

**COMMONWEALTH OF KENTUCKY
JUDICIAL CONDUCT COMMISSION**

ORDER OF PRIVATE REPRIMAND

The Commission issues this order of private reprimand to a judge for violation of the Code of Judicial Conduct, SCR 4.300, Rules 1.1, 1.2, 2.2, 2.3, and 2.6.

Mother filed a Petition for an Emergency Protective Order (“EPO”) alleging that Father abused their child while the child had court-ordered visitation with him. The judge denied the Petition for EPO but *sua sponte* directed that the Cabinet for Health and Family Services’ Department of Community Based Services (“DCBS”) initiate a Dependency, Neglect, and Abuse (“DNA”) action relating to their child. Per the judge’s directive, DCBS initiated an investigation into Father and the court scheduled a Temporary Removal Hearing in December 2017. Since Father was never provided notice, he did not appear. The judge nonetheless proceeded with the hearing in Father’s absence. DCBS reported that they had not yet been able to contact Father as a part of their investigation, and counsel for Mother falsely reported she had filed a motion in Circuit Court to stop visitation. Although DCBS’s investigation was incomplete, the judge entered a “no-contact” order against Father. And, there was no evidence that the “no contact” order was ever sent to him by the clerk.

In late December, Father attempted to contact the child via telephone. Mother then filed a second petition seeking an EPO against Father for violating the no-contact order which he was never provided. (A separate judge granted Mother’s second EPO petition.) The second EPO matter was later transferred to the judge for further review in conjunction with the pending DNA case.

In early April 2018, the judge heard argument in both the EPO matter and the DNA matter. Father was not represented by counsel. At this point, there was no sworn testimony

or evidence in the record concerning the child's injury – only the allegations in Mother's second petition for an EPO. During the hearing, DCBS reported it had completed its investigation, could not substantiate the allegations of abuse, and there were no grounds to open a case against Father. Notwithstanding this report, the judge demanded DCBS open a case against him. Based solely on Mother's allegations in the EPO petition, the judge also dismissed DCBS's work in the case, ordered the child be removed from Father, and granted sole custody to Mother. In addition, although no testimony had been taken, the judge made a finding of fact that Father had abused his child.

In late May 2018, the Court scheduled a final adjudication for the DNA matter. Father, who was represented by counsel for the first time, was permitted to testify. Father informed the court that the child was injured while the two were playing and described the events which happened thereafter. No contradictory evidence or testimony was heard. The judge dismissed the EPO case per the parties' agreement, but the judge reaffirmed the April 2018 order awarding temporary sole custody to Mother and prohibiting any contact by Father. The Circuit Court upheld the judge's ruling, but the Court of Appeals reversed and remanded.

KRS § 610.060 requires that only interested parties may institute DNA proceedings. Moreover, a judge may not be an interested party in a case over which he or she presides. And, specifically with respect to DNA cases, the Cabinet for Health and Family Services possesses the sole governmental authority to initiate a case. Thus, the judge's order overriding DCBS' declination to open a case against Father is not only inappropriate, but contradictory to the law. Moreover, the judge's unilateral removal of the child without taking any testimony was procedurally improper with unsubstantiated, predetermined prejudices as to Father's guilt.

The judge informed the Commission that the judge believed the decisions made were in keeping with the law, (a belief which was legitimized by the Circuit Court's affirmation of the decisions). However, given the Court of Appeals' ruling, the judge recognizes now that those decisions were in error. The judge has accepted the Court's decision and has since dismissed the DNA case.

The Commission appreciates the judge's candor and willingness to take immediate corrective action. However, all judges must be sensitive to the need to remain impartial, as well as to refrain from deciding cases in such direct contradiction to the law that would violate the Code of Judicial Conduct. Based upon the foregoing conduct, the judge is hereby privately reprimanded.

In issuing this private reprimand, the Commission duly considered that the judge fully cooperated in the investigation.

Date: 11/5/20


R. MICHAEL SULLIVAN, CHAIR

Judge Glenn Acree and Judge David Bowles recused from any consideration of this matter.