

Rev. Stat. Ann. § 600.020(1)(a)(4), (8), the family court construed neglect if parents continuously or repeatedly failed or refused to provide essential parental care and protection for the child, considering the age of the child, or did not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. There was no evidence to prove M.C. failed to meet the standards of childcare. During the investigation, the police officer and social worker found the children to be appropriately provided and cared for. Additionally, two children testified that they liked being in M.C.'s care.

The court discussed two Kentucky cases that were considered by the court of appeals, one readily distinguishable from the instant case, and the other apposite. In *Cabinet for Health and Family Services v. C.B.*, 556 S.W.3d 568 (Ky. 2018), the Cabinet filed against a parent whose baby, C.R., was born with birth defects and positive for buprenorphine/naloxone, indicating sufficient evidence of physical or emotional injury in support of findings of neglect and requiring C.B. to complete drug rehabilitation. Here, mostly due to C.R.'s special needs, the analysis differed from that of the instant case; termination of parental rights was justified, as C.B. failed rehabilitation efforts.

In *K.H. v. Cabinet for Health and Family Services*, 358 S.W.3d 29 (Ky. Ct. App. 2011), the Cabinet substantiated a sexual abuse allegation by the children's 12-year-old cousin against their father. The mother was concerned about the children's being subjected to a potential risk of sexual abuse if the father were to bathe them. The court charged the mother with neglect based on failure to comply with the aftercare plan, while not finding substantial evidence to support the allegations of the father having sexually abused the children. The court highlighted that "risk of harm must be more than a mere theoretical possibility, but an actual and reasonable potential for harm" (*K.H.*, p 32). Similarly, in the instant case, children were not subjected to either actual or reasonable potential harm from father's alcohol use.

Having considered the above cases and statutes, the court held that sufficient evidence existed to support the finding that M.C. had a mild to moderate substance use disorder, but there was no evidence presented to show that M.C.'s disorder caused him to be incapable of caring for his children. The family court's finding that M.C. neglected his children by engaging in substance was an abuse of discretion, overturned in the appellate decision.

Discussion

M.C. v. Commonwealth highlights that finding of alcohol use while parenting does not equate with *per se* child neglect or provide a sufficient basis for removal of children absent an actual finding of harm. Rather, the court ruled that explicit assessment of substance use and its impact on childcare must be considered prior to alleging parental abuse. The court examined Kentucky's statutory framework for child abuse/neglect, reviewed the family court's findings, and compared it to two prior cases with some similarities. The finding focused on lack of actual harm, rather than the presumption that an alcohol-using parent was inherently defective.

Stigma against substance use runs deep, and is evident in the disconnect between the family court's considerations of legal and operational definitions of child neglect and lack of substantial findings to associate it with the latter. It appears that the reporting Cabinet social worker was taken aback by M.C.'s rejection of the alcoholism label and that he exacerbated the situation through noncompliance. The high court looked past these dynamics, ruling on the evidence bearing on the legal question.

This case highlights how parents have the fundamental constitutional right to raise their children, reflected in the Commonwealth's policy of not removing children from their biological parents "except when absolutely necessary" (Ky. Rev. Stat. Ann. § 600.010(2)(c)). While it is important to have a high degree of suspicion in screening for child abuse/neglect during routine interactions with children and families, it is important to assess the interplay of psychiatric and social comorbidities, which often act as potential confounders and add a layer of complexity to assessment of parental neglect. In this regard, the examination for alcohol use disorder, which is a psychiatric matter, was absent from the array of evidence before the family court.

Termination of Employment Due to Mental Illness

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Failure to Meet Professional Fitness Standards Due to Mental Illness Does Not Constitute Misconduct nor Preclude Unemployment Benefits

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In *City of Grenada v. Miss. Dep't of Emp't Sec.*, 320 So. 3d 523 (Miss. 2021), the Supreme Court of Mississippi affirmed the Mississippi Department of Employment Security Board of Review's determination that a police officer who was terminated because of mental illness did not engage in misconduct and was therefore entitled to unemployment benefits.

Facts of the Case

Stefan Sanders was in his fourth year of employment with the Grenada Police Department when he placed an off-duty 911 call asking for police assistance at his home. Responding officers found Mr. Sanders with a young woman, whom he had been seeing "for a few months" (*City of Grenada*, p 524). Mr. Sanders proceeded to make multiple delusional statements about the woman, raising concerns about his mental health. Mr. Sanders claimed that the young woman had suffered from a stroke and that when she awoke from the stroke, she was "gifted" with extraordinary powers, including the ability to do mass calculations in her head. Mr. Sanders believed that her "gifts" would make her a target and that the government might attempt to cause the woman to disappear. He called 911 because he did not want to be blamed for her disappearance. Mr. Sanders was subsequently placed on administrative leave and received a fitness-for-duty examination, which led to a diagnosis of delusional disorder. Mr. Sanders was determined to be unfit for duty as a police officer.

Mr. Sanders was allowed to seek a second opinion to contest the initial report's findings but declined to do so, denying any need for additional evaluation. He did, however, allege in writing instances of

wrongdoing on behalf of the police chief. The allegations prompted an investigation by the state attorney general, which was subsequently closed.

