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Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-1724-ME

CROSS-APPELLANT

J.J.R.

v.

CROSS-APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE JASON S. FLEMING, JUDGE
ACTION NO. 18-AD-00020

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND
FAMILY SERVICES; O.J.A.Y.; AND
T.E.S.

CROSS-APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CALDWELL, JONES, AND TAYLOR, JUDGES.

CALDWELL, JUDGE: J.J.R. (Father) cross-appeals from the involuntary termination of his parental rights to his son, O.J.A.Y. (Child). We affirm.

Child was born in September 2010 to Father and T.E.S. (Mother), who were both living in the state of Washington. Father and Mother were unmarried, but

they lived together, and both took care of Child until late 2012. At that time, alleging domestic violence, Mother sought a domestic violence protective order against Father in Washington state court. In that proceeding Mother was granted the protective order and further was granted sole custody of Child. Father was allowed only supervised visitation with Child and was ordered to attend and complete classes about domestic violence and parenting.[1]

Mother married another man (Stepfather) in early 2013. Shortly thereafter, she obtained permission from the court in Washington to move to Kentucky with Child due to Stepfather's being stationed at Fort Campbell. The Washington court ordered that Father could communicate with Child via Skype and telephone. Mother and Child moved to Kentucky in April 2013.

Father has remained in Washington. According to Father, he tried to keep in touch with Child through Skype sessions and/or contacting Mother via Facebook or text, but Mother sometimes failed to respond to his communication attempts. Father asserts that he paid child support to Mother beginning with their separation in 2012. He also states that he sent clothes and toys and other supplies for Child to Mother, and that Mother sent him photographs of Child.

[1] The parties have not directed our attention to any orders or other written records from Washington state courts in the record on appeal. Our description of the Washington state court proceedings comes from the briefs and trial testimony, and there appear to be no significant disputes among the parties about what happened in Washington state court proceedings.

In late November 2015, Child and his younger half-brother were removed from the home of Mother and Stepfather due to domestic violence occurring in the children's presence. The boys entered foster care and were found to be neglected after an adjudication hearing. After a dispositional hearing, the Christian Family Court adopted the recommendation of the Cabinet for Health and Family Services (Cabinet) that the boys be placed with the Cabinet. Father claims he was not informed that Child was in foster care for several months to a year after the placement. An attorney was appointed to represent Father in late 2015.

About mid-May of 2016, the Cabinet obtained contact information for Father, and Father's counsel was emailed the contact information. In August 2016, a social worker emailed Father to inform him of an upcoming team meeting, to be held in early September, to discuss Child's case. Father participated in this meeting by telephone. The Cabinet offered Father the opportunity to visit with Child, facilitated by Child's therapist, via Skype.

The social worker emailed Father and the therapist to ask how the Skype visit went after it was originally scheduled for late September. It turned out that the initial Skype visit appointment had been postponed due to illness. The therapist reported in an email to the social worker in October that the appointment had been rescheduled for another date, but the Skype visit had not occurred because Father had not set up and sent to the therapist a new Skype username for the session.

In November 2016, Father emailed his social worker and stated that he had lost the therapist's contact information and asked her to send that to him. The social worker did not directly respond to Father's email but forwarded it to the therapist, asking the therapist to contact Father. According to Father, he did not hear back from either the social worker or the therapist and did not inquire again.

In late December 2016, another team meeting occurred to discuss Child's care. At trial the social worker testified that she had called Father to remind him of this meeting, which he could attend telephonically. According to the social worker, Father did not answer when the Cabinet attempted to call him on the scheduled meeting date. Father insists he did not receive such a call.

Thereafter, after some apparent improvement by Mother, the children were returned to her care for a trial period in early 2017. According to the social worker's testimony, Father had been upset to learn of the plans to return Child to Mother's home. Within a couple of months of being returned to Mother's care, the children returned to foster care due to truancy. Since late February 2017, Child has continuously remained in foster care—with the same foster family where he and his brother lived prior to the trial return to Mother. According to medical and other treating professionals, the foster parents excel in caring for the children and meeting their needs.

