

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001283-ME

S.G.J.

APPELLANT

v. APPEAL FROM CAMPBELL FAMILY COURT  
HONORABLE D. MICHAEL FOELLGER, JUDGE  
ACTION NO. 05-AD-00029

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND FAMILY SERVICES,  
E.K.S., and R.K.S., THROUGH HER NEXT FRIEND,  
CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ABRAMSON AND STUMBO, JUDGES; KNOPF,<sup>1</sup> SENIOR JUDGE.

KNOPF, SENIOR JUDGE: S.G.J. appeals from the judgment terminating her parental rights. She argues that the statutory grounds for termination were not proven by clear and convincing evidence and that the trial court failed to make specific findings of fact. We affirm.

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<sup>1</sup> Senior Judge William L. Knopf, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

This case involves the relationship between S.G.J. and R.K.S., her sixth child. None of S.G.J.'s five other children are in her custody. S.G.J. and R.K.S. went to stay with Wayne Davidson in Campbell County, Kentucky, after they had been evicted from the residence of her paramour, Ronald Langford. On July 31, 2004, S.G.J. stole Davidson's automobile, wallet, and cell phone leaving the child behind. S.G.J. then traveled to Cincinnati, Ohio, where she was promptly arrested for soliciting prostitution and for possession of drug paraphernalia. Davidson notified police that S.G.J. had stolen his belongings and had left the child behind. Davidson stated that he was unable to care for R.K.S. and did not know the child's name. The police contacted the Cabinet for Health and Family Services (Cabinet) who placed the child in foster care.

At a hearing on August 16, 2004, the Campbell Circuit Court found R.K.S. to be a neglected child. Around this time, S.G.J. traveled to Davidson's home and left him a handwritten note giving him "custody" of the child. However, S.G.J. made no attempt whatsoever to contact R.K.S. or to ascertain her well-being. Meanwhile, after numerous attempts, the Cabinet located S.G.J. in Cincinnati and informed her that R.K.S. was in foster care. S.G.J. was instructed to contact her social worker to arrange visitation with the child and begin the process of reunification. S.G.J. failed to contact the Cabinet in any manner for more than eighty days after abandoning the child, although she eventually contacted the Cabinet from the Hamilton County, Ohio, detention center.

After her release from custody, S.G.J. entered a drug rehabilitation facility. At this time, S.G.J. and the Cabinet began developing a case plan towards reunification.

The plan required S.G.J.: (1) to complete drug treatment; (2) obtain employment; (3) obtain suitable housing; (4) complete parenting classes; and (5) attain financial stability in order to provide the necessities for her child. On February 22, 2005, the trial court changed the permanency plan for R.K.S. from reunification with parent to adoption. S.G.J. began visiting R.K.S. every other week beginning in April 2005. On June 3, 2005, the Cabinet filed a petition for involuntary termination of parental rights. Visitation ceased in September 2005 upon the recommendation of R.K.S.'s mental health counselor. S.G.J. moved the trial court to reinstate visitation and to return the permanency plan to reunification. Although the trial court noted that S.G.J. had substantially complied with her case plan and had changed her lifestyle, it denied both of her motions. On May 22, 2006, after a termination trial, the court entered a judgment terminating S.G.J.'s parental rights to R.K.S. This appeal follows.

S.G.J. argues that there was insufficient evidence to prove several of the KRS 625.090 statutory grounds for involuntary termination. KRS 625.090 requires a three-part finding: (1) that the child is abused or neglected as defined in KRS 600.020(1); (2) that the termination would be in the best interest of the child; and (3) that one or more of the factors set out in subsection (2)(a)-(j) are present. *R.C.R. v. Commonwealth, Cabinet For Human Resources*, 988 S.W.2d 36, 38 (Ky.App. 1998). S.G.J. only challenges the findings relating to the third prong. Appellate review in a termination of parental rights proceeding is limited to the clearly erroneous standard set forth in CR

