

RENDERED: MARCH 22, 2024; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2023-CA-0420-ME

E.H.T., JR., AND J.K.T.

APPELLANTS

v. APPEAL FROM HARDIN CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE DAWN LONNEMAN BLAIR, JUDGE
ACTION NO. 22-J-00288-001

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
AND E.H.T., III, A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: THOMPSON, CHIEF JUDGE; ECKERLE AND TAYLOR, JUDGES.

TAYLOR, JUDGE: E.H.T., Jr., (Father) and J.K.T. (Mother), both *pro se*, appeal from a March 28, 2023, dispositional order of the Hardin Circuit Court, Family Court Division, (family court) in this dependency, neglect, and abuse (DNA) case. The dispositional order provided that the parties' minor child, E.H.T. (Child)

would remain in the custody of the Cabinet for Health and Family Services (CHFS). We affirm.

BACKGROUND

The parties are from Oklahoma. In January of 2022, the Oklahoma Department of Human Services (ODHS) responded to a threat of harm made by Child in the form of a journal that was found at Child's school.¹ The journal alleged Father physically abused Child and his younger siblings and committed acts of domestic violence against Mother. Child specifically alleged that Father held a gun to his head and beat him with various instruments, including a paddle, horse whip, sticks, and his fists. The journal also revealed that Child had suicidal thoughts. However, upon being interviewed by a social worker, Child did not disclose abuse and the social worker noted that Child was "careful of how he answered questions." Mother was also interviewed and the record before us indicates she expressed fear of Father and a desire to leave him. She also confirmed to both the social worker and the principal at the school where she was employed that instances of domestic violence had occurred. On January 31, 2022, while ODHS was still conducting its investigation, Father and Mother transported Child to Kentucky to live with Father's brother, the Child's paternal uncle and aunt. Shortly after their arrival, Father and Mother granted legal guardianship of

¹ Child was twelve years old at the time.

Child to the uncle and aunt. Father and Mother returned to Oklahoma. Eventually, ODHS found the allegations of abuse unsubstantiated, but recommended services in the form of domestic violence education for both parents, anger management and parenting classes for Father, and counseling for Child.

In April 2022, Child disclosed allegations of abuse that had occurred in Oklahoma to medical professionals in Kentucky, as well as his continued suicidal thoughts. The allegations were subsequently reported to the CHFS. The record on appeal reflects that CHFS filed a DNA petition in July 2022, prompted by Father's threats to retrieve Child from Kentucky and return him to Oklahoma. As of July 2022, Mother and Father had not completed the recommendations of ODHS. On July 15, 2022, the family court entered an order granting temporary custody of Child to CHFS, but placement remained with the paternal uncle and aunt.

On October 17, 2022, CHFS filed an amended DNA petition to include the results of a forensic interview of Child by Dr. Kim Mudd. During the interview, Child disclosed numerous additional instances of physical abuse, domestic violence, death threats, and abuse of animals by Father. He also revealed Father offered him \$1,500 to drop everything and return to Oklahoma. Father filed an objection and motion to dismiss. The objection was premised on Father's argument that Kentucky lacked "territorial jurisdiction" over any events that

occurred in Oklahoma. Father also insisted that, in the event the family court did not dismiss the action, the court: (1) apply Oklahoma law; (2) order CHFS to pay for an attorney licensed in Oklahoma to represent him; and (3) appoint a special judge familiar with Oklahoma law to preside over the case. The family court denied Father's motion.

On February 17, 2023, the family court conducted an adjudication hearing that lasted approximately eight and one-half hours. Father and Mother appeared telephonically from Oklahoma. Father testified extensively and denied all allegations of abuse and domestic violence.² He blamed Child's behavior on the fact that he recently started public school in Oklahoma after being homeschooled for many years. Father classified his relationship with Mother as "great" and described his relationship with Child as "couldn't be better." In his testimony, Father frequently referred to what he called "title twenty-one section eight forty-four" of Oklahoma law to insist that corporal punishment is legal in Oklahoma, even though he testified he punished Child in that way only once or twice. He also stated that corporal punishment is allowed by scripture. The family court conducted an extensive interview of Child *in camera*. The parties and their attorneys were permitted to listen to the interview, but were not present. Child

² When Mother was called to testify by Cabinet for Health and Family Services (CHFS), Father protested. After a brief recess to consult with her counsel, Mother declined to testify at the adjudication hearing.

made allegations consistent with what was contained in the DNA petition. Later, when Father was recalled to testify, he continued to insist that Child was not telling the truth and denied all allegations. On March 3, 2023, the family court entered extensive findings of fact in addition to completing form AOC-DNA-4, entitled “Order Adjudication Hearing.” The family court found that Child’s testimony was credible and adjudicated him as abused or neglected. On March 22, 2022, the family court conducted the dispositional hearing and subsequently entered the March 28, 2023, order stating Child was to remain in the custody of CHFS. The dispositional order also incorporated the findings made in the adjudication order. This appeal followed.

