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Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000823-ME

J.A.S.

APPELLANT

v.

APPEAL FROM FAYETTE FAMILY COURT
HONORABLE JO ANN WISE, JUDGE
ACTION NO. 13-AD-00003

CABINET FOR HEALTH AND FAMILY
SERVICES; T.F.; AND J.J.B., A CHILD

APPELLEES

AND

NO. 2013-CA-000824-ME

J.A.S.

APPELLANT

v.

APPEAL FROM FAYETTE FAMILY COURT
HONORABLE JO ANN WISE, JUDGE
ACTION NO. 13-AD-00004

CABINET FOR HEALTH AND FAMILY
SERVICES AND A.T.L. JR., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, LAMBERT, AND THOMPSON, JUDGES.

LAMBERT, JUDGE: J.A.S. (the Mother) has appealed from the April 12, 2013, orders of the Fayette Family Court terminating her parental rights to her sons, J.B.B. (Child 1) and A.T.L. (Child 2). Because the family court's orders were supported by clear and convincing evidence, and we find no abuse of discretion or error in the decisions, we affirm the orders on appeal.

Child 1 was born in March 2010 to the Mother and T.F., who does not have any contact or involvement with his child and did not participate in the proceedings below. The Mother was sixteen years old when Child 1 was born. Child 2 was born in March 2011 to the Mother and A.L., who was killed by multiple gunshot wounds in December 2012. Both of the children (and the Mother and her sister, who were also juveniles) were removed by the Cabinet for Health and Family Services (the Cabinet), and the two children have resided in foster care since October 6, 2011, when the Cabinet filed Juvenile Dependency, Neglect and Abuse petitions in the family court. The Cabinet became involved with the family the previous year due to the Mother's truancy issues. In following up on the original neglect petition filed by the school system, the Cabinet discovered the deplorable conditions of the home, which placed the children at imminent risk of harm. The family court found that both children were neglected and committed

them to the Cabinet. The family court also ordered a UK Comprehensive Assessment and Training Services (UK CATS) evaluation for each child. In October 2012, the family court entered permanency orders changing the goal to adoption and ended all visitations with the Mother.

The Cabinet filed petitions to terminate parental rights of both the Mother and T.F. with the family court on January 8, 2013.¹ In the petitions, the Cabinet stated that both children had been committed to the Cabinet and that in the underlying juvenile actions, the family court found them to be neglected children, that reasonable efforts were made to prevent their removal from the home, and that the children should be placed for adoption. The Cabinet further alleged that the parents failed to protect and preserve the children's fundamental right to a safe and nurturing home, that they were neglected children as defined by Kentucky Revised Statutes (KRS) 600.020, and that it was in their best interest that parental rights be terminated. Specifically, the Cabinet alleged that the Mother had failed or refused to provide essential care and protection for the children and there was no reasonable expectation of improvement considering the age of the children; that the Mother for reasons other than poverty alone had failed to provide or was incapable

¹ In Child 1's case, the family court appointed a warning order attorney for T.F., who did not respond to the warning order attorney's letter. The letter was returned and marked "attempted – not known." In its findings of fact and judgment, the family court agreed with the Cabinet's allegations against T.F. and found that he had "abandoned the child for periods of not less than ninety days. He has not contacted the Cabinet or his child, despite multiple phone messages left and mailed written-contact attempts by the assigned social worker. [T.F.] has not availed himself of reunification services or visitation to foster and/or maintain a bond with his child." On the basis of this finding, the family court terminated T.F.'s parental rights. T.F. did not appeal the termination of his parental rights, and we shall limit our review to information related to the Mother.

of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the children's well-being and there was no reasonable expectation of improvement considering the age of the children; that the Mother failed to pay court-ordered child support; and that the Cabinet had offered or provided all reasonable services to the family, but the Mother had failed or refused or been unable to make any lasting changes in her circumstances, conduct, or conditions that would allow a safe return of the children to her care. The family court appointed an attorney for the Mother as well as a guardian *ad litem* (GAL) for the children. In her answer, the Mother admitted she was the children's mother, but denied the allegations in the petition.