52.01. *Id.* The findings of the trial court will not be disturbed unless there is no substantial evidence in the record to support its findings. *Id.*

S.G.J. argues that the the Cabinet failed to prove KRS 625.090(2)(a) by clear and convincing evidence that she abandoned her child for more than ninety days. Abandonment is generally proven “by facts or circumstances that evince a settled purpose to forego all parental duties and relinquish all parental claims to the child.” *O.S. v. C.F.*, 655 S.W.2d 32, 34 (Ky.App. 1983). The temporary abdication of parental responsibility in favor of a kindred does not rise to the level of abandonment. *Id.* In *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky.App. 1986), this Court stated that “abandonment rests mainly upon intent.”

The facts in this case demonstrated that S.G.J. left her child with Wayne Davidson when she stole his automobile and traveled to Cincinnati to engage in prostitution and drug activity on July 31, 2004. Davidson was a complete stranger to the child. He did not consent to care for the child nor did he even know the child's name. S.G.J. failed to contact Davidson in order to ascertain the child's well-being before or after leaving for Cincinnati. Sometime in the middle of August 2004, S.G.J. returned to Davidson's home and left a note giving him “custody” of the child. Again, at no point did S.G.J. attempt to contact the child in any way. On September 14, 2004, the Cabinet informed S.G.J. that she would have to contact her social worker in order to arrange visitation with the child. However, S.G.J. made no attempt to check on the child or arrange a visit until October 22, 2004, almost two weeks after she was incarcerated.

S.G.J. remained incarcerated until January 2005. While incarceration alone cannot prove abandonment, it may be considered along with other factors. *J.H. v. Cabinet for Human Resources*, 704 S.W.2d 661, 664 (Ky.App. 1985). In this case, the abandonment occurred when S.G.J. left the child to pursue her criminal lifestyle. In other words, incarceration did not cause the separation. After her release, visitation was suspended from September 2005 until the termination proceeding. The suspension was made upon the request of the child's mental health counselor. There was testimony indicating that had S.G.J. completed her parenting classes, she could have interacted with the child more appropriately. Finally, S.G.J.'s history of abandoning her other five children tends to demonstrate an intent to abandon R.K.S. S.G.J. did not know the whereabouts of any of her other children at the time of the termination proceeding. We are convinced that it was not clearly erroneous for the trial court to find that S.G.J. had abandoned her child for more than ninety days.

S.G.J. argues that there was insufficient evidence to support the findings of additional statutory grounds for termination. However, KRS 625.090(2) states “[n]o termination shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds.” As noted above, we found that KRS 625.090(2)(a) was proven by clear and convincing evidence. Clear and convincing proof of one factor is sufficient to support a termination order. S.G.J. does not challenge the trial court's finding that R.K.S. was neglected or abused nor does she challenge the finding that termination would be in the best interest of the child. The three

factors required by KRS 625.090 have been satisfied. While the Cabinet concedes that R.K.S. did not reside in foster care for 15 out of 22 months prior to the filing of the termination action as set forth in KRS 625.090(2)(j), any error in this regard is harmless.

Next, S.G.J. argues that the trial court failed to make fact-specific findings in the judgment and that the court erred by framing its findings in conditional language.

CR 52.04 states:

A final judgment shall not be reversed or remanded because of the failure of the trial court to make a finding of fact on an issue essential to the judgment unless such failure is brought to the attention of the trial court by a written request for a finding on that issue or by a motion pursuant to Rule 52.02.

S.G.J. made neither a written request for specific finding nor did she make a motion pursuant to CR 52.02. Moreover, our review of the record indicates nothing conditional in the judgment whatsoever. Reversal is unwarranted.

Accordingly, the judgment of the Campbell Circuit Court is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Glenda Harrison  
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Covington, Kentucky

BRIEF FOR APPELLEE:

Kelly S. Wiley  
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