RENDERED: MARCH 8, 2024; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2023-CA-0735-ME

PAUL GEOUGE — APPELLANT

v.

APPEAL FROM CLARK CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE KIMBERLY BLAIR WALSON, JUDGE
ACTION NO. 19-J-00236-002

COMMONWEALTH OF KENTUCKY, DEPARTMENT OF COMMUNITY BASED SERVICES; C.S., MOTHER; AND E.G., A MINOR CHILD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: LAMBERT, MCNEILL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Paul Geouge appeals from the May 18, 2023, dispositional order of the Clark Circuit Court, Family Court Division, (family court) in this dependency, neglect, and abuse (DNA) case.[1] The family court entered two orders

[1] The case on appeal, Clark County Case No. 19-J-00236-002, named Paul Geouge only as the person responsible in the petition. This case overlapped and was eventually consolidated with an

after the adjudication hearing on June 10, 2022. The dispositional order provided that minor child, E.G. (Child) would remain in the custody of the Cabinet for Health and Family Services (Cabinet). We affirm.

Factual and Procedural Background

Geouge and his wife, J.G., participated on a social networking website for adults who indulge in various sexual fetishes and the practices of bondage, discipline, sadism, and masochism (BDSM). Geouge held himself out as a "master" who was seeking "slaves" to not only indulge his sexual fantasies and polyamorous lifestyle, but also to "produce heirs." Although Geouge and J.G. had raised two children of their own, J.G. was past her child-bearing years.[2] Both Geouge and J.G. began communicating with C.S. on the fetish website. C.S. was approximately thirty-three years younger than Geouge and lived in California. The parties exchanged text messages and telephone calls. Eventually, it was decided that C.S. would visit Geouge and J.G. in Kentucky to see if she wanted to integrate into their family and have a child with Geouge.

In the autumn of 2018, C.S. took a train from California to Kentucky. Rather than return to California as planned, C.S. stayed in Kentucky and eventually

---

earlier action, Clark County Case No. 19-J-00236-001, which named both parents as persons responsible. C.S. (Mother) stipulated to dependency in the earlier action and does not appeal.

[2] Geouge and his wife, J.G., had a son who passed away as a young adult.

became pregnant with Geouge's Child.[3] Child was born in August of 2019. While C.S. was in the hospital giving birth to Child, hospital personnel contacted adult protective services on behalf of C.S. and the Cabinet on behalf of Child. C.S. was exhibiting erratic behaviors and an inability to parent Child. She reported that Geouge was controlling and violently sexually abusive to her. Cabinet case workers went to the home and discovered a wall covered in whips and paddles as well as a large indoor container of farm tools. Julie Ferrell, a supervisor with the Cabinet, testified that Geouge attempted to prevent C.S. and J.G. from speaking to Cabinet representatives.

In August, 2019, the Cabinet filed an emergency petition for custody of Child, which was granted. An agreement was subsequently reached where Geouge would leave the home and Child was returned to C.S., under the supervision of J.G. By October 2019, Child was returned to the custody of C.S. and Geouge, and Geouge was allowed to return to the home. All parties, including J.G., were ordered to undergo a parenting assessment by Dr. David Feinberg.

On April 1, 2020, the Cabinet filed a second DNA petition. The allegations in the petition were based on a lengthy letter from C.S. that described numerous instances of domestic violence and sexual abuse she suffered from

[3] At some point C.S. returned to California with Geouge to collect her belongings and move them to Kentucky.

Geouge. The letter also stated that this abuse occurred in the presence of Child. Emergency custody of Child was granted to the Cabinet. The parties, including J.G., were again ordered to undergo parenting assessments by Dr. Feinberg. These were completed and reunification with Child was not recommended for Geouge, C.S., or J.G. Geouge hired at least one mental health expert to refute Dr. Feinberg's recommendations, and what followed was extensive discovery, including obtaining C.S.'s medical records from California, depositions of experts and parties, motions for continuances from all parties, and numerous motions *in limine* regarding admissible evidence at the adjudication hearing. This was also at the height of the COVID-19 pandemic. As a result, the adjudication hearing did not take place until June 8, 2022.

