Commonwealth of Kentucky

Court of Appeals

NO. 2026-CA-1437-OA

REBEKKAH WHITE — PETITIONER

v. AN ORIGINAL ACTION
ARISING FROM JEFFERSON FAMILY COURT
ACTION NO. 26-CI-500298

HONORABLE LAUREN ADAMS OGDEN — RESPONDENT

AND

AUSTIN TYLER COOK AND
ZACHARY THOMAS DZIEDZIC — REAL PARTIES IN INTEREST

ORDER
DENYING EMERGENCY RELIEF

** ** ** ** **

This action is before the Court on the motion of Petitioner, Rebekkah White ("Mother"), for emergency relief pursuant to RAP[1] 60(H). Specifically, Mother requests "an Order staying all of Jefferson Circuit Court, Family Division

[1] Kentucky Rules of Appellate Procedure.

4, Orders and Ordering the immediate return of the minor child, L.L.C. [(hereinafter "Child")] to Rebekkah." Having reviewed the record, and being otherwise sufficiently advised, IT IS ORDERED that the motion shall be, and hereby is, DENIED.

I. BACKGROUND

Mother and Real Party in Interest Austin Cook ("Cook") are the biological parents of Child. Mother and Real Party in Interest Zachary Dziedzic ("Stepfather") were married in October 2022. It is undisputed that Cook has basically not been involved in Child's life, while Stepfather has acted as father to her since she was one year old. Following their separation in June 2023, Mother asserts she and Stepfather equally cared for Child.[2] Stepfather claims that he became Child's primary caregiver when they separated.

In April 2025, Mother was charged with operating a motor vehicle while under the influence ("DUI"), to which she pled guilty in June 2025.[3] There

[2] Mother and Stepfather also share a biological child, a son. The son is discussed at various points in the proceedings, but the parties' custodial rights concerning their son are not at issue here.

[3] *See* Oldham District Court Case No. 25-F-00117. The Court may take judicial notice of this case. *Polley v. Allen*, 132 S.W.3d 223, 226 (Ky. App. 2004). An aggravating circumstance was initially alleged for this DUI, but this was removed when the charge was amended down by the plea agreement. Stepfather alleges Child was in the vehicle at the time of the DUI, and the family court made this comment as well, but we are unable to confirm from the limited record available whether the aggravating circumstance was based on this allegation. *See* KRS 189A.010(11)(f).

is no dispute that Child began primarily residing with Stepfather following this DUI. Mother stated in an affidavit that she believed this arrangement was in Child's best interests, in part, because her "transportation issues" made it difficult for her to reliably transport Child to school. During this time, Stepfather alleges that Mother "sporadically" visited Child; that she would pass out leaving Child unsupervised; and that Mother's home lacked running water and was unsanitary, with the children using plastic grocery bags as toilets.

Stepfather filed his petition for custody on February 10, 2026, claiming he is Child's *de facto* custodian. Warning order attorneys were appointed for Mother and Cook. Relevantly, on March 17, 2026, the warning order attorney appointed for Mother filed a report, and Stepfather filed for default judgment. The report stated that the last known address given for Mother was not recognized by the United States Postal Service ("USPS"). The corrected address was included in the report, and the family court was informed that a copy of Stepfather's petition was mailed to the corrected address. The USPS tracking information attached to the report indicated that the petition was delivered on February 19, 2026. Mother, *pro se*, filed an affidavit on March 20, 2026, wherein she objected to Stepfather's custodial claims and his assertions that she was unfit. An order was subsequently

entered scheduling a hearing on Stepfather's motion for default judgment[4] for August 19, 2026.