The court held a joint termination hearing on March 27, 2013. The first witness to testify was Adrian Whitt-Woosley with the UK CATS project. The UK CATS team completed consultation reports for the children involved in these cases, reviewing data and working with the DCBS case manager as well as the foster parents to gather information. Based upon the review, the team determined that case planning services put into place were appropriate but that there was no evidence that the risk of maltreatment had been mitigated in this family. The Mother had not fully taken advantage of the services that had been offered. Based on the age of the children and the length of time they had been in foster care, the UK CATS team recommended that the Cabinet focus on securing permanency for the children and that it was not in their best interests to be returned to the Mother. Over the Mother's objection, the court-ordered UK CATS consultation reports

were introduced into evidence. On cross-examination by the Mother, Ms. Whitt-Woosley answered several questions related to the findings in the UK CATS consultation report. She stated that the foster mother reported that the children were experiencing “night terrors,” but that this had never been specifically diagnosed by a professional. On redirect examination, Ms. Whitt-Woosley confirmed that the children experienced “night terrors” after visits with their mother, but the “night terrors” had ceased when visitation ended.

The family court asked Ms. Whitt-Woosley about the special needs of the children. Both children came into care with multiple developmental delays, but both had made significant progress after being placed in foster care. The UK CATS team did not believe the Mother was able to provide the essential parental care and protection for her children, noting that she was unable to demonstrate sobriety, complete parenting classes, or demonstrate consistent and appropriate visitation with the children. The UK CATS team also pointed to the Mother’s decision to discontinue mental health services when she aged-out of foster care. Ms. Whitt-Woosley stated that the Mother had experienced considerable obstacles in her life for which she would require mental health treatment to address and that would make her a more protective parent. The UK CATS team did not see any evidence that the Mother was ready to provide basic and protective care for the children, considering their young ages (they were one and two years old at the time of the consultation), and she stated that the time-frame was an issue for the Mother

to address her long-term issues. She noted that the children were at a highly dependent stage of their lives and needed to have permanent attachment figures.

The GAL also questioned Ms. Whitt-Woosley regarding the children's emotional and developmental needs. She stated that "night terrors," developmental delays, lack of verbal ability, and being easily distressed by interruptions in routines could be associated with a history of neglect, but she stated that these conditions had improved once the children entered foster care and began receiving services. She hoped that the children would not experience life-long problems due to their neglect, noting that the children had made tremendous progress. She attributed the progress to their experiences in foster care. They had received many services, including First Steps services, occupational therapy, physical therapy, speech and language therapy, and services at Cardinal Hill. The services had made a big difference for the children. When asked whether she believed the children would be at risk if returned to the Mother, Ms. Whitt-Woosley stated that based upon the information provided, the UK CATS team concluded that many risks still remained unresolved and that the focus shifted to securing permanency for the children.

The next witness to testify was Cabinet social worker Sarah Murrell, who was assigned to this family. Ms. Murrell stated that the Mother signed affidavits of paternity naming the fathers for both children and that Child 2's father was deceased. The children were removed from the Mother's care by the Cabinet on October 5, 2011, following a home visit. At that time, the Mother was living

with her mother, and Ms. Murrell reported that there was little food in the house, the conditions were deplorable, the whole family was sleeping on a dirty mattress, the baby beds were not in working order, there were minimal supplies for the children, dirty diapers were on the floor, a six-inch hole was in the floor, and the bathtub was clogged with stagnant water. Ms. Murrell returned on October 6, 2011, but the home was still not in an appropriate condition. She saw Child 2 face down on a mattress in the back bedroom; he had been crying for a long period of time and no one was tending to him. She was afraid for his life. The refrigerator contained only a small amount food. Two unchained pit bulls were also in the house. Furthermore, the Mother was truant from school. The Mother, her sister, and the children were all removed from the home. The Mother was placed with her children in a foster home in Richmond for the first few days until Ms. Murrell received a phone call from the foster care worker who was working with the family asking that the Mother be removed from her children. The Mother was locking herself in the bedroom with the children, not feeding the children or permitting the foster parents to feed them, not following the rules of the home, and attempting to sleep most of the day. The Cabinet placed the Mother in another foster home in December due to the safety risk of keeping them together. She went AWOL from foster care and shortly thereafter turned eighteen years old. The Cabinet could not locate the Mother and therefore filed a subsequent DNA petition in January.