STANDARD OF REVIEW

On appeal, Father and Mother do not contest the findings of fact and conclusions of law of the family court. Rather, they first argue Kentucky lacked jurisdiction. Appellant’s Brief at 14-16. Jurisdiction issues are questions of law which we review *de novo*. *Addison v. Addison*, 463 S.W.3d 755, 764 (Ky. 2015). Their second argument is that the family court “improperly aligned itself with the prosecution thus violating [Father’s and Mother’s] due process right to a fair and impartial trial.” Appellant’s Brief at 16. This argument is unpreserved and Father and Mother request palpable error review under Kentucky Rules of Civil Procedure 61.02 which provides that:

A palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error.

“Manifest injustice is error [that] so seriously affect[s] the fairness, integrity, or public reputation of the proceeding as to be shocking or jurisprudentially intolerable.” *Iraola-Lovaco v. Commonwealth*, 586 S.W.3d 241, 245 (Ky. 2019) (internal quotation marks and citations omitted). Our review proceeds accordingly.

ANALYSIS

We first address the jurisdictional argument. Kentucky Revised Statute (KRS) 610.010(1), part of Kentucky’s Unified Juvenile Code, states, in relevant part, that “[u]nless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his or her eighteenth birthday[.]” This must be read in conjunction with KRS 23A.100(2)(c), which gives the family court jurisdiction over dependency, neglect, and abuse proceedings under KRS Chapter 620. Father and Mother argue that, “[r]ather than granting Hardin Family County judicial authority over allegations of criminal activity taking place all over the world, KRS 610.010 merely *assigns* cases involving children found in the county borders

exclusively to [the family court.]" Appellant's Brief at 15-16. This argument has no basis in the law.

"The purpose of the dependency, neglect, and abuse statutes is to provide for the health, safety, and overall wellbeing of the child." *S.R. v. J.N.*, 307 S.W.3d 631, 637 (Ky. App. 2010). Contrary to the assertions of Father and Mother, the family court was not conducting a criminal trial for crimes committed in Oklahoma. "The adjudication determines the truth or falsity of the allegations in the DNA petition, while the disposition determines the action to be taken by the court on behalf of the child or children." *M.C. v. Cabinet for Health and Family Services*, 614 S.W.3d 915, 920-21 (Ky. 2021) (footnotes omitted). Further, "[t]he foundation of our Unified Juvenile Code is to serve the best interests of the child." *Id.* at 922 (footnote omitted). Because Child was residing in Hardin County when he made disclosures of abuse, the family court had jurisdiction under KRS 610.010 and KRS 23A.100, regardless of where Father and Mother were living and regardless of where the alleged abuse took place.

The family court also has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The UCCJEA is codified in KRS 403.800 through 403.880, and applies to custody proceedings "in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, **neglect, abuse,**

dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence[.]” KRS 403.800(4) (emphasis added).³ We note that, because ODHS chose not to take their case to the Oklahoma courts, there was no prior custody determination regarding Child in Oklahoma. KRS 403.828 provides, in relevant part,

- (1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.
- (2) If there is no previous child custody determination that is entitled to be enforced under KRS 403.800 to 403.880 and a child custody proceeding has not been commenced in a court of a state having jurisdiction under KRS 403.822, 403.824, and 403.826, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under KRS 403.822, 403.824, and 403.826. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under KRS 403.822, 403.824, and 403.826, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

In other words, even if Father and Mother had argued that Oklahoma had jurisdiction over custody issues pertaining to Child (which they did not), the

³ Oklahoma has also adopted the Uniform Child Custody Jurisdiction and Enforcement Act.

Hardin Family Court had temporary emergency jurisdiction under KRS 403.828(1), once Child disclosed the abuse. However, because there is no prior custody order from Oklahoma, the family court has jurisdiction pursuant to KRS 403.828(2). We find no error in the family court assuming jurisdiction in this case.

Father and Mother next argue they were denied due process because the family court judge asked questions during the adjudication hearing. We disagree. We note that many of the family court's questions were an attempt to clarify Father's testimony due to the often-poor sound quality of his telephonic testimony from Oklahoma. Other questions by the family court probed into inconsistencies in Father's testimony. Kentucky Rules of Evidence (KRE) 614(b) provides, in relevant part, that, "[t]he court may interrogate witnesses, whether called by itself or by a party." Importantly, the family court was the fact-finder in both the adjudication and dispositional hearings. As a result, there was no risk of the possibility that the family court appeared biased to jurors or that it was attempting to influence the outcome of the trial. *See Terry v. Commonwealth*, 153 S.W.3d 794 (Ky. 2005), *superseded by statute on other grounds as stated in Gaither v. Commonwealth*, 521 S.W.3d 199 (Ky. 2017). Further, "[w]hen the trial court acts as the trier of fact, the extent of examination of witnesses by the presiding judge is left to the trial judge's discretion." *Bowling v. Commonwealth*,

80 S.W.3d 405, 419 (Ky. 2002) (citing *United States v. McCarthy*, 196 F.2d 616, 619 (7th Cir. 1952) (citation omitted)). There was no manifest injustice.

For the foregoing reasons, the March 28, 2023, disposition order of the Hardin Circuit Court, Family Court Division is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

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