The adjudication hearing lasted over nine hours and focused on the domestic violence and abuse Geouge inflicted upon C.S., including in the presence of Child and once while Child was in bed with C.S. and Geouge. At the hearing, the Commonwealth called Julie Ferrell, Kentucky State Police Detective Michael Keeton,[4] and C.S. C.S. provided lengthy and detailed testimony about the extreme control and abuse she suffered at the hands of Geouge. The evidence established Geouge controlled every aspect of C.S.'s life, including her finances, how she

[4] Although Detective Michael Keeton conducted an investigation, at the time of this appeal, no criminal charges have been filed against Geouge.

wore her hair, her clothing, food intake, and her coming to and from the home. She was forced to wear bells around the home so that Geouge knew where she was at all times. C.S. also detailed physical abuse and instances of sexual assault. Although she acknowledged meeting Geouge and J.G. on a fetish-themed social networking site, C.S. did not consent to the beatings and sexual violence perpetrated on her by Geouge. She testified that she was not permitted to have a "safe word" that she could say during sexual activity that would alert Geouge that she no longer consented. C.S. detailed the various paddles, chokers, and other implements used on her by Geouge. The domestic violence and sexual assault continued once Child was returned to the home. C.S. testified Geouge sexually assaulted her while Child was in the bed with them. On C.S.'s last night in the home, there was an instance of domestic violence between C.S. and Geouge in Child's presence. Finally, C.S. detailed her own mental health challenges, including autism, dependent personality disorder, and bipolar disorder.

Geouge called J.G. as a witness who testified that her marriage to Geouge was like "1950's Leave It To Beaver" and denied all controlling and abusive behavior by Geouge towards her and C.S. She stated that any "punishment" she received from Geouge was because she asked for it and only occurred during "sexy time." Although J.G. acknowledged consensually engaging in BDSM activities with Geouge, she stated that it never occurred in the presence

of Child. Geouge also testified and denied all allegations of domestic violence and sexual assault.

On June 10, 2022, the family court entered an extensive opinion and findings of fact after the conclusion of the adjudication hearing. The court found Child was abused or neglected due to a clear risk of harm from Geouge who engaged in acts of sexual abuse and domestic violence against C.S. while Child "was *in utero* and present in the home; and, on one occasion, while in the same bed[.]" June 10, 2022, order at 12.

After entry of the adjudication order, numerous motions were filed by the parties, including motions for continuances. As a result, the disposition hearing did not occur until May 18, 2023. Thereafter, the family court immediately entered an order for Child to remain in the custody of the Cabinet and the permanency goal was changed to adoption. This appeal follows.

Preservation and Standard of Review

Geouge acknowledges his arguments on appeal are not preserved. His assertions center on what he claims were biases of the presiding family court judge. The alleged bias only became apparent during the adjudication hearing through various behaviors and statements by the judge. We agree with Geouge that his allegations of bias raised on appeal are governed by KRS 26A.015(2)(a) which states, in relevant part, that:

> (2) Any justice or judge of the Court of Justice or master commissioner shall disqualify himself in any proceeding:
>
> (a) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings, or has expressed an opinion concerning the merits of the proceeding[.]

Kentucky Supreme Court Rule (SCR) 4.300, Canon 2, Rule 2.3(A) and Rule 2.3(B) are also applicable and state that:

> (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.
>
> (B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.[5]

The Commonwealth argues that, because Geouge did not raise the issue of bias to the family court judge at any point in the proceedings below, he has waived the argument on appeal. We agree with Geouge that *Commonwealth v. Carter*, 701 S.W.2d 409 (Ky. 1985) is applicable. To wit:

[5] We note that bias as set forth in Kentucky Supreme Court 4.300, Canon 2, Rule 2.11(A)(1) requires automatic disqualification of a judge that may not be remitted under Rule 2.11(C). Based on our review of the record, Rule 2.11 of Canon 2 is not applicable to these proceedings.

> The Commonwealth contends that failure to file a motion in the lower court that the judge disqualify himself constitutes waiver of the mandate of KRS 26A.015(2)(a). It is our opinion that any waiver of such right may be made under proper circumstances, either in writing or on the record, but will not be presumed from silence.

Id. at 410.

Carter also provides that if a challenge is made under KRS 26A.015(2)(b),[6] the judge must have been apprised of his purported connection to the case before the court. *Id.* at 411.[7] However, this requirement was not imposed for challenges under KRS 26A.015(2)(a). The Kentucky Supreme Court reiterated the lack of need for preservation in *Nichols v. Commonwealth*, 839 S.W.2d 263, 266 (Ky. 1992). Therein, the Court stated: "it should be noted that in regard to the argument regarding recusal, [an appellant] is not required to preserve the error as noted in *Commonwealth v. Carter*, Ky., 701 S.W.2d 409 (1985). *Also see Small v. Commonwealth*, Ky. App., 617 S.W.2d 61 (1981) in this regard." *Nichols*, 839

[6] Kentucky Revised Statutes (KRS) 26A.015(2)(b) provides that a judge must recuse himself from any proceeding:

> Where in private practice or government service he served as a lawyer or rendered a legal opinion in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter in controversy, or the judge, master commissioner or such lawyer has been a material witness concerning the matter in controversy[.]