Ms. Murrell testified that the family court had committed the children, found that the Cabinet had provided reasonable services, changed the goal to

adoption, granted a waiver of further reasonable efforts as to the Mother, and issued a no-contact order between the Mother and the children. Services provided to the Mother while she was still a juvenile included mental health counseling, a Step-by-Step parenting program and counseling through Necco, and medication for anxiety. All of the services ended when she turned eighteen. When she became an adult, the Cabinet provided other services, including the recommendations that the Mother undergo a psychosocial assessment by TAPP, attend parenting classes at the Nest, obtain stable housing and employment, undergo drug testing, enroll in a GED program, attend the children's medical appointments, and attend substance abuse treatment at the Pride Program. The Mother completed sixteen hours of parenting classes but did not receive a certificate from the Nest because she needed more classes, attended one meeting with TAPP regarding her application for disability but could not be located for further appointments, completed one drug assessment at the Pride Program but failed to follow through on the recommendation to receive in-patient treatment due to the positive tests for cocaine and alcohol in her system the day of her assessment. The Mother was currently living in an apartment, but she was not paying her utility bills, which were being paid by Community Action. She did not attend the children's medical appointments. She had not been drug testing regularly, but when she had been tested recently, she was positive for marijuana and cocaine. She had never enrolled in a GED program.

Ms. Murrell expressed concerns about the Mother's ability to parent the children based on her observations at visitations. She expected more interaction with the children. While Child 2's father was still alive, they would visit with the children together, and they would spend more time interacting with each other than with the children. The Mother would yell at one child and yank him around by his arm. She did not provide diapers, wipes, or bottles during the visits, as parents were supposed to do. Ms. Murrell's main concern was that the Mother was not teaching the children, reading books to them, interacting with them, or using any of the parenting techniques she had learned. She merely watched them play on the floor by themselves. She was not regular with her visitation and would miss several visitations in a row at times prior to the entry of the no-contact order. When the Cabinet changed the visitation schedule to have the Mother and Child 2's father visit on opposite weeks, the Mother never showed up for a visitation again. The Mother gave birth to a third child, a girl, in January 2013. That child was also committed to the custody of the Cabinet due to risk of neglect.

Ms. Murrell testified that the Mother's drug use had been an issue throughout the children's lives. She tested positive for marijuana when she came into care and tested positive for cocaine in October 2012. The Mother also tested positive for cocaine in January, February, and March 2013, the month of the hearing. In addition to drug use, domestic violence had also been a problem with the family. The Mother reported to her in 2012 that Child 2's father, while still

alive, had been threatening her and tried to put her in a car with a gun to her head in an attempt to hurt her and her unborn child. Ms. Murrell referred her to a domestic violence shelter and told her how to seek a protection order, neither of which she did. The father of her third child also had a history of domestic violence, and the Mother had been informed of this.

Ms. Murrell testified that the children were doing well in their foster care placements. Child 2 had completed all of his therapy at Cardinal Hill, and Child 1 was still receiving speech therapy, but was doing much better. She described their behavior when she first saw them during home visits, when Child 1 would run around screaming, but in later visits he would sit down and go through a book with her. Both children were beginning to speak. Both children had been diagnosed with failure to thrive and had fungus on their heads when they entered foster care. That had all been alleviated. They had attached to their foster parents and were happy children. They were on normal schedules with their physicians. However, both children were at risk for possible hearing loss due to the scar tissue in their ears, believed to have been caused by untreated ear infections. Their baby sister had been placed in the home, and both children were happy she was there. The children had been in this foster home since March 1, 2012, and the foster parents planned to adopt them.

The GAL asked Ms. Murrell to describe the children when they were removed, and she provided more details about their conditions. The children were diagnosed as failure to thrive, and neither child was up to date in his

immunizations. Child 1 would constantly overeat until he threw up and would take food when he did not need it. He regressed when his sister came into the home, and the foster parents were working on his eating issue. Child 1 was not speaking at all and had no routine. He had not been exposed to play activities and experiences, and he was not able to perform self-help activities, such as zipping his jacket. He was not able to follow directions or listen to redirection appropriately. He had no idea of what a routine was, but did what he wanted to do. Child 2 had very little muscle tone in his body. He was unable to stand on his legs or sit up, and he was not able to function at his age level. Child 2 had an umbilical hernia and was throwing up. He continued to have problems with his stomach. Both children had fungus on their heads because they had not been appropriately cleaned. Their heads had to be shaved, and they had to take medication to eliminate the fungus, which took several months. Both children were very developmentally delayed and qualified for all of the therapies through First Steps, including speech therapy, occupational therapy, and developmental intervention.