In the meantime, on April 14, 2026, Stepfather filed a verified "motion for immediate return of Child" which was noticed for a motion hour on April 20, 2026. In the motion, Stepfather reiterated that Mother had prior DUI charges, but now she had a newer DUI charge. Indeed, Mother was arrested again on February 9, 2026, after she drove into a snowbank that night. The citation reveals that Mother was clearly impaired. Yet she was allowed to plead guilty to reckless driving and not having her license in her possession, although initially charged with driving on a suspended license.[5] Less than a week later, after being involved in a non-injury car accident, Mother was again cited for not having proof of insurance. She pled guilty in that case also.[6]

Stepfather further alleged:

> [o]n February 27, 2026, shortly after [he] filed this case, [Mother] picked the child up from school during the middle of the day and threatened to take her to Florida. After a couple of days, she returned the child to [Stepfather]. Most recently, on April 7, 2026, [Mother]

[4] We need not delve too deeply at this point on the question of default. Having been constructively served, Mother had additional time to contest the petition, and she in fact filed some timely response. To a degree, subsequent events overtook the technical question of default as we will explain.

[5] Oldham District Court Case No. 26-T-00286.

[6] Oldham District Court Case No. 26-T-00321.

> showed up at [Stepfather's] house and dragged the child, including pulling her hair, against her will to the car over [Stepfather] and the child's objections.

The motion was served on Mother at the corrected address identified in the warning order attorney's report. Mother did not file a response. On April 20, 2026, Stepfather filed a letter from Child's maternal great-grandmother supporting his petition for custody and his pending motion for immediate return. Motion hour that day was canceled and all pending motions were continued to the following motion hour.

An order granting the motion for immediate return was entered on April 29, 2026. The order authorized law enforcement to assist in the return of Child and prohibited Mother from unilaterally removing Child from school or Stepfather's care. It further noted that there was not any objection to Stepfather's motion. Mother, having by then retained counsel, filed a motion to alter, amend, or vacate the April 29, 2026, order because, she argued, it had been entered without adequate notice or an opportunity for her to be heard. Stepfather filed a response asserting that Mother was aware of the motion and the new court date.

On June 26, 2026, the family court entered an order denying Mother's motion. It concluded that a temporary custody order could not be modified unless there was a material and substantial change in circumstances. Further, the family court found that "[n]o changes in circumstances have been alleged which justify

modification given the abuse allegations and the substance use disorder of [Mother], as evidenced by multiple recent DUI cases, at least one of which was while driving the minor child." The order went on to give Mother weekly supervised parenting time with the child and stated that all other pending issues would be addressed at the previously scheduled August 19, 2026, hearing. The matter was also referred to mediation.

Subsequently, two *agreed* orders were entered. The first was an agreement to continue the August 19, 2026, hearing, which was rescheduled for February 5, 2027. The second agreed order addressed communication between the parties, supervised visitation, and drug testing. Mother *agreed* the parties would coordinate weekly supervised parenting time within seven days of receipt of a negative drug test from Mother. But Mother's drug test apparently produced a positive result for Kratom.[7] As a result, Stepfather has declined to allow Mother to exercise her supervised parenting time. Mother maintains that her drug test results do not constitute a positive drug test, and it appears there is a pending motion to enforce the second agreed order.

[7] "'Kratom' commonly refers to an herbal substance that can produce opioid and stimulant-like effects. Kratom and kratom-based products are currently legal [in Kentucky] and accessible in many areas, though U.S. and international agencies continue to review emerging evidence to inform kratom policy." National Institute on Drug Abuse, Kratom (November 5, 2026), https://nida.nih.gov/research-topics/kratom.

Mother filed her petition for a writ of prohibition in this Court on October 28, 2026, along with a motion for emergency relief pursuant to RAP 60(H). Stepfather timely filed a response.

II. ANALYSIS

The *only* issue presently before this Court is whether Mother is entitled to *emergency* relief pursuant to RAP 60(H). RAP 60(H)(1) states:

> If any party requires relief prior to a ruling on the petition [for a writ], the party may, upon a showing that immediate and irreparable harm will occur, move in conformity with RAP 7 for a temporary order in the court in which the original action is filed.