In late March 2017, Father's attorney asked the social worker about the children's status via email. The social worker replied that the children had returned to foster care and that she had had no contact with Father since late 2016. Father complains that he was not informed of Child's returning to foster care until his attorney's email inquiry to the social worker.

In May 2017, Father emailed the social worker to inform her that he wanted to have custody of Child and would file an action in Washington state court to obtain custody of Child. In February 2018, Father emailed the social worker again to inquire about what he needed to do to go pick up Child and take him back to Washington to live. In June 2018, he sent another email to the social worker regarding his intent to file paperwork in the state of Washington. There was no evidence in the record or presented to court that Father ever actually filed anything in Washington to obtain custody of Child.

In March 2018, the Cabinet filed a petition to terminate the parental rights of Father (and of Mother) to Child. It also filed a petition to terminate the parental rights of Mother and Stepfather to Child's younger half-brother. The two cases were tried together.

The family court ordered appointment of counsel for Father. The same lawyer was appointed to represent Father in termination proceedings that represented him in earlier dependency, neglect, and abuse (DNA) proceedings. By counsel,

Father filed a motion in the DNA proceedings to alter the district court's finding that Child was neglected to reflect that Child had not been neglected by Father. According to notations on docket entries, this motion was granted.

In May 2018, by counsel, Father filed a motion in the underlying DNA action to compel the Cabinet to provide services to Father, including obtaining an Interstate Compact for Placement of Children (ICPC) evaluation of his home. The family court granted the motion and specifically ordered that: 1) medical, mental health, and therapy records for Child be provided to Father's counsel, 2) the Cabinet set up a case plan with Father "to give him the opportunity for [Child] to be placed with him as the least restrictive alternative[,]" and 3) the Cabinet begin the process for obtaining an ICPC evaluation from Washington state about whether it would be appropriate to place Child with Father. (Order dated May 23, 2018 in juvenile case file included in the record herein as Plaintiff's Exhibit 4).

Unfortunately for Father, the ICPC evaluation—dated December 2018—recommended against placement in his home. The ICPC evaluator found that Father had stable employment and a clean and appropriate home and that he was capable of caring for a child without special needs. But the evaluator expressed concerns that Father had unresolved domestic violence issues since he had not completed court-ordered classes on domestic violence and since he had a recent domestic violence charge from 2017. The evaluator also noted that Father's mother, whom he lived

with and might sometimes rely upon for child care, had some criminal history and referrals to child protective services in Washington. These child protective services referrals were for investigations into child abuse, neglect, drug issues, and domestic violence involving her and/or her partner while Father and his younger brother were growing up. The evaluator also opined that Father did not understand Child's special needs or how to properly care for Child in light of Child's autism diagnosis and other challenges.

The evaluator made recommendations for actions which should be done before Father's home could be considered for placement: 1) completion of domestic violence assessment and classes, 2) attending classes on parenting special needs children, 3) attending classes on domestic violence-informed parenting, 4) participating in Skype visits with Child facilitated by Child's therapist, and 5) going to Kentucky for Father/Child in-person sessions for a "Bonding/Best interest assessment by a doctorate level clinician to determine if there are appropriate attachments with the child and bonding issues . . ." (p. 11 of ICPC evaluation attached to guardian *ad litem*'s brief, also included as Plaintiff's Exhibit 3 in record on appeal). The Kentucky social worker testified that she emailed Father to remind him of the ICPC recommendations but that he had not completed these recommendations prior to trial.

Father contends that he had lacked information about Child's diagnosis and special needs before meeting with the ICPC evaluator in Washington and it was unfair to hold his lack of knowledge of these matters against him. In January 2019 (after the ICPC evaluation), the family court ordered the Cabinet to release to his attorney—and others in the case—all medical, mental health, and other records regarding Child. Apparently, some records were provided to Father and his counsel, although he later requested additional records such as IEPs (Individual Education Plans) for certain years when trial commenced in May 2019.

