by an emergency custody order.

A temporary removal hearing was held two days later. The court determined it was not in the best interests of the child to return him to his parents, there having been testimony establishing the existence of domestic violence between the father and mother. Such conclusion was supported by the volatile conduct of the parents before the court. Temporary custody was amended to grant custody to the child's paternal grandmother ("Grandmother").

On June 22, 2011, Grandmother contacted the social service worker ("SSW") assigned to the case to request that C.B. be removed from her custody because he refused to follow rules. When asked for an example of such behavior, Grandmother reported that the child had eaten more cookies than he was allowed to eat. When offered services that might allow C.B. to stay in her home, Grandmother refused such services. The next day, C.B. was placed in the custody of the Cabinet and placed in a foster home. When the SSW attempted a home visit with the natural parents on June 23, 2021, the mother refused to allow the SSW in the home and refused to sign any paperwork. The father was not present. Another home visit was scheduled for July 2, 2021, after consult with the parents.

On July 2, 2021, the natural mother contacted the SSW and canceled the home visit, stating she had another appointment. A Zoom meeting was held on July 6, 2021, which the parents did attend, but both stated they would not sign the case plan provided by the Cabinet. On July 15, 2021, two SSWs went to the home to attempt yet another home visit, but the mother again refused to allow them to enter. The father was not present. Phone calls and text messages were sent by the SSW to both parents in an attempt to schedule a home visit, but the parents never responded.

On July 19, 2021, the SSWs again attempted an unscheduled home visit, but no one was home. On July 21, 2021, the natural mother presented to the Bullitt County Department of Community Based Services (“DCBS”) office for a visit with the child. The father did not accompany her. During the visit, the mother repeatedly brought up the “case” with the child, visibly upsetting the child and raising the issue despite the SSW advising her not to do so. Despite this, the SSW quantified the mother as nurturing during the visit.

On August 4, 2021, the case was before the court on a motion of the natural mother raising concern about the presence of animals in the foster home. The mother alleged that the child had allergies to animals and needed an EpiPen in case of a reaction. The court ordered the mother to provide the name of the child’s treating allergist and ordered the parents not to discuss the case with the child.

Nothing in the record indicates the mother ever provided the treating allergist information.

The case came before the court on August 18, 2021, for an adjudication hearing. However, the case was continued as the Cabinet determined that the mother was not compliant with the Cabinet and a new petition would be filed. A contempt hearing and adjudication hearing was scheduled for September 8, 2021, but there is no indication in the record of a new petition being filed.

At the hearing, the court heard testimony from the original petitioner, Friend, the child, both parents, as well as the SSW. Friend testified that she had seen bruises on the mother and that the mother had told her that the father had abused her physically. The child told Friend that his father had threatened him and “put him down on the floor.” The court found Friend’s testimony credible. The SSW testified that the parents provided minimal cooperation. The court found that there had been repeated acts of domestic violence between the parents in the child’s presence. Further, the court found that the mother told the child to keep “private business private,” and therefore interfered with the investigation. The court also found that the father had put his hands on the child and pushed him to the ground at least once and that the child was afraid of him.

Following the hearing, the mother moved for the child to be returned to her custody. In the motion, the mother argued that since she was not named in

the original petition, she was not properly before the court. Therefore, the court erred in removing the child from her custody as she had not been found to have abused or neglected the child and placement in a foster home was not the least restrictive alternative. On October 6, 2021, that motion was considered by the court at the dispositional hearing. The court denied the natural mother's motion and continued placement with the Cabinet.

The father filed a motion pursuant to CR 52.02 for specific findings of fact and pursuant to CR 59 for an order vacating the adjudication. The mother likewise filed a motion pursuant to CR 52.01 for specific findings as to why the child was not placed in her custody and for an order pursuant to CR 59 vacating the judgment denying her motion for custody, which was heard on October 6, 2021.

The court entered findings of fact in support of the previous orders and judgments. A final review was conducted on December 8, 2021, and an SSW informed the court that the parents had not made any progress in completing the case plan, including even beginning protective parenting classes, a domestic violence assessment, or mental health assessments. When asked by the court if she had done anything towards the case plan, the mother responded that she had never agreed to a case plan. When the court pointed out that the plan had been ordered

by the court, the mother responded that she had not completed any of the tasks ordered as part of the parenting plan.