[7] "[I]n those cases in which the party relies upon the failure of any justice or judge of the Court of Justice to disqualify himself under the provisions of KRS 26A.015(2)(b), it must appear from the record, either by motion or otherwise, that he was apprised of his connection with the matter in controversy." *Commonwealth v. Carter*, 701 S.W.2d 409, 411 (Ky. 1985).

S.W.2d at 266. Accordingly, despite the lack of preservation, we shall review Geouge's appeal on the merits, including his argument that the family court judge should have recused *sua sponte* during the adjudication hearing based on her alleged biases.

Our standard of review in this case has been established by the Kentucky Supreme Court to be a *de novo* review with the following directions:

> Because any judge, however candid, will naturally be loathe to acknowledge the judge's own partiality or bias, compounded by the judge's general duty to hear and decide matters assigned to the judge, a reviewing court gives a motion to recuse fresh eyes, owing no deference to a refusal to recuse.

Phillips v. Rosquist, 628 S.W.3d 41, 54 (Ky. 2021) (footnotes omitted).

Analysis

Geouge contends that his consensual, alternative, fetish-driven BDSM lifestyle was used against him in the DNA proceedings. In essence, Geouge asserts he is being punished for his sexual lifestyle and preferences which he alleges have never impacted Child. He claims the family court judge exhibited numerous instances of bias towards him during the adjudication hearing. He first claims the judge suffered an "emotional collapse" on the bench. Geouge also cites what he contends are numerous other instances of bias and inappropriate behavior by the family court judge. Geouge has a very high burden to meet to demonstrate the judge was so biased that she should have *sua sponte* recused from the case. Our

highest court has clarified that "[t]he burden of proof required for recusal of a trial judge is an onerous one. There must be a showing of facts of a character calculated seriously to impair the judge's impartiality and sway his judgment." *Stopher v. Commonwealth*, 57 S.W.3d 787, 794 (Ky. 2001) (internal quotation marks and citations omitted).

We first turn to Geouge's assertion that the family court judge suffered an "emotional collapse" on the bench. The incident in question occurred during a portion of C.S.'s testimony when she was describing in graphic detail the first physical beating she endured by Geouge. C.S. described being humiliated by being forced to remove her clothes and kneel in front of Geouge. He then made her choose a paddle, whip, or crop from the wall that he used to deliver her "punishment." C.S. described the paddle, the beatings, and being forced to beg Geouge to hit her again and again. She was sobbing on the witness stand and, several minutes later, the family court judge suddenly stated, "I have to take a break. I'm sorry. We're going to take a break. I can't . . ." At that point, the judge's voice trails off and is inaudible. Her voice did sound distressed, but she is not visible in the recording contained in the record before this Court. The recess lasted approximately fifteen minutes, and afterward, C.S. returned to the witness stand in a much calmer state.

Geouge broadly asserts that the family court judge's actions during the hearing demonstrates that she could not be fair or impartial toward Geouge. We acknowledge that C.S.'s testimony was emotionally charged and lengthy. She was describing a particularly heinous instance of physical abuse when the family court abruptly called a recess. However, merely ordering a recess during the testimony does not mean the judge exhibited bias in favor of C.S. or prejudice against Geouge. And, Geouge does not explain how this equates to bias against him. Importantly, the family court was the fact-finder in the adjudication hearing and there was no jury to be influenced by the judge's alleged conduct. As a result, there was no risk that the judge appeared biased to jurors or that the court was attempting to influence the outcome of the case. *See Terry v. Commonwealth*, 153 S.W.3d 794, 802-03 (Ky. 2005). Geouge was provided an opportunity to cross-examine C.S. and to present his own witnesses, whose testimony was in direct contrast to C.S.'s. Based on our review of the record, we conclude the abrupt recess by the judge in the midst of particularly difficult testimony did not demonstrate bias on the part of the family court.

Geouge next contends that the family court judge exhibited bias when he was not permitted to cross-examine C.S. about her definition of "nonsensical" communications she had with Geouge and J.G. on the fetish website. To begin our analysis, we look to C.S.'s direct examination. When asked by the Commonwealth

what types of things she would discuss with Geouge in her messages, C.S. responded "complete nonsense. Helplessness . . . I can't even say that it was all that genuine because it was just literally nonsense. I was just literally sending him absolute nonsense sentences . . . stuff that most users would have blocked me and been like, 'go get help.'" Following her direct examination, the family court judge asked questions for clarification on what C.S. meant by "nonsense" and asked C.S. to provide an example. C.S. responded:

> Yeah, just like I don't know, like it's part of my mental disabilities. It's dependent personality disorder, but it only comes out in romantic relationships and I'm learning to cope with that and improve it . . . Instead of getting aggressive, if I think somebody's going to abandon me, I get very helpless. Well, I can't take care of myself without you. Well, I can't do anything on my own. It used to be more unmanaged, but I've learned to work with it a lot.

