

RENDERED: OCTOBER 14, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2011-CA-000122-ME

A.S.

APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE LISA O. BUSHELMAN, JUDGE  
ACTION NO. 10-AD-00083

CABINET FOR HEALTH AND  
FAMILY SERVICES, COMMONWEALTH OF  
KENTUCKY; AND M.S., AN INFANT

APPELLEES

AND

NO. 2011-CA-000123-ME

A.S.

APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE LISA O. BUSHELMAN, JUDGE  
ACTION NO. 10-AD-00084

CABINET FOR HEALTH AND  
FAMILY SERVICES, COMMONWEALTH OF  
KENTUCKY; AND K.A.S., AN INFANT

APPELLEES

AND

NO. 2011-CA-000124-ME

A.S.

APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE LISA O. BUSHELMAN, JUDGE  
ACTION NO. 10-AD-00085

CABINET FOR HEALTH AND  
FAMILY SERVICES, COMMONWEALTH OF  
KENTUCKY; AND K.S., AN INFANT

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CAPERTON, KELLER, AND LAMBERT, JUDGES.

CAPERTON, JUDGE: A.S. appeals from the termination of her parental rights concerning her three children, M.S., K.A.S., and K. S. On appeal, A.S. argues that the trial court erred because she did not know of the abuse of the children by the biological father when she left them in his care. The Cabinet disagrees with A.S.'s assertion based upon the father's two convictions for abusing the children, the documented abuse, and the resulting mental health issues of the children. Upon a thorough review of the record, the applicable law, and the parties' arguments, we find no error and, accordingly, affirm the orders terminating A.S.'s parental rights.

A.S. and biological father (hereinafter “father”) had three children together, M.S., K.S., and K.A.S. Father was convicted in 2004 and again in 2009 for criminal abuse of two of these children. A.S. would leave the children in father’s care. M.S. was repeatedly whipped by the father over the majority of his body after being left in his care. K.A.S. was also physically abused.

M.S., K.S., and K.A.S. were committed to the Cabinet of Health and Family Services (“Cabinet”) as abused children by order of the Kenton Family Court and have resided in foster care since October 2008. The Cabinet filed for involuntary termination of parental rights. The Kenton Family Court tried the action without a jury. Therein, the Cabinet presented evidence that K.A.S. and M.S. have required treatment in a residential psychiatric care for Post-Traumatic Stress Disorder (“PTSD”), Anxiety Disorder, and Mood Disorder due to the violence in the parental home. K.S. also suffers from PTSD. Additionally, A.S. violated the “no contact” order of the Family Court when she allowed the children to be around the father. A.S. admitted to being beaten by the father so badly that she required medical care and that the children were physically abused, punched in the mouth, kicked, choked and burned with a hot comb. Neither A.S. nor the father presented any evidence that the father had engaged in services to ameliorate his abusive practices.

After hearing this evidence, the Family Court terminated A.S.’s parental rights, entering an order for each child and making the requisite findings under Kentucky Revised Statutes (KRS) 625.090; including that A.S. and father

had inflicted or allowed to be inflicted emotional harm and physical abuse upon the children, that it was in the best interest of the children to terminate the parental rights of A.S., and that father had been convicted of child abuse involving two of the children. Additionally, the court found that A.S. has failed to provide essential care and protection and, although she has attended some parenting classes and counseling, the court found no reasonable expectation of marked improvement. The court found that A.S. failed to protect the children from their abusive father, that both parents had engaged in repeated acts of domestic violence and all three siblings suffered from PTSD from the abusive environment in the parental home. It is from these orders that A.S. now appeals.

On appeal, A.S. presents one argument, namely, “Did the Court err in terminating the parental rights of the Appellant even though Appellant did not commit the abuse or know of the abuse of her children, but did know the biological father had abused other child(ren) in the past and she still allowed him to look after their children when she was at work?” The Cabinet disagrees with the argument presented by A.S. and, instead, asserts that the trial court did not err, since the Cabinet contends that the sole issue is whether A.S. inflicted or allowed to be inflicted physical or emotional harm to her children. Additionally, the Cabinet cites to the record wherein A.S. makes the assertion that the father’s first conviction for child abuse was not against one of her children. The Cabinet argues that this assertion is simply incorrect because the father’s abuse was targeted at two

of their children. With these arguments in mind we turn to our applicable standard of review.

In addressing the arguments of the parties, we note that the standard of review for a finding of termination of parental rights is confined to the clearly erroneous standard set forth in Kentucky Rules of Civil Procedure (CR) 52.01. Accordingly, the findings of the trial court will not be disturbed unless no substantial evidence exists in the record to support its findings. *See M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998). Further, we note that the family court has a great deal of discretion in determining whether a child fits within the abused or neglected category. *See Department for Human Resources v. Moore*, 552 S.W.2d 672, 675 (Ky. App. 1977). Finally, we are reminded that in determining whether to grant a petition for involuntary termination of parental rights pursuant to KRS 625.090, a trial court must have clear and convincing evidence of three elements: (1) that the child is abused or neglected as defined by KRS 600.020(1); (2) that one or more of the grounds stated in KRS 625.090(2) exists; and (3) that termination would be in the best interest of the child. *See N.S. v. C. and M.S.*, 642 S.W.2d 589 (Ky. 1982).

Having reviewed these findings of fact in the case *sub judice*, we conclude that the family court's findings are supported by substantial evidence in the record and, accordingly, are not clearly erroneous. The evidence before the family court was of a probative and substantial nature sufficient to convince ordinarily prudent-minded people that the facts were as the family court

determined. Indeed, the evidence presented to the family court was overwhelming that children had witnessed domestic violence in the home, had been physically abused, suffered emotional harm, and suffered from mental health issues as a result of the abusive parental home. We find A.S.'s argument to be disingenuous that she did not "know" of the abuse, because the father had multiple convictions for abusing *their* children.<sup>1</sup> Moreover, the family court correctly applied the involuntary termination statute to the facts as set forth in its orders, and we find no reason to disturb those findings on appeal.

Finding no error, we affirm the orders terminating the parental rights of A.S.

KELLER, JUDGE, CONCURS IN RESULT ONLY.

LAMBERT, JUDGE, CONCURS.

BRIEF FOR APPELLANT:

Andrew M. Campbell  
Covington, Kentucky

BRIEF FOR APPELLEES:

Kelly S. Wiley  
Covington, Kentucky

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<sup>1</sup> We note that A.S. has failed to provide this Court with proper citation to the record to support her argument. Absent any citation to the record by A.S. in her brief to this Court, we are required to assume that the omitted record supports the decision of the trial court. *See Commonwealth v. Thompson*, 697 S.W.2d 143 (Ky. 1985).