In the context of an original action, "irreparable injury" is defined as "incalculable damage to the applicant . . . either to the liberty of his person, or to his property rights, or other far-reaching and conjectural consequences." *Hoskins v. Maricle*, 150 S.W.3d 1, 19 (Ky. 2004) (internal quotation marks and citation omitted). Ordinarily, loss of child custody is not sufficient to meet the standard of irreparable harm to the parent. *Lee v. George*, 369 S.W.3d 29, 34 (Ky. 2012).

Essentially, Mother argues she is entitled to emergency relief because the family court infringed on her parental rights by entering temporary custody orders without first determining Stepfather has standing as a *de facto* custodian. She also asserts the family court violated her due process rights by failing to

conduct a hearing before placing Child in Stepfather's custody, and that the family court's orders are devoid of findings of fact regarding Child's best interests.

In response, Stepfather maintains that Mother cannot meet the immediacy requirement contained in RAP 60(H), given her delay of just *over six months* in challenging the April 29, 2026, order and because of Mother's subsequent *agreement* to uphold that same order. He further asserts the family court had authority to award temporary custody pursuant to KRS 403.280(1) because he was a party (even if he is not ultimately determined to be a *de facto* custodian) and Mother did not object to his motion, although she had proper notice of the motion.

It is apparent from the limited record[8] available to this Court that the underlying case has been mishandled by the Respondent judge. Before explaining how, we pause to address the elephant in the room, the Respondent judge's upcoming suspension for unethical conduct. This judge has shown a pattern of disregard of the law and dismissive disrespect for this Court. For example, the Respondent judge has explained that appellate judges do not really recognize the issues family courts handle. With all due respect to the Respondent judge, the

[8] The parties are responsible for providing "evidence with the petition or response in the form of exhibits, affidavits, counter-affidavits, depositions, documents filed in the underlying case, and the electronic record of any relevant proceedings." RAP 60(E); *see also* RAP 60(C)(6) and RAP 60(D). Given the allegations in this case, the Court has also utilized CourtNet. The Court acknowledges that CourtNet is an unofficial record of the family court proceedings.

various judges of this Court have considerably more experience, some having been family law practitioners and trial court judges (even before family courts existed). This Court understands that the rights of parents to be heard and for them to expect judges to follow the law is not just a preference to be chosen by a judge; it is an integral part of the proper process for the people to have confidence in their courts.

With that digression, we now list the problems with how the Respondent judge handled this case. With warning order service and Mother's response, this does not appear to be a matter of a true default. Stepfather's status as a *de facto* custodian has yet to be determined by the family court. A legitimate question remains regarding whether he has standing to seek custody of Child, although the circumstances strongly suggest a colorable claim to a *de facto* custodian status. The utilization of KRS[9] 403.270 or KRS 403.280 to award temporary custody of Child to Stepfather may have been improper, although the specific statutory provision upon which Stepfather relies does not clearly require the ultimate determination of *de facto* status in making a temporary decision. *See* KRS 403.270(1)(b); KRS 403.280(9). KRS 403.270(1)(b) explicitly states

> A person shall not be a de facto custodian until a court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a court determines that a person meets the definition of de facto custodian, the court shall give the person the same

[9] Kentucky Revised Statutes.

> standing in custody matters that is given to each parent under this section and KRS 403.280, 403.340, 403.350, 403.822, and 405.020.

Kentucky's case law makes clear that "non-parents may attain standing to seek custody or visitation of a child only if they qualify as *de facto* custodians, if the parent has waived her superior right to custody, or if the parent is conclusively determined to be unfit." *Truman v. Lillard*, 404 S.W.3d 863, 868 (Ky. App. 2012) (citing *Mullins v. Picklesimer*, 317 S.W.3d 569, 578 (Ky. 2010). The Court has been unable to locate, and the parties did not direct the Court's attention to, any case addressing this exact scenario.

Regardless of the question of *de facto* status in the traditional sense of temporary and permanent custody decisions, we have legal processes to respond to true emergency situations which may not wait for every such determination to be made. Stepfather and the family court here had very legitimate concerns about the safety and wellbeing of Child. And Kentucky has two statutes which provide the proper framework for awarding custody on an emergency basis.