Father was present at the termination trial, which occurred over a few separate dates in May and August 2019. At the trial, his counsel pointed out differences in opinion in medical and mental health testimony and records about Child's diagnoses and needs. Both a psychiatric nurse practitioner and Child's current therapist noted that Child had significant speech and language challenges. The nurse practitioner, who had provided medical management for Child for a year or so after he first entered foster care, stated in her testimony that she diagnosed Child as being in the middle range of the autism spectrum and also having other challenges such as oppositional defiance disorder. But an assessment from the Weisskopf Center stated that Child did not "overwhelmingly" appear to have autism, and instead noted simply a mild intellectual disability and significant speech and language challenges as Child's diagnoses.

Child's current therapist testified that she relied on the Weisskopf diagnosis in treating Child. She also testified that even though Child was not currently diagnosed as autistic, he did have significant difficulty dealing with change and some repetitive behaviors. Father argues that assessments finding Child not to have autism or as many challenges were more accurate, and that the ICPC finding that he is unprepared to deal with challenges such as autism should be disregarded.

Father has not disputed that he has not had actual in-person contact with Child since Child moved to Kentucky in 2013. He does not dispute that he had not completed Washington court-ordered domestic violence classes by the time of trial. He does not deny that he never participated in Skype visits with Child during Child's time in foster care. He also admitted in his testimony that Child did not know who he was during Skype visits while Child was in Mother's home in early 2017.

Although the social worker testified to never receiving gifts for Child after Father expressed interest in sending those, Father testified to sending gifts while Child was in Mother's care. Father also testified to paying court-ordered child support—including that imposed in the state of Washington for several years to be paid for periods dating back to Child's birth and that imposed in Kentucky for Child's time in foster care for which Father's wages were garnished. Despite any disagreements about causation, Father and the Cabinet both appear to agree that there were some periods of contact and others of no contact—often for many months at a

time—between Father and the social worker from late 2016 until the 2019 termination trial.

In the autumn of 2019, the family court issued an order terminating both Mother's and Father's parental rights to Child and amended findings of fact and conclusions of law.[2] In October 2019, Father filed a motion to alter, amend, or vacate, which the family court denied after a hearing. Father appealed.[3,4,] Further facts will be provided as necessary.

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[2] Prior to Father's filing of a motion to alter, amend, or vacate, the family court issued amended findings of fact and conclusions of law stating therein that it did so to correct clerical errors in its original findings of fact and conclusions of law, which had been rendered just a few days beforehand.

[3] We agree with Father's statement in his reply brief that the issues he raises on appeal—generally allegations of clear error in the family court's findings and/or an abuse of discretion in its decision—were presented to the family court and thus preserved for review in his motion to alter, amend, or vacate. However, the guardian *ad litem*'s brief accurately points out that the Appellant's brief fails to specifically set forth whether and where in the record issues are preserved for review, contrary to the requirements of Kentucky Rules of Civil Procedure (CR) 76.12(4)(c)(v), despite other citations to the record in the Appellant's brief. We caution counsel to take greater care to comply with rules regarding appellate briefs in the future. *See Hallis v. Hallis*, 328 S.W.3d 694, 696 (Ky. App. 2010) (noting importance of complying with appellate procedural rules and potential consequences for non-compliance including striking all or part of a brief and reviewing issues only for manifest injustice). We direct counsel's attention to the *Basic Appellate Practice Handbook* available at the Kentucky Court of Justice website: https://kycourts.gov/Courts/Court-of-Appeals/Documents/P56BasicAppellatePractice Handbook.pdf (Last visited June 3, 2021).

