

RENDERED: JANUARY 5, 2024; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2023-CA-0648-ME

J.F.-A. AND M.N.

APPELLANTS

v. APPEAL FROM ELLIOTT CIRCUIT COURT  
HONORABLE JENIFFER BARKER NEICE, JUDGE  
ACTION NO. 23-J-00001-001

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES; A.T., A CHILD;  
AND J.T.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: GOODWINE, KAREM, AND McNEILL, JUDGES.

KAREM, JUDGE: This appeal arises from an adjudication hearing in a Dependency, Neglect, or Abuse (“DNA”) case brought by the Cabinet of Health and Family Services (the “Cabinet”) regarding child A.T. (“Child”) against her mother, J.F.-A. (“Mother”) and mother’s paramour, M.N.<sup>1</sup> Appellants challenge

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<sup>1</sup> The Cabinet named M.N. as a non-parent exercising custody or control of Child.

the trial court's use of *in camera* testimony from Child, contending that they were not allowed the opportunity to cross-examine Child, thus violating their right to confront and cross-examine a witness. We disagree and affirm the circuit court.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The Cabinet filed a DNA petition in the interest of Child on January 10, 2023, following allegations of sexual abuse. The circuit court conducted a Temporary Removal Hearing the next day and ultimately placed Child in the temporary custody of her father. The circuit court appointed Mother with counsel and Child with a Guardian *ad litem* ("GAL").

At the Adjudication Hearing on March 13, 2023, the Commonwealth called Child as its first witness. At that time, the GAL requested Child be allowed to testify out of the presence of her parents or caretakers. Considering the nature of the case, the trial court indicated that it would conduct the questioning as an *in camera* interview with both parties being allowed to hear the interview and submit questions as their method of cross-examination. Mother and M.N. objected.

The *in camera* interview between the trial court and Child, in the presence of the GAL, was held in the courtroom. Following the trial court's initial questioning, the judge exited the courtroom, presumably to speak with the parties, and returned with a list of questions submitted by the parties. At the conclusion of the hearing, the circuit court found the petition to be true in its entirety and, as

such, left Child in the temporary custody of her father. Additionally, the circuit court set the matter for a Disposition Hearing on April 24, 2023, after which the circuit court found neglect and abuse. This appeal arose from Appellants' objection to the circuit court interviewing the child *in camera*.

### ANALYSIS

Kentucky Revised Statute ("KRS") 403.290(1) governs *in camera* interviews and provides that the court "**may interview** the child in chambers to ascertain the child's wishes as to his custodian and as to visitation." (Emphasis added.) While the trial court has discretion as to whether counsel is present during the interview, the statute further provides that, "[t]he court shall cause a record of the interview to be made and to be part of the record in the case." *Id.* Thus, the circuit court had discretion as to how the evidence would come in and "abuse of discretion is the proper standard of review of a trial court's evidentiary rulings." *Goodyear Tire and Rubber Co. v. Thompson*, 11 S.W.3d 575, 577 (Ky. 2000).

In presenting their argument to this Court, Mother and M.N. misinterpret the cases upon which they rely. In *Couch v. Couch*, 146 S.W.3d 923, 925 (Ky. 2004), a domestic relations commissioner held an *in camera* taped interview with a child when deciding which parent would be the primary physical custodian. However, the trial court sealed the tape, preventing either party from

viewing the testimony for purposes of rebuttal and appeal. *Id.* The Court, upon review, held that the mother's rights had been substantially prejudiced:

The only issue currently before us relates to the propriety of the sealed interviews and whether the trial court erred in denying [the mother] access to the taped interviews with [the child], particularly in light of the fact that the Commissioner's recommendation of a change in custody was based primarily on [the child's] wishes. [The mother] argues that sealing the interviews substantially prejudiced her rights as it impeded her ability to rebut any testimony by [the child] or to utilize any such evidence on appeal. We agree.

*Id.* at 925. *Couch* is easily distinguishable from the case *sub judice* in that the circuit court permitted Mother and M.N. to view the *in camera* interview in real time and submit questions for Child.

Appellants further argue the reasoning in *Morgan v. Getter*, 441 S.W.3d 94 (Ky. App, 2014), should be applied. However, in *Morgan*, the daughter's GAL testimony was in question when a mother was not allowed the opportunity to cross-examine the GAL, not the testimony of the child herself. *Id.* at 111-12. We decline to extend the reasoning in *Morgan* to this case.

In *May v. Harrison*, 559 S.W.3d 789, 791 (Ky. 2018), the Court made clear the analysis to be used in the question of an *in camera* interview with children:

[The mother] also alleges that her right to due process and her right to cross-examine [the child] were violated here. However, she concedes that the judge returned to

the courtroom during the *in camera* interview and permitted her counsel to submit questions for [the child] on two separate occasions. Therefore, [the mother] was permitted an opportunity to question the witness. Considering the unique context of domestic relation cases and the *in camera* testimony of minors, [the mother] received the process that is due.

*Id.* at 791 (citations omitted). In an almost identical situation, Mother and M.N. were allowed to view the interview out of sight of Child and submit questions before the close of the testimony. Appellants were provided adequate due process.

### **CONCLUSION**

For the foregoing reasons, we affirm the orders of the Elliot Circuit Court.

ALL CONCUR.

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