

Commonwealth Of Kentucky

Court of Appeals

NO. 2001-CA-002558-DG

KEVIN HAMBY AND
KELLY HAMBY

APPELLANTS

ON DISCRETIONARY REVIEW FROM LYON CIRCUIT COURT
v. HONORABLE BILL CUNNINGHAM, JUDGE
ACTION NO. 01-XX-00002

COMMONWEALTH OF KENTUCKY;
CABINET FOR FAMILIES AND CHILDREN,
DIVISION OF PROTECTION AND ADVOCACY;
HONORABLE BILL CUNNINGHAM,
LYON CIRCUIT COURT JUDGE;
AND HONORABLE JILL CLARK,
LYON DISTRICT COURT JUDGE

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND DYCHE, JUDGES.

DYCHE, JUDGE. This matter is before us on discretionary review¹
of an opinion of the Lyon Circuit Court affirming an order of

¹ Although we do not usually grant discretionary review to merely re-examine the evidence in a case without "special reasons" (CR 76.20(1)), since a panel voted to grant review, and this is an important issue to the parties, we will consider the merits of the case.

the Lyon District Court finding the four children of the appellants to be "neglected" as defined in KRS 600.020(1)(h):

"Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent . . . [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.

The parents argue here, as they did below, that the children are, at worst, "dependent":

"Dependent child" means any child, other than an abused or neglected child, who is under improper care, custody, control or guardianship that is not due to an intentional act of the parent

KRS 600.020(16).

The evidence in the case shows that in March, 2001, the children had suffered an infestation of head lice, and were missing a significant amount of school; as a result of these chronic problems, a protective services case had been opened by the Cabinet for Families and Children. The Family Preservation Program of the Cabinet, designed to help keep the children in the home, was provided to the Hambys, and a series of intensive home visits (10 hours a week for 4-6 weeks) began. After two weeks, the Hambys were not home when the worker called. The Cabinet received information that the family had lost utility services, but upon repeat visits, workers found no one at home.

On June 6, 2001, a worker visited the home, and was refused admittance. Mrs. Hamby admitted to the worker that the only utility service was an extension cord, which ran from a neighbor/relative's house, providing them with minimal electrical service. There was no running water, natural gas, or other sanitary services. The worker acknowledged that the children were clean, having bathed at nearby relatives' homes, that the lice problem had abated, that the children were attending school, and that she "suspected" that there was food in the home. At that time, neither parent was working. The family had been "camping" for the preceding two weeks. These facts resulted in the petition (KRS 620.070) being filed in district court, and the finding of neglect which brings us here.

The heart of the Hambys' argument is that they were the victims of a series of mishaps resulting in the termination of Mr. Hamby's job, and the loss of utility service. They argue that the children are, at worst, dependent, as there was no "intentional" act which led to the predicament in which the Cabinet worker found the family on June 6, 2001.

We agree with the circuit court that this is a close question, but also agree that the district court made the correct decision. It is the stated goal of the statutes concerning matters such as this to preserve the family, intact, when possible; but the overriding purpose of any Cabinet or

court intervention in families' lives is the protection of children and their fundamental rights as set out in KRS 620.010. With that in mind, we must conclude that the courts below were not clearly in error. While we have every sympathy for the parents and the unfortunate series of events which led to the loss of the father's job, and the termination of utility services, it was the intentional act of refusing completion of the Family Preservation Program which left them in the situation in which they found themselves. Further participation in the program could, and probably would, have prevented the utility problem, and perhaps even the loss of employment.

We realize that government intrusion into the sanctity of family life is a matter not to be lightly undertaken, or judicially approved, but the welfare of the young is paramount. In this case, the facts are in favor of the finding of neglect. We commend the *Guardian ad Litem* for the Hambys for her diligent and caring efforts in their behalf.

The opinion of the Lyon Circuit Court is affirmed.

ALL CONCUR.

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