

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2004-CA-001430-ME  
NO. 2004-CA-001431-ME

KELLY GARRIS

APPELLANT

v. APPEAL FROM ELLIOTT FAMILY COURT  
HONORABLE KRISTI HOGG GOSSETT, JUDGE  
ACTION NOS. 00-J-00011 AND 00-J-00012

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: DYCHE, SCHRODER, AND VANMETER, JUDGES.

DYCHE, JUDGE: Kelly Garris appeals from an order of the Elliott Family Court granting permanent custody of her two sons to a relative. We affirm.

The incident which gave rise to the filing of the petition in this case was but a continuation of a series of abusive and neglectful acts by Kelly toward the boys. This particular incident involved the beating of one of the boys by

Kelly's live-in boyfriend. The boyfriend was purportedly disciplining the child for jumping on a bed, and breaking a bed slat. The manner of discipline: beating with the broken slat on the child's buttocks and lower back. Bruises were discovered by the father's family, and the child was admitted overnight to the hospital.

The children were returned, after temporary removal, to Kelly, with the stipulation that they have no contact with the boyfriend. Kelly could not keep that stipulation, and the temporary custody of the boys was given to the Cabinet for Families and Children. At a hearing in the family court, the parents admitted that one of the boys had been abused, and that both had been neglected, neither admitting to the act causing the bruises.

The trial court found that reasonable efforts to prevent removal from Kelly's home had been made by the Cabinet, that no less restrictive alternative was available to protect the boys, and that it was in their best interest to be placed permanently with the relative. This appeal followed.

Kelly argues that she was denied procedural due process by the trial court. We disagree. The trial court followed the applicable statutes. Kelly was represented by counsel. The cabinet made reasonable efforts to prevent removal, and to facilitate return of the children. Kelly was

unavailable for notification by mail, which caused some delay in the process, but that is her own fault, not the Cabinet's nor the court's. The parents admitted neglect. Abuse was shown to have happened while in Kelly's custody. She was unable or unwilling to prevent contact between the children and the abusive boyfriend. A properly supported finding of the children's best interest was made: placement with relatives. We find no procedural error.

Kelly also argues that the trial court erred by not returning the children to her. Such argument is refuted by the record. We have examined the entire record and watched the hearing on the placement. The record fully supports the trial court's action.

The judgment of the Elliott Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

MaLenda S. Haynes  
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BRIEF FOR APPELLEE:

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