Ms. Murrell stated that the Mother chose not to extend her commitment to the Cabinet, despite the Cabinet's offer to help her reunify with her children if she did so. They discussed this several times, and the Mother decided she did not want to do this. Ms. Murrell believed that the Mother was still living with her mother. The Mother told Ms. Murrell that she was doing temporary work, but that the last time she had worked was in February. She worked one day per month and was not in school. She had been ordered to pay child support and was

in arrears on her obligation. After her birth, the Mother's third child was in the ICU for cocaine withdrawal.

At the conclusion of the Cabinet's evidence, the Mother moved for a dismissal of the petitions due to the Cabinet's failure to present clear and convincing evidence to establish the requirements under the statute. The family court denied the motion.

The Mother then testified on her own behalf. She was nineteen years old at the time of the hearing and admitted the children were hers. She had completed the 10th grade and was registered at Bluegrass Community & Technical College to study cosmetology. She grew up in the care of her mother, and she learned from her how to care for her own children. The Mother stated that after the children were removed from her care, she visited with them on a regular basis. She stated that she canceled a few visitations, but made up those missed sessions. She also denied missing any drug tests. The Mother did not have a car, and she walked or took the bus to get places. She had her own apartment, where she lived by herself. She supported herself through food stamps and did not have to pay any rent; she only had to pay the electric bill. She stated that she worked for Patty Tipton doing banquets and catering and that she was able to work whenever she called her employer. She had worked one week in the month of March.

Regarding her children, the Mother disagreed that there was anything wrong with them developmentally when they were in her care and that they had had all of their shots. When asked about Child 2's inability to walk, the Mother

stated that he was only eleven months old when he was taken from her. She was aware that one child had a hernia, and she sought medical treatment for him. She stated she was told that he was supposed to have surgery to correct this before he turned one year old, but a particular time was not given. Regarding Child 1's inability to speak, the Mother stated that he did not talk because the Cabinet had taken him away from her, that he talked to her at home, and that she understood everything he said to her. She denied that there was any fungus on the children's heads and stated that they always took baths. They were always clean and in clean clothes, and there were always diapers available. She described the children as spoiled and that there was nothing they did not have.

The Mother testified that she did not know why her drug tests came back positive because she was not on any drugs. She chose not to recommit to the Cabinet when she became an adult because the Cabinet was not going to give her children back to her; the Cabinet only stated that it was a possibility that they would be returned to her. The Mother stated that she had been paying some child support but that she did not have a "real" job. When she did earn money, she made some payments. The Mother stated that she loved her children, describing them as her "babies." She wanted her children to be returned to her because she was a good mother. She did not beat them or yell at them. Her children were with her all of the time. Regarding the men involved in her life who might jeopardize her children, the Mother stated that she was no longer with T.F. and did not know where he was. She confirmed that Child 2's father was deceased.

At the conclusion of the hearing, the Mother renewed her motion to dismiss for insufficiency of the evidence. The court again denied the motion. The court then permitted the GAL to make a verbal report to the court. The GAL had been with this family throughout the case, and she stated that this was one of the worst cases of neglect she had seen, citing the children's compulsive eating, the hernia, and the fungus. The Mother did not understand what the children needed, and her third child had been in the hospital going through withdrawal from cocaine. The children were doing well and had improved in foster care. The Mother had done nothing to better herself that would permit the children to be returned to her. The GAL recommended that parental rights be terminated and that the children be placed for adoption.