As the parents had refused to work the case plan, the court held there was nothing much she could do towards reunification. The matter was set for review in January of 2022, but the record in this matter as certified contains no appearances past December of 2021.

The parents filed separate notices of appeal and each requested review of the Bullitt Family Court's disposition order and the findings of fact promulgated in response to the mother's motion requesting specific findings of fact. The two cases were consolidated on appeal.

STANDARD OF REVIEW

The standard of review of a trial court decision regarding the dependency, neglect, or abuse and custody of a child is the highly deferential "clearly erroneous" standard.

A family court's findings of fact in a DNA^[1] action "shall not be set aside unless clearly erroneous." "A finding of fact is clearly erroneous if it is not supported by substantial evidence, which is evidence sufficient to induce conviction in the mind of a reasonable person." If the family court's findings of fact were supported by substantial evidence, and it applied the correct law, its decision will not be disturbed absent an abuse of discretion. An abuse of discretion occurs when "the family court's decision is unreasonable or unfair."

¹ Dependency, Neglect, or Abuse.

“Thus, in reviewing the decision of the family court, the test is not whether the appellate court would have decided it differently, but whether the findings of the family court are clearly erroneous, whether it applied the correct law, or whether it abused its discretion.”

M.C. v. Cabinet for Health & Fam. Servs., 614 S.W.3d 915, 921 (Ky. 2021)

(citations omitted).

The natural mother also challenges whether the family court had particular case jurisdiction as to her since the original petition filed by Friend only alleged abuse by the natural father. Questions of jurisdiction are matters of law and no deference to the trial court’s determinations is warranted as the standard of review is *de novo*. *Madison County Fiscal Court v. Kentucky Labor Cabinet*, 352 S.W.3d 572, 575 (Ky. 2011).

ANALYSIS

The natural parents raise several issues in their combined brief to this Court. They question whether the Bullitt Family Court had particular case jurisdiction vis-à-vis the natural mother. Additionally, they allege that there was no finding that the Cabinet satisfied the requirement that it make reasonable efforts at unification of the family. And finally, they question the quantum of evidence supporting the court’s conclusions that both parents abused or neglected the child. We affirm the Bullitt Family Court on each issue.

1. Particular case jurisdiction as to Natural Mother

The Appellants allege that the mother's due process rights were "trampled" because the original petition filed by Friend alleged abuse by the father only. They maintain that because the natural mother was not alleged to have abused the child in the original petition, the family court lacked particular case jurisdiction over her. Appellants allege that this resulted in the mother's due process rights being violated when the court determined to disrupt her natural rights to parent her child.

Preliminarily, particular case jurisdiction requires that a statutory scheme be honored before a court can act as to a matter.

This kind of jurisdiction often turns solely on proof of certain compliance with statutory requirements and so-called jurisdictional facts, such as that an action was begun before a limitations period expired.

Nordike v. Nordike, 231 S.W.3d 733, 738 (Ky. 2007).

Kentucky Revised Statute ("KRS") 620.070(1) provides that any dependency, neglect, or abuse action may be commenced by the filing of a petition by any interested party. And while the form provided to petitioners alleging dependency, neglect, or abuse of a child has a section for naming the person they believe responsible for the alleged actions, it is not a requirement of the statute. Further, KRS 620.080(2) allows temporary removal of a child, "even though it is not proved conclusively who has perpetrated the dependency, neglect or abuse."

In the present case, the jurisdiction of the court was secured when Friend filed the petition alleging abuse of *both* the natural mother and the child by the natural father. It was incumbent upon the family court to investigate the allegations of the petition, which included the allegation that the child had witnessed domestic violence perpetrated on the mother. The witnessing of abuse of one's parent can form the basis of a finding that a child is dependent, neglected, or abused, particularly when the parent who is subjected to the abuse denies such abuse is occurring. KRS 620.023. *See Cabinet for Health and Family Services v. P.W.*, 582 S.W.3d 887 (Ky. 2019).