We also find troubling the attachment to the Appellant's brief of the termination of parental rights order regarding Child's younger half-brother rather than the termination of parental rights order regarding Child. However, given the significant interests at stake, we overlook this error to review the merits of the family court's termination of Father's parental rights to Child.

[4] Father filed a notice of cross-appeal after Mother filed her notice of appeal, and there are no issues about the timeliness of either notice. Mother later dismissed her appeal on her own motion. Neither parent named the child as an appellee in the body of his/her notice, a potentially fatal error. *See, e.g., A.M.W. v. Cabinet for Health and Family Services*, 356 S.W.3d 134, 135 (Ky. App. 2011) ("If a parent appeals an order terminating parental rights, the child is a principal focus of the appeal. Therefore, the child must be made a party to the appeal to protect his interests. The child is a necessary and indispensable party to an appeal from the termination of parental rights and the failure to join the child to the appeal requires this Court to dismiss this appeal."). However, Father

STANDARD OF REVIEW

Before terminating parental rights, the family court must find clear and convincing evidence[5] to support each of three parts of the standard established by Kentucky Revised Statutes (KRS) 625.090. First, the child must have been found to be an "abused or neglected" child as defined by KRS 600.020(1). KRS 625.090(1)(a). Second, termination must be in the child's best interest. KRS 625.090(1)(c). Third, the family court must find at least one ground of parental unfitness. KRS 625.090(2). In determining the child's best interests and whether there are ground(s) of parental unfitness, the family court must consider the factors listed in KRS 625.090(3).

Termination of parental rights is a grave action which the courts must conduct with "utmost caution." *M.E.C. v. Commonwealth, Cabinet for Health and Family Servs*., 254 S.W.3d 846, 850 (Ky. App. 2008). Thus, the evidence to support termination must be clear and convincing. KRS 625.090; *see also Santosky v.*

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referred to the Cabinet's serving as the next friend of the named child in the caption and body of the notice of cross-appeal and—unlike *A.M.W.*—mailed a copy of the notice to the children's guardian *ad litem*. Therefore, dismissal of the appeals is unnecessary. *Morris v. Cabinet for Families and Children*, 69 S.W.3d 73, 74 (Ky. 2002) ("Appellants' notice of appeal named the minor child, CJM, in the caption, and, although he was not included in the certificate of service, copies of the pleadings were provided to the child's guardian ad litem. These factors together substantially comply with the requirements of CR 73.03 and provided sufficient notice to all parties concerned that the minor child was also an Appellee."). Furthermore, Child's guardian *ad litem* filed an Appellee brief on Child's behalf—in addition to the Cabinet filing its own Appellee brief.

[5] *Clear and convincing evidence* does not mean uncontradicted proof, but "proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent-minded people." *Commonwealth, Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010) (citations omitted).

Kramer, 455 U.S. 745, 769-70, 102 S. Ct. 1388, 1403, 71 L. Ed. 2d 599 (1982) (holding due process requires proof by at least clear and convincing evidence for terminations).

Even so, the decision of a trial court—here the family court—to involuntarily terminate parental rights is accorded great deference on appellate review, and the court's factual findings are reviewed under the "clearly erroneous" standard of Kentucky Rule of Civil Procedure (CR) 52.01[6] meaning they shall not be disturbed unless they are not supported by substantial evidence. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998).

Father argues that the family court issued clearly erroneous factual findings and that there was no showing by clear and convincing evidence of grounds of parental unfitness nor of termination being in Child's best interests. He argues that the Cabinet failed to make reasonable reunification efforts and that the family court abused its discretion in terminating his parental rights.[7]

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[6] CR 52.01 governs "all actions tried upon the facts without a jury" and provides in pertinent part: "Findings of fact, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."