Pursuant to KRS 403.828(1), "[a] court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child . . . is subjected to or threatened with mistreatment or abuse." KRS 620.060

authorizes the use of emergency custody orders when the custodian is unwilling or unable to protect the child, it is in the child's best interest, and if:

> (a) The child is in danger of imminent death or serious physical injury or is being sexually abused;
>
> (b) The parent has repeatedly inflicted or allowed to be inflicted by other than accidental means physical injury or emotional injury. This condition shall not include reasonable and ordinary discipline recognized in the community where the child lives, as long as reasonable and ordinary discipline does not result in abuse or neglect as defined in KRS 600.020(1); or
>
> (c) The child is in immediate danger due to the parent's failure or refusal to provide for the safety or needs of the child.

KRS 620.060(1); *see also Robison v. Theele*, 461 S.W.3d 772, 775-76 (Ky. App. 2015).

Had the family court clearly utilized either emergency statute, Mother's motion would be clearly meritless. Stepfather filed a verified motion for immediate return raising allegations of neglect and abuse. The motion was properly served on Mother pursuant to CR[10] 5.02(1). Mother could have filed a response or appeared at motion hour to challenge Stepfather's motion; instead, she chose not to act until after entry of the April 29, 2026, order. Even then, Mother proffered no evidence that Stepfather's allegations of neglect and abuse were

[10] Kentucky Rules of Civil Procedure.

unfounded or that her circumstances were changed.[11] The family court's order denying Mother's motion to alter, amend, or vacate makes clear that its decision was primarily based on the allegations of abuse and Mother's substance abuse disorder with its ongoing consequences.

Specifically problematic for Mother here is that she *agreed* to this custody arrangement and to her having supervised parenting time conditioned on a negative drug test. Mother asserts she did this because she had no other choice. But Mother had already been awarded supervised parenting time in the family court's order denying her motion to alter, amend, or vacate. There was no need for Mother to subsequently *agree* to this. Also, Mother could have moved forward with the hearing on August 19, 2026, where the family court could have addressed Stepfather's *de facto* custodian status and custody. But, again, Mother agreed to continue the hearing until February 5, 2027. This Court cannot allow a party to manufacture an emergency based on their own action, or inaction.

While the family court may have erred in awarding temporary custody of Child to Stepfather pursuant to KRS 403.270 and KRS 403.280, the Court has independently reviewed the record and concludes that there was sufficient

[11] If Mother testified at the hearing regarding her motion to alter, amend, or vacate the April 29, 2026, order the Court is unaware of it. The parties did not provide the Court with copies of the video record, and Mother did not refer to any proffered testimony in her motion for emergency relief. *See* footnote 5 *supra*.

evidence in the record for the family court to award Stepfather emergency custody pursuant to KRS 403.828(1) or KRS 620.060(1). *Richmond v. Louisville and Jefferson County Metropolitan Sewer Dist.*, 572 S.W.2d 601, 603 (Ky. App. 1977) (citation omitted) ("However, it is well settled that a correct decision will not be disturbed merely because it was based upon incorrect grounds.").

In her recent suspension order, the Respondent judge was quoted as saying, "We have to worry about the kids more than anything." Indeed, the best interest of children is the North Star for custody decisions. But even this does not excuse a judge's making decisions without proper consideration of the constitutional rights of parents, including the right to be timely heard and to have the correct law applied to their cases. Perhaps fortunately for Child here, the law if properly applied could have justified the decision of the family court. Considering the specific facts and circumstances of this case, the Court declines to grant Mother emergency relief pursuant to RAP 60(H).

III. CONCLUSION

For the foregoing reasons, the Court ORDERS that Mother's motion for emergency relief be DENIED. The petition for a writ of mandamus shall be assigned to a three-judge panel of this Court in the ordinary course. That panel will not be bound to any degree by the result of this Order or any of the discussion

contained in it. That panel will have the benefit of a more complete record and further argument from the parties.

ENTERED: November 6, 2026



HON. KELLY MARK EASTON
JUDGE, COURT OF APPEALS