Later, Geouge cross-examined C.S. about what she meant by "nonsensical." While the family court granted leeway in the questioning, the court eventually interrupted the cross-examination, stating that C.S. already answered the question and that the court was satisfied with her answer. Clearly, the court was trying to maintain judicial expediency and avoid duplicative or cumulative testimony. There was no bias.

Geouge points to another instance during the hearing in which he claims he was not permitted to cross-examine C.S. When counsel for Geouge

asked C.S. if she remembered calling herself a liar and a conman, C.S. responded that she remembered calling herself "a narcissist, if that helps." At that point, the family court interrupted and told C.S. that she did not "need to help" Geouge's counsel and that if she did not remember something, she should say so. This was not the first time C.S. offered more information than was asked by either the Commonwealth or Geouge's counsel. Geouge points out that the family court judge stated she wanted to make sure that C.S. was "competent" to testify and argues that if C.S.'s competency was an issue, her testimony should have ended. We disagree. The family court did not use "competent" in the same manner it is used in a criminal trial.[8] Rather, the family court was making sure C.S. understood that if she did not remember something, she should say so, rather than continue to offer unresponsive testimony. Again, this was not bias on the part of the family court.

Geouge's numerous other arguments are also refuted by the record before us, and we decline to address each individual complaint. What Geouge contends is "bias" on the part of the family court judge was simply attempts by the court to reign-in lengthy and duplicative testimony in a hearing that lasted over nine hours.

[8] Competency can also mean "[t]he mental ability to understand problems and make decisions." *Competency*, BLACK'S LAW DICTIONARY 354 (11th ed. 2019).

Lastly, Geouge asserts that his case-in-chief was "tainted by bias" demonstrated by the family court judge. He points to the family court's questioning of J.G., who was called as a witness by Geouge. The court's questioning came after direct examination by Geouge and cross-examination by the Commonwealth and the guardian *ad litem*. The family court probed deeper into some of J.G.'s testimony that looked to her credibility as a witness. For example, J.G. testified she used the fetish website only to connect with friends and to locate a handyman to work on the parties' property. In other words, she denied participating in fetish-themed social networking for sexual reasons. J.G. also testified she could not recall any violent behavior by Geouge toward C.S., which totally conflicted with C.S.'s testimony.

Kentucky Rules of Evidence 614(b) provides, in relevant part, that "[t]he court may interrogate witnesses, whether called by itself or by a party." The general rule is that where the court assumes the role of the trier of fact, the extent of examination of witnesses is left to the 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)). In its June 10, 2022, order, the family court found that J.G. was not a credible witness and "believes she is *at best* following the direction of her husband/Master and *at worst*, and [sic] a willing participant in the [abuse] endured by [C.S.] in the presence of [Child]." June 10,

2022, order at 12. Kentucky Rules of Civil Procedure 52.01 provides, in relevant part that "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." *See also Williford v. Williford*, 583 S.W.3d 424, 428 (Ky. App. 2019). As the trier of fact, the family court was well within its authority in finding J.G.'s testimony not credible. There was no bias by the family court in this regard.

Conclusion

We agree with the family court that this case involved a young woman (C.S.) who, although she initially consented to a polyamorous, master/servant, BDSM lifestyle with Geouge and J.G., soon realized she had no control over her money or life while living with the Geouges. The record before us supports the family court's finding that C.S. suffered physical and sexual abuse at the hands of Geouge and Child was present during several instances of abuse. As a result, there was a risk of harm to Child. As much as Geouge attempts to frame this case as heavily prejudiced against his lifestyle choices, Geouge failed to demonstrate "a showing of facts 'of a character calculated seriously to impair the judge's impartiality and sway his judgment.'" *Stopher*, 57 S.W.3d at 794 (citations omitted).

Accordingly, we affirm the Clark Circuit Court, Family Court Division's, orders entered June 10, 2022, and May 18, 2023.

ALL CONCUR.

BRIEF FOR APPELLANT:

Mason S. Powell
Stanton, Kentucky

BRIEF FOR APPELLEE COMMONWEALTH OF KENTUCKY:

Erica Kemp Rompf
Winchester, Kentucky