[7] Father cites a child custody case not involving termination of parental rights as authority to argue that an abuse of discretion standard of review applies here. *See Cherry v. Cherry*, 634 S.W.2d 423, 425 (Ky. 1982), cited on page 11 of Appellant's brief. However, because of the intensely fact-specific nature of termination proceedings, we have often applied a clearly erroneous standard when reviewing termination of parental rights cases—meaning that we will only disturb findings and/or decisions not supported by substantial evidence. *See, e.g., T.R.W. v. Cabinet for Health and Family Services*, 599 S.W.3d 455, 461 (Ky. App. 2019). But issues in termination proceedings other than the validity of factual findings or the ultimate decision whether to terminate may be subject to other standards of review. For example, we reviewed evidentiary rulings in *T.R.W.* for abuse of

Despite Father's arguments, we discern no reversible error in the family court's termination of his parental rights. From our review of the record, its findings that the Cabinet showed by clear and convincing evidence that Child was abused or neglected by Father, that termination was in Child's best interests, and that the Cabinet made reasonable reunification efforts are supported by substantial evidence. Also supported by substantial evidence is one ground of parental unfitness found by clear and convincing evidence by the family court—that Father has failed to provide essential parental care and protection to Child for at least six months without reasonable expectation of improvement considering Child's age. *See* KRS 625.090(2)(e).[8] Thus, as the statutory requirements for termination were met, we affirm as we further explain below.

discretion. *Id.* at 464. *See also D.G.R. v. Commonwealth, Cabinet for Health and Family Services*, 364 S.W.3d 106, 113 (Ky. 2012) (although decision to terminate parental rights is reviewed under the clearly erroneous standard due to the inherently fact-sensitive nature of decisions, "[a]pplication of the law to the facts, however, will be reviewed *de novo*.").

[8] As the family court's finding of a showing by clear and convincing evidence of the ground of parental unfitness stated in KRS 625.090(2)(e) is not clearly erroneous upon our review of the record, we need not reach whether its findings of showing of alternate grounds in KRS 625.090(2) by clear and convincing evidence—such as abandonment (KRS 625.090(2)(a)) or failure to provide necessities such as food, clothing, shelter, education, and medical care (KRS 625.090(2)(g)) with no reasonable expectation of significant improvement—are similarly supported by substantial evidence.

The Family Court Specifically Found That Father Neglected Child and This Finding Is Supported by Substantial Evidence

Father argues that despite the Cabinet's assertion in the termination petition that Child was found to be neglected, "the Court never made any such determination with respect to [Father], and the proof at the hearing does not support any such finding by clear and convincing evidence." However, regardless of whether there was a specific adjudication that Child was neglected by Father during the juvenile court proceedings, the family court specifically found, by clear and convincing evidence, that Father abused or neglected Child in paragraph 19 of its amended findings of fact and conclusions of law in the termination proceeding. The family court therein specifically found that "the parents have engaged in a pattern of conduct that renders them incapable of caring for the immediate and ongoing needs of the child" based on Child's remaining in foster care for well over fifteen months[9]—since Child had been in foster care since late 2015 except for the brief trial return to Mother's house. (Record on Appeal ("R"), p. 216).

[9] The family court referred to KRS 625.090(2)(j) in its paragraph 19 finding that Child had been neglected by both parents. And it also cited KRS 625.090(2)(j) grounds of parental unfitness in its order terminating parental rights. However, KRS 625.090(2)(j) was not cited as a ground of parental unfitness in the family court's amended conclusions of law—unlike other grounds of parental unfitness such as those stated in KRS 625.090(2)(e) and KRS 625.090(2)(g).

The family court noted in its order denying Father's motion to alter, amend, or vacate that Child had been out of his household 15 of the last 22 or 48 months. But it did not explicitly find, by clear and convincing evidence, the existence of KRS 625.090(2)(j) grounds of parental unfitness in in this order.

In the next paragraph, the family court then specifically found that the parents' acts of domestic violence prevented them from properly parenting Child—in particular, finding that Father engaged in domestic violence against Mother when he lived with her in Washington. It found that Father failed to complete recommendations for getting his home approved for placing Child there—including getting a domestic violence assessment and complying with recommendations therein and attending domestic violence-informed parenting classes.