The family court determined that the child was “exposed to repeated acts of domestic violence.” Further, the court found that the natural mother's denials of domestic violence conflicted with the evidence of abuse which she had acknowledged, all of which supports a finding of her having been abused by the father. Further, the natural mother had previously called the police after she was struck by the father. The child told the court that he had witnessed violence perpetrated on his mother by his father.

Even putting the domestic violence to which the mother allowed the child to be exposed aside, it was her interference with the investigation and her refusal to cooperate in any way with the investigation which supported a basis for the court to have concerns about her ability to parent the child even though the

original petition did not allege any physical abuse of the child on her behalf. *See Commonwealth, Cabinet for Health & Fam. Servs. ex rel. M.H. v. R.H.*, 199 S.W.3d 201, 204 (Ky. App. 2006) (holding that it is not necessary for the perpetrator to be identified in the order for a finding of neglect).

The family court did not violate the mother's due process rights when it exercised statutory jurisdiction over the petition which was properly filed pursuant to KRS 620.070(1).

2. The Cabinet made reasonable efforts to maintain the family.

The Appellants' allegation that the family court failed to find that the Cabinet did not exercise "reasonable efforts" to maintain the family is simply not cognizable. The order entered by the family court on October 6, 2021, following the disposition hearing, specifically held that "reasonable efforts were made to prevent the child's removal from the home." Per the statute, the Cabinet is to exercise "reasonable efforts" to maintain the family unit. KRS 620.020(13). There is substantial evidence to support the family court's conclusion that such reasonable efforts existed.

The Cabinet, through its SSWs, provided the natural mother and natural father with the roadmap of how to gain back custody of their child – the parenting plan, which satisfies the "reasonable efforts" standard. However, the parents wholly refused to sign off on the plan, and despite both parents being court

ordered to execute the plan, neither made any effort whatsoever to work the plan. *See Cabinet for Health & Fam. Servs. on behalf of C.R. v. C.B.*, 556 S.W.3d 568, 573 (Ky. 2018). In short, it was the failure of the parents, not the Cabinet, which required that the family court keep the child in the custody of the Cabinet. This claim is wholly meritless.

3. *The family court's conclusions were not clearly erroneous.*

On review, appellate courts give deference to the factual determinations of the trial court in matters concerning dependency, neglect, and abuse allegations and custody determinations. The family court judge met with the child *in camera* and observed his reactions to the questions she asked and appreciated his demeanor during the proceedings, both in and out of the presence of his parents. The family court also had the opportunity to observe the behavior and attitude of both parents. In doing so, the court determined it was in the child's best interests not to remain in the home. The court, with the consult of the SSWs, endeavored to place the child with a family member, his paternal grandmother. But his paternal grandmother decided within days of placement that she no longer wished to provide the child a home because he "stole cookies." Thus, the child was placed in a foster home, where he reported being happy to the court.

The family court specifically found that though the child loved his natural father, he also feared him. The child described a home where he was in

constant fear that something would anger his father. Despite Friend testifying that she had witnessed injuries on the mother and that the mother had reached out to Friend for assistance when she had been victimized by the father, the mother denied such to the court. The court found Friend credible and did not believe the mother's denials, particularly when the father was present during her testimony.

Finally, the complete and utter failure of the parents to even begin to attempt to complete steps in the parenting plan so that they might gain back custody of the child supports the family court's conclusion that the child's best interests would not be served by returning him to the home. *See A.C. v. Cabinet for Health & Fam. Servs.*, 362 S.W.3d 361, 362-63 (Ky. App. 2012). The mother instructed the child not to cooperate with the SSWs and to keep "private business private," frustrating the ability of the family court and the Cabinet to unify the family.

CONCLUSION

Pursuant to KRS 620.070, the Bullitt Family Court had jurisdiction over this matter. We find that the family court properly exercised its discretion in finding the child had been neglected and ordering the child be placed in the custody of the Cabinet. The court's order was supported by substantial evidence and was in the child's best interests. We affirm.

ALL CONCUR.

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