On April 13, 2013, the family court entered its findings of fact and conclusions of law as well as judgments terminating the Mother's parental rights. As the Cabinet alleged in its petitions, the family court found that the Mother failed to protect and preserve the children's fundamental right to a safe and nurturing home, that they were abused and neglected children as defined in KRS 600.020, and that it was in their best interests that parental rights be terminated. The family court then found that the Mother, for not less than six months, had failed or refused to provide essential parental care and protection for the children, without any reasonable expectation of improvement considering the age of the children, and that the Mother had for reasons other than poverty alone failed to provide essential food, clothing, shelter, medical care, or education for the children's well-being,

and there was no reasonable expectation of significant improvement in the immediately foreseeable future considering the age of the children. In support, the family court relied upon the following findings of fact:²

8. The [children were] severely neglected while in the care of the mother. The respondent mother has failed to pay court ordered child support.

9. Respondent mother has not regularly drug-tested as ordered by the Court, to address an identified pattern of conduct of substance abuse. When she has drug tested, she has tested positive for cocaine and marijuana. After the [children's] removal, respondent mother became involved in a relationship with a man who has a history of domestic violence, with whom she now has a child in common, and who would pose a risk of abuse or neglect to a child in their care. Respondent mother has completed parenting classes, but did not improve her parenting skills as a result, as shown by observation of her interactions with the child at visits. Respondent mother has obtained subsidized housing, and receives food stamps, which are her primary sources of income. She has not maintained employment and works only intermittently.

10. Respondent mother has given birth to another child after the removal of the subject [children] from her care. That child has been removed from her care for risk of neglect and has been placed in foster care with the subject [children]. Since that child's removal, the mother has tested positive for cocaine.

11. The Cabinet for Health and Family Services has offered or provided all reasonable services to the family, but the mother has failed or refused or has been unable to make sufficient changes in her circumstances, conduct or conditions which would allow the child to be safely returned to her care. The respondent mother has been offered services since the first removal of the [children] from her care, but has not followed through

² The family court made almost identical findings in both cases.

with most of the services offered and has not made substantial progress or improvement in her circumstances as a result.

Related to Child 1, the family court found:

The child was developmentally delayed when removed from the respondent mother's care, but has made good progress in his foster care placement. He still requires speech therapy, but is able to speak and is learning new words. He is appropriately bonded to his foster family, in whose care he has been for a year. He and his brother are excited at the placement of their baby sister in their home.

Related to Child 2, the family court found:

The child was developmentally delayed when removed from the respondent mother's care, but has made good progress in his foster care placement. He has successfully completed his therapy and treatment for delays, is able to walk, crawl and is learning new words. He is appropriately bonded to his foster family, in whose care he has been for a year. He and his brother are excited at the placement of their baby sister in their home.

The family court terminated parental rights, declared the children to be wards of the state, and granted the Cabinet the authority to place them for adoption. These appeals by the Mother follow.

Our standard of review in termination of parental rights cases is set forth in *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116-17 (Ky. App. 1998):

The trial court has a great deal of discretion in determining whether the child fits within the abused or neglected category and whether the abuse or neglect warrants termination. *Department for Human Resources*

v. Moore, Ky.App., 552 S.W.2d 672, 675 (1977). This Court's standard of review in a termination of parental rights action is confined to the clearly erroneous standard in CR 52.01 based upon clear and convincing evidence, and the findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings. *V.S. v. Commonwealth, Cabinet for Human Resources*, Ky.App., 706 S.W.2d 420, 424 (1986).

“Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent-minded people.” *Rowland v. Holt*, 253 Ky. 718, 726, 70 S.W.2d 5, 9 (1934).

Furthermore, “[t]he findings of the trial judge may not be set aside unless clearly erroneous with due regard being given to the opportunity of the trial judge to consider the credibility of the witnesses.” *Lawson v. Loid*, 896 S.W.2d 1, 3 (Ky. 1995), citing CR 52.01; *Cherry v. Cherry*, 634 S.W.2d 423 (Ky. 1982); *Reichle v. Reichle*, 719 S.W.2d 442 (Ky. 1986).

We recognize that the United States Supreme Court has emphasized the fundamental nature of the liberty interest natural parents have for the raising of their child:

The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into

ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.

Santosky v. Kramer, 455 U.S. 745, 753-54, 102 S.Ct. 1388, 1394-95, 71 L.Ed.2d 599 (1982) (footnote omitted). *See also M.E.C. v. Com., Cabinet for Health and Family Services*, 254 S.W.3d 846, 850 (Ky. App. 2008) (“While the state has a compelling interest to protect its youngest citizens, state intervention into the family with the result of permanently severing the relationship between parent and child must be done with utmost caution.”).