In paragraph 23, the family court reiterated that Father did not complete the programs required by Washington state courts, including not completing domestic violence classes in a timely manner. Furthermore, though not specifically noted in the family court's amended findings of fact and conclusions of law, the ICPC evaluation also indicated that Father had more recent domestic violence charges in 2017. This further supports the family court's finding that Father had failed to fully address domestic violence issues.

In addition to finding that Father neglected Child due to not addressing unresolved domestic violence issues, the family court also found neglect in Father's

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KRS 625.090(2)(j) currently states that one ground of parental unfitness is "[t]hat the child has been in foster care under the responsibility of the cabinet for fifteen (15) cumulative months out of forty-eight (48) months preceding the filing of the petition to terminate parental rights[.]" An earlier version of KRS 625.090(2)(j)—in effect from 2012 to 2018—stated this ground of parental unfitness as: "That the child has been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights."

not taking more action to maintain a relationship with Child in paragraph 20 of its amended findings. The family court specifically found that Father failed to follow through to participate in Skype visitations, maintained only sporadic contact with the social worker, and failed to complete any of the ICPC's recommendations for getting his home approved for placement.

Given evidence of Father's failure to consistently stay in touch with the social worker, failure to engage in Skype sessions after finding out that Child was in foster care, and failure to address domestic violence issues to provide a safe home environment, we cannot say that the family court's finding of neglect was clearly erroneous. Though the social worker did not respond directly to Father's request for the therapist's contact information after he lost it, she asked the therapist to contact Father, and Father did not ask again for the therapist's contact information when he did not receive it. We are aware of Father's testimony that he was frustrated and decided to just focus on keeping stable housing and employment. We are also aware the family court could have reasonably inferred that Father should have taken some further action towards getting in touch with the therapist if he truly took responsibility for pursuing a relationship with Child and making sure Child was receiving appropriate care.

Substantial Evidence Supports the Family Court's Finding of Termination Being in Child's Best Interest

Father contends that the family court erred in finding termination to be in Child's best interest and discusses several factors for consideration of best interest in KRS 625.090(3). He correctly points out there is no evidence of him suffering from a mental illness or intellectual disability. He also points to evidence that he paid child support and, at times, sent clothes, toys, and other items for Child. He asserts he has not committed acts of abuse or neglect toward any child. However, as previously discussed, the family court found that he had neglected Child, and this finding is supported by substantial evidence.

Father also points to evidence that extended family in Washington would be available to provide love and support if Child is placed in Father's care. He claims that Child will not be better off if Father's parental rights are terminated and that Father tried to maintain a relationship with Child despite the long distance and what he views as Mother's and the Cabinet's failures to help facilitate a relationship between Father and Child.

Despite some factors being at least arguably in Father's favor, however, there was also substantial evidence in the record supporting the family court's determination that termination was in Child's best interest. For example, the family court cited testimony that Child was doing well in the foster family's care and was deeply bonded with his half-brother. It found that it would not be in Child's best

interest to be separated from his half-brother and that it would be in Child's best interest to have permanency. And the family court found that "[t]he parents have not shown any progress that would show a lasting parental adjustment with the child." (paragraph 31 of amended findings of fact and conclusions of law, R., p. 196). In assessing Child's best interests, the family court also expressed doubt that Father could successfully complete a case plan—after previously finding repeated failures to do so—and doubt that Father could achieve a lasting bond with Child after Child's long stint in foster care.

In short, in addition to considering whether the Cabinet had rendered reasonable services which we address separately below, the family court issued findings regarding factors listed in KRS 625.090(3), and its findings are supported by substantial evidence. Obviously, a large part of Father's "best interest" argument concerns whether the Cabinet rendered reasonable reunification efforts. But we also conclude that the family court's finding that the Cabinet rendered reasonable reunification efforts is supported by substantial evidence.