Mr. Sanders was ultimately terminated from the Grenada Police Department and sought unemployment benefits, which were denied. An administrative law judge (ALJ) upheld the denial of benefits, citing the Mississippi Supreme Court's ruling in *City of Clarksdale v. Miss. Emp't Sec. Comm.*, 699 So. 2d 578 (Miss. 1997), noting that Mr. Sanders had the option to demonstrate fitness for duty with a second evaluation but chose not to.

Upon appeal, the Mississippi Department of Employment Security Board of Review (Board of Review) reversed the ALJ's decision, noting that Mr. Sanders' termination was not based on the failure to seek a second fitness-for-duty evaluation, but rather concerns about his mental health. The City of Grenada appealed to the circuit court, raising a new argument that Mr. Sanders' failure to seek treatment, as recommended in his fitness-for-duty evaluation, constituted misconduct. The circuit court affirmed the Board of Review's finding and declined to consider Mr. Sanders' failure to seek treatment, stating that his mental health, not his refusal to seek treatment, was cited by the City of Grenada as the basis for his termination.

The City of Grenada subsequently appealed to the Mississippi Supreme Court, arguing that the ALJ had correctly relied on *City of Clarksdale* as the applicable precedent in this matter.

Ruling and Reasoning

The Supreme Court of Mississippi affirmed the judgment of the court of appeals, ruling that Mr. Sanders was entitled to unemployment benefits. The court did not refute the City of Grenada's conclusion that Mr. Sanders was unfit for duty or its decision to terminate his employment. The court determined, however, that Mr. Sanders' mental illness was outside of his control, and he was therefore entitled to receive unemployment benefits.

In its appeal to the Mississippi Supreme Court, the City of Grenada argued that the ALJ rightly applied the court's previous *City of Clarksdale* decision in denying unemployment benefits to Mr. Sanders. In *City of Clarksdale*, a police officer was terminated after repeatedly failing to pass a physical fitness test. A finding of misconduct resulted in part from the officer's refusal to engage in additional conditioning sessions

that may have allowed him to pass the physical fitness test. Mississippi law states that a finding of “misconduct” disqualifies an individual from receiving unemployment benefits (Miss. Code Ann. § 71-5-513 (A) (1)(b) (2020)). The City of Grenada argued that Mr. Sanders’ failure to seek a second opinion regarding his mental fitness constituted the requisite misconduct.

The court rejected this argument, first by reiterating the definition of misconduct as an employee’s “willful and wanton disregard” of an employer’s expectations, and “carelessness and negligence” of such degree that the employee has shown an “intentional or substantial disregard of the employer’s interest or of the employee’s duties . . .” (*City of Grenada*, p 526, citing prior case law).

The court determined that, in contrast to the claimant in *City of Clarksdale*, Mr. Sanders’ actions did not constitute misconduct. The court noted that “no evidence was presented that refutes the Board of Review’s finding that Sanders’s mental condition is the result of anything other than circumstances outside Sanders’s control.” (*City of Grenada*, p 528). Regarding Mr. Sanders’ failure to seek a second opinion, the court noted that there was no surety that a second opinion would have changed his fitness for duty or the City of Grenada’s decision to terminate his employment and additionally did not qualify as misconduct.

The City of Grenada argued that the decision in *City of Clarksdale* called upon the Mississippi State Legislature to amend the applicable employment statute if it felt unemployment benefits should be provided in such a scenario. It argued that the legislature’s failure to amend the statute in the ensuing two decades further affirmed the denial of benefits in *City of Clarksdale* and should be similarly denied in the current case. The court found that the legislature’s inaction suggested that the established definition of misconduct, as applied in *City of Clarksdale* and upon which qualification for unemployment benefits relies, was appropriate. Accordingly, the court determined that as Mr. Sanders did not engage in misconduct as legally defined, he qualified for unemployment benefits.

Finally, regarding Mr. Sanders’ failure to follow the recommendation to seek treatment for his mental illness, the court said that Mr. Sanders’ termination was based on his mental illness alone. Therefore, it would not consider whether this refusal constituted misconduct.

Discussion

In *City of Grenada*, the Mississippi Supreme Court evaluated whether it is misconduct when a police officer is diagnosed with a mental disorder that makes the officer mentally unfit for duty. The definition of misconduct here is a legal one, defined in state statute. A finding of misconduct disqualifies a terminated employee for unemployment benefits. The court determined that the scenario in Mr. Sanders’ case does not constitute misconduct, based on the established definition of misconduct. In doing so, the court refused to assign blame to Mr. Sanders for having a mental illness.

The City of Grenada’s argument for Mr. Sanders’ misconduct was based on the previous case of *City of Clarksdale* regarding a police officer who repeatedly failed physical fitness tests yet refused opportunities to improve his physical condition. In that case, the court determined that a police officer’s failure to pass a physical fitness test to obtain certification was in his control and constituted misconduct as a matter of law.

Upon appeal, the City of Grenada had also argued that the fitness-for-duty evaluator recommended that Mr. Sanders seek treatment with psychotherapy and medication and that the officer had failed to do so. The court of appeals and the Mississippi Supreme Court declined to consider whether this constituted misconduct, noting that Mr. Sanders was terminated on the basis of his mental condition alone. The court gave no indication on how it would rule had the City of Grenada terminated Mr. Sanders based on his failure to mitigate as instructed with treatment recommendations, thereby leaving this question unanswered.

Police Officer Immunity in Cases of Suicide

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