In this appeal, the Mother contends that the family court’s judgments terminating her parental rights were not supported by substantial evidence of record. She contends that her own testimony depicts a different history of the family than that presented by the Cabinet’s witnesses. The Cabinet disagrees, arguing that the Mother’s testimony was subject to the family court’s evaluation for credibility and that its witnesses provided the family court with substantial evidence to support the judgments. We agree with the Cabinet that substantial evidence supports the family court’s decision to terminate the Mother’s parental rights.

Pursuant to Kentucky Rules of Civil Procedure (CR) 52.01, a reviewing court must afford “due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses.” It has long been held that “when the testimony is conflicting we may not substitute our decision for the judgment of the trial court.” *R.C.R. v. Com. Cabinet for Human Resources*, 988 S.W.2d 36, 39 (Ky. App.

1998), citing *Wells v. Wells*, 412 S.W.2d 568, 571 (Ky. 1967). Here, the family court had the opportunity to consider the Mother's testimony in light of the testimony from the Cabinet's witnesses, whose testimony was wholly different from the Mother's, as well as the records of the UK CATS consultation reports and the records in the juvenile actions. The family court found the Cabinet's witnesses more credible and chose to rely upon that testimony. We find no error in the credibility assessment the family court had to make and hold that the family court's findings of fact are supported by clear and convincing evidence of record.

Pursuant to KRS 625.090, the Cabinet must meet a three-prong test in order to involuntarily terminate parental rights and establish that 1) the child is abused or neglected; 2) termination would be in the child's best interest; and 3) one of several listed grounds exists. In this case, the family court found that the Cabinet established grounds under 625.090(2)(e)³ and (g),⁴ and that the Cabinet provided the Mother with reasonable services in order to attempt to reunite her with her

³ “That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child[.]”

⁴ “That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child[.]”

children pursuant to KRS 625.090(3)(c).⁵ In making these findings, the family court also considered other listed factors in KRS 625.090(3), which include:

(a) Mental illness as defined by KRS 202A.011(9), or mental retardation as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;

(b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;

...

(d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;

(e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and

(f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

Based upon our review of the substantial evidence of record, we hold that the family court's decision to terminate the Mother's parental rights was not clearly erroneous. The clear and convincing proof introduced at the hearing

⁵ "If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court[.]" The term "reasonable efforts" is defined as "the exercise of ordinary diligence and care by the department to utilize all preventative and reunification services available to the community in accordance with the state plan for Public Law 96-272 which are necessary to enable the child to safely live at home[.]" KRS 620.020(11).

established that the children had been severely neglected while in the care of the Mother, which resulted in developmental delays, permanent damage to their ears due to untreated ear infections, fungus on their heads, lack of muscle tone, and overeating problems. The Mother's testimony made it clear that she had no idea how to raise a child, and she could not apply anything she had learned in her parenting classes or from any of the services the Cabinet provided to her. The Mother's mother (the children's grandmother) provided the only model for her upbringing of the children, and the record contains ample evidence that her mother's home where they all lived was in a deplorable condition when the Mother, her sister, and the two children were initially removed by the Cabinet. Ms. Murrell's observations of the Mother's visitations with the young children, when they were actually held, did not reveal that she interacted with her children, but that she spent her time interacting with Child 2's father while he was still alive. The evidence also established that visitations were traumatic and distressful for the children, and resulted in "night terrors," according to the foster parents. Furthermore, the Mother tested positive for cocaine and marijuana multiple times, and her third child had to remain in ICU after her birth because she was going through withdrawal from the cocaine in her system. She did not successfully complete any of her case plan, including substance abuse and mental health treatment. Finally, the Mother was only employed intermittently, relied upon subsidized housing and food stamps for her support, and failed to remain current on her child support obligation. All of these findings establish clear and

convincing evidence to support the family court's decision to terminate her parental rights, and therefore the family court's decision is not clearly erroneous.

For the foregoing reasons, the judgments of the Fayette Family Court terminating the Mother's parental rights are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Thomas L. Conn
Lexington, Kentucky

BRIEFS FOR APPELLEE, CABINET
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SERVICES:

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