

RENDERED: SEPTEMBER 15, 2023; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2022-CA-1425-ME

C.M.

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT  
HONORABLE ELISE GIVHAN SPAINHOUR, JUDGE  
ACTION NO. 17-J-00029-003

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES; P.M., A MINOR  
CHILD; AND R.T.

APPELLEES

### OPINION AFFIRMING

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BEFORE: THOMPSON, CHIEF JUDGE; ACREE AND JONES, JUDGES.

THOMPSON, CHIEF JUDGE: C.M.<sup>1</sup> (“Appellant”) appeals from a November 8, 2022 order of the Bullitt Circuit Court denying her motion to establish visitation with her minor child, P.M. (“Child”). She argues that the circuit court improperly

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<sup>1</sup> Because this case involves child custody matters, we will not use the parties’ names.

failed to find that visitation was in Child's best interests. For the reasons addressed below, we find no error and affirm the order on appeal.

### **FACTS AND PROCEDURAL HISTORY**

Appellant and R.T. ("Father") are the biological parents of Child. Due to Appellant's lengthy history of substance abuse, Child was placed in the permanent custody of his sister, M.H. ("Sister") at an early age. Sister failed to provide Child with proper care, and she gave Child to Father. For years thereafter, Father continued to take care of Child. In 2021, the Cabinet for Health and Family Services ("the Cabinet") filed a dependency, neglect, and abuse ("DNA") petition against Sister, which resulted in an award of custody in favor of Father. Appellant was not a party to the DNA proceeding. The circuit court would later find that Father's home was the only home Child ever knew.

On October 1, 2020, Appellant filed a motion seeking contact with Child. The motion was denied because Appellant failed to remain sober. She filed a second motion seeking visitation on July 29, 2021. A hearing on the second motion was conducted, at which time Appellant testified that she had been sober for 15 months; that she had an addiction sponsor and attended therapy or counseling every week; and, that she was enrolled in college. Father opposed visitation because Child did not know that Appellant was his biological mother. In

addition, Father believed that Appellant's insertion into Child's life would be disruptive. Social worker Monica Gregory also testified.

After considering the testimony, the Bullitt Circuit Court rendered an order denying Appellant's motion for visitation. In support of the order, the court determine that Appellant's visitation would seriously endanger Child's emotional health per Kentucky Revised Statutes ("KRS") 403.320(1). It found that Child did not know that Appellant was his biological mother; that Father's wife was the only mother Child had ever known; and perhaps, most importantly, that Child at the age of approximately 9 years old was too young to hear the revelation that Appellant was his biological mother. The court determined that in order to protect Child's emotional health, he needed to be sufficiently mature to process the revelation that he had another mother. The court then ordered Father to consult with a mental health professional to determine the best way to tell child about Appellant, and held that Child should be told about Appellant no later than his 11th birthday. The court concluded that, "[t]his finding should not be construed to end the issue."

This appeal followed.

### **STANDARD OF REVIEW**

We review the trial court's findings of fact pursuant to Kentucky Rules of Civil Procedure ("CR") 52.01, and will not disturb those findings unless they are clearly erroneous. *Owens-Corning Fiberglas Corp. v. Golightly*, 976

S.W.2d 409, 414 (Ky. 1998). Findings of fact are not clearly erroneous if supported by substantial evidence. *Kentucky State Racing Commission v. Fuller*, 481 S.W.2d 298, 308 (Ky. 1972). Substantial evidence is that evidence which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the minds of reasonable people. *Id.* This standard applies to child custody proceedings. *Miller v. Harris*, 320 S.W.3d 138, 141 (Ky. App. 2010). We review the circuit court's questions of law *de novo*. *Nash v. Campbell County Fiscal Court*, 345 S.W.3d 811, 816 (Ky. 2011).

### **ARGUMENTS AND ANALYSIS**

Appellant, through counsel, argues that the Bullitt Circuit Court erred in denying her motion for visitation. She asserts that her parental rights have not been terminated and, as such, she has a constitutional right to raise her child. She argues that parental rights are a fundamental liberty interest protected by the 14th Amendment to the United States Constitution, and the termination of her parental rights is an improper abridgement of this liberty interest. Appellant contends that, though she has been a substance abuser in the past, the Cabinet never sought to terminate her rights as to Child and she was not a party to the DNA action against Sister. Further, Appellant argues that the circuit court's selection of Child's 11th birthday is arbitrary and that Child could be informed of his biological mother now

with the help of a therapist. She argues that visitation is in Child's best interests and she seeks an opinion reversing the order on appeal.

The Bullitt Circuit Court denied visitation at this time based on KRS 403.320(1), which states that,

[a] parent not granted custody of the child and not awarded shared parenting time under the presumption specified in KRS 403.270(2), 403.280(2), or 403.340(5) is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health. Upon request of either party, the court shall issue orders which are specific as to the frequency, timing, duration, conditions, and method of scheduling visitation and which reflect the development age of the child.

In denying Appellant's motion, the circuit court determined that Appellant's visitation with Child at the present time would endanger seriously his emotional health per KRS 403.320(1). The issue presented for our consideration is a mixed question of fact and law. We will first consider whether the court's findings of fact are supported by substantial evidence per *Owens-Corning Fiberglas Corp., supra*. If that question is answered in the affirmative, we then examine *de novo* the application of KRS 403.320(1) to the facts.

After careful review, we conclude that the Bullitt Circuit Court's findings of fact are amply supported by the record. It is uncontroverted that due to her long history of substance abuse, Appellant has had little contact with Child

since he was a toddler. The record demonstrates that early on, Child was placed with Sister, who gave him to Father. After caring for Child for some time, Father was awarded custody in the DNA proceeding. Appellant, having already lost custody of Child, was not a party to the DNA proceeding. The circuit court's conclusion that Father's home is the only home Child can remember is also supported by substantial evidence of record. The circuit court's findings are not clearly erroneous.

The next question, then, is whether the Bullitt Circuit Court properly applied these facts to KRS 403.320(1) in concluding that visitation would endanger seriously Child's emotional health. In considering this question, we must not determine whether the record could have supported a different result, but whether the record supports the result reached. *C.M.C. v. A.L.W.*, 180 S.W.3d 485, 494 (Ky. App. 2005). The fact that the record contains evidence that could support a different result does not mean that the circuit court's decision must be reversed. *Id.*

The record in this case supports the result reached. Child is established in his current household with Father and, as of the filing of this appeal, did not know that Appellant is his biological mother. According to Father, Child believes that Father's wife is Child's mother. Based on these facts, the court determined that it would be detrimental to Child's emotional wellbeing to reveal

this information to Child without first engaging the counsel of a qualified mental health professional. When considering the totality of the record, the result fashioned by the circuit court protects Child's emotional health in the short term while also directing Father to inform Child of his biological mother no later than Child's 11th birthday. This result reasonably accommodates the interests of all parties, while expressly leaving open the door for Appellant's visitation after Child learns that she is his biological mother.

### **CONCLUSION**

The Bullitt Circuit Court's findings of fact are supported by substantial evidence and the court properly applied the law to the facts. Accordingly, we find no error in the order on appeal. We affirm the order of the Bullitt Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEE.

Allison S. Russell  
Louisville, Kentucky