RENDERED: April 1, 2005; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002552-MR

L.G.; Z.G., A CHILD; and
L.G., A CHILD — APPELLANTS

v.

APPEAL FROM HENDERSON CIRCUIT COURT
HONORABLE SHEILA NUNLEY-FARRIS, JUDGE
ACTION NOS. 03-J-00258-001 & 03-J-00259-001

COMMONWEALTH OF KENTUCKY, CABINET
FOR FAMILIES AND CHILDREN — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BARBER AND VANMETER, JUDGES; HUDDLESTON, SENIOR JUDGE.[1]

VANMETER, JUDGE: This is an appeal from disposition orders entered by the Henderson Family Court relating to charges of child neglect. Appellant L.G., whose two children were returned to her care and custody after the hearing, contends that the trial court erred by finding that the children were neglected

[1] Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute 21.580.

and by temporarily removing them from her care. For the reasons stated hereafter, we affirm.

L.G.'s two children were born in August 1995 and November 2001. It is undisputed that on July 10, 2003, L.G. and the children traveled to a McDonald's for lunch. L.G. left the children in her parked, running car while she went inside to purchase food. L.G. later testified that she watched the children from inside the restaurant during the entire time she was inside, except during a thirty-second period when she obtained drinks. Meanwhile, a social worker employed by the Cabinet for Families and Children (CFC), who also went to McDonald's for lunch, observed the children in the vehicle and began talking with them. The worker later testified that she observed the unsupervised children playing in the running vehicle for three to five minutes, that the toddler was unrestrained and playing in the front seat, and that L.G. did not visibly respond to the worker's interaction with the children. The social worker introduced herself when L.G. returned to the car, but L.G. declined to speak with the worker and left the scene with her children. The social worker reported the incident to her supervisor and was assigned the responsibility of further investigating the situation.

Five days later, on July 15, the social worker went to L.G.'s home where she concluded that L.G.'s toddler was

unsupervised while outside in L.G.'s car. According to the worker the toddler was unrestrained, the car windows were open, and no one responded when she approached and remained near the car for approximately one minute. L.G. later testified that she had left the toddler in her car for only a short time while she returned to her apartment to answer the phone, and that a friend was watching the child outside while L.G. was inside. However, the social worker testified that L.G. did not come outside until the worker knocked on her door. Again, L.G. refused to speak with the worker and left the scene.

L.G. then met with local CFC officials, but on July 16 the social worker filed petitions alleging that the children were neglected. Emergency custody orders (ECO's) were issued and the children were placed in foster care. Some two weeks later, after L.G. provided names and background checks were completed, the children were moved into a relative's home.

On September 18 the trial court entered adjudication orders finding that the children were neglected, that L.G. had admitted "under oath that the children might have been [at] risk due to being left in a running vehicle," and that they should continue to reside outside of L.G.'s home. On September 25, after L.G. sought reconsideration, the trial court directed that the children should be returned to L.G.'s home. Finally, on October 2 the court entered disposition orders directing that

the children should "[b]e returned/released to home of removal," that L.G. should "cooperate fully with DCBS,"[2] and that despite the findings of neglect the children's best interests did not require the court to take custody of them. This appeal followed.

First, L.G. contends that the evidence was insufficient to support the trial court's finding that the children were neglected. We disagree.

A trial court's findings of fact may be set aside only if clearly erroneous, with the dispositive question being "whether or not those findings are supported by substantial evidence."[3] Substantial evidence is defined as

> "[e]vidence that a reasonable mind would accept as adequate to support a conclusion" and evidence that, when "taken alone or in the light of all the evidence . . . has sufficient probative value to induce conviction in the minds of reasonable men." Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses" because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court. Thus, "[m]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal," and appellate courts should not

[2] Formerly CFC.

[3] *Moore v. Asente,* 110 S.W.3d 336, 354 (Ky. 2003) (footnote omitted).

> disturb trial court findings that are supported by substantial evidence.[4]

As stated in *Cross v. Clark*, "[t]he determination of the weight of conflicting evidence and of the credibility of witnesses rests exclusively within the province of" the trier of fact, who "may believe any of the witnesses in whole or in part, and may accept the testimony of one set of witnesses to the exclusion of that of another or the testimony of one witness as against the testimony of a number of witnesses."[5]

KRS 600.020(1) defines an abused or neglected child as including one whose health or welfare either is harmed or is threatened with harm when the child's parent "[c]reates or allows to be created a risk" of physical injury "by other than accidental means,"[6] when the parent "repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child,"[7] or when the parent fails to provide adequate supervision as is "necessary for the child's well-being."[8] Here, substantial evidence was adduced regarding

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[4] *Id.* at 354 (footnotes omitted) (quoting *Black's Law Dictionary* 580 (7th ed. 1999), *Blankenship v. Lloyd Blankenship Coal Co.,* 463 S.W.2d 62, 64 (Ky. 1970), CR 52.01, and 7 Kurt A. Phillips, Jr., *Kentucky Practice,* CR 52.01, note 55, comment 8 (5th ed. 1955)).

[5] 308 Ky. 18, 213 S.W.2d 443, 446 (1948).

[6] KRS 600.020(1)(b).

[7] KRS 600.020(1)(d).

[8] KRS 600.020(1)(h).

one occasion when both of L.G.'s children were left unrestrained and unsupervised in a running vehicle, and another occasion when her toddler was left unsupervised in an open vehicle. Regardless of whether members of this panel would have reached the same conclusions as the trial court if sitting as triers of fact, we cannot say that the evidence was insufficient to support the trial court's decision, by a preponderance of the evidence, that the children were neglected.

L.G. next contends that CFC abused its authority by removing the children from her care. However, this issue is not properly before us since this is not an appeal from an action brought by L.G. alleging that CFC misused its authority. Instead, the issues raised below pertain to the trial court's, rather than CFC's, ability to remove the children from L.G.'s care.

Finally, L.G. contends that the trial court abused its discretion by entering emergency and temporary custody orders. We disagree.

A trial court may enter an ECO pursuant to KRS 620.060(1), which permits such action

> when it appears to the court that removal is in the best interest of the child, and that there are reasonable grounds to believe, as supported by affidavit or by recorded sworn testimony, that one (1) or more of the following conditions exist and that the parents or other person exercising custodial

> control or supervision are unable or unwilling to protect the child:
>
> (a) The child is in danger of imminent death or serious physical injury . . .; [or]
>
> . . .
>
> (b) The child is in immediate danger due to the parent's failure or refusal to provide for the safety or needs of the child.

A temporary custody order may be issued pursuant to KRS 620.090(1) if, after a hearing, the court finds that there are "reasonable grounds to believe the child is dependent, neglected or abused."

Here, it was undisputed that the children, including an unrestrained toddler, were left in a running car without adult supervision while L.G. went into McDonald's, and L.G. admitted under oath that there "might have been" a risk to the children from being left in the running vehicle. Further, it was undisputed that five days later, the social worker found L.G.'s unrestrained toddler playing in an open car while L.G. was inside her home. Although L.G. asserted that a friend was outside watching the child, there was evidence that no adults were near the child or responded to the worker's presence by the car. Since such evidence certainly was sufficient to constitute "reasonable grounds to believe" that inadequate supervision placed L.G.'s children in serious or immediate danger, we cannot

say that the trial court erred by entering the protective emergency and temporary custody orders.

The court’s judgments are affirmed.

ALL CONCUR.

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