Substantial Evidence Supports the Family Court's Finding That Cabinet Rendered Reasonable Efforts and Reunification Services

The family court found, by clear and convincing evidence, that the Cabinet rendered reasonable reunification efforts by providing case plans with reasonable task requirements, which Father failed to complete. In this finding (paragraph 27), it also alluded to its neglect findings (paragraphs 20 and 21) in which

it discussed how Father was offered Skype visits but failed to follow through to actually have such visits and how Father only maintained sporadic contact with the social worker.

Father has argued that the social worker's failure to respond to his request for the therapist's contact information makes the family court's finding of reasonable efforts clearly erroneous. Although the social worker admitted to not directly replying to Father's email request for contact information for the therapist, the social worker testified to forwarding Father's email to the therapist to get in touch with Father, and there was no indication of further inquiry by Father.

Father argues that there was no evidence that he refused phone calls or emails or other opportunities to establish connections with Child. Nonetheless, there was substantial evidence of the Cabinet trying to contact Father for the December 2016 team meeting which he missed—namely, the social worker's testimony. To the extent that the social worker's and Father's testimony concerning their communications conflicted, we must give "due regard" to the family court's unique opportunity to assess the witnesses' credibility under CR 52.01. And, despite any delay and the filing of a motion to compel the ICPC, the Cabinet eventually facilitated the process of getting an ICPC evaluation from Washington state. In short, the record supports a finding of reasonable efforts by the Cabinet.

Furthermore, we reject Father's argument that: "[i]f the Cabinet had provided the same services provided to the father in K.M.E. v. Commonwealth, 565 S.W.3d 648 (Ky. App. 2018), [Father] undoubtedly would have had a much greater chance of success." Father does not specifically identify which services he is referring to, although he does mention that the Cabinet requested an ICPC evaluation in Michigan in the cited case. *See K.M.E.*, 565 S.W.3d at 653. A number of different services had been offered in *K.M.E.* including "substance abuse counseling, random drug screens, abusive parenting classes, and supervised visitation[,]" and we affirmed the family court's finding that the Cabinet rendered reasonable services despite the father's failure to take advantage of offered services. *Id.* at 658. As the specific services which should be offered to comply with the Cabinet's duty to render reasonable reunification services differs with the specific facts of each case, *id.*,[10] we fail to see how *K.M.E.* indicates that the services offered here were not reasonable, especially in light of evidence showing that Father did not take advantage of all services offered him such as Skype visits. At most, perhaps an argument for a timelier request—at the Cabinet's initiative—for an ICPC evaluation as in *K.M.E.* carries some weight. But on the whole, nothing in *K.M.E.* or the record here

[10] Many of the services offered in *K.M.E.* would not be appropriate in this case. For example, substance abuse counseling and random drug screens would not seem appropriate as we are unaware of any disputes about Father's assertion that he is clean and sober and does not abuse substances.

demonstrates any clear error in the family court's finding that the Cabinet rendered reasonable reunification efforts. As aptly stated in the family court's order denying the motion to alter, amend, or vacate, "The Cabinet has provided reasonable efforts to the father, but the father also has to make efforts." (R., p. 241).

Substantial Evidence Supports the Family Court's Finding of Failure or Inability to Provide Essential Parental Care and Protection for Over Six Months

The family court found, by clear and convincing evidence, that Father had continuously failed to provide or been incapable of providing essential parental care and protection for Child for a period of at least six months with no reasonable expectation of improvement considering Child's age. *See* KRS 625.090(2)(e). It specifically found that Father had not provided essential parental care and protection for Child for over five years in paragraph 23 of its amended findings. And it also alluded to earlier findings (which would include such matters as failing to follow through to attend Skype therapy visits with Child) and found no reasonable expectation of improvement based on Father's failure to comply with case plan requirements and failure to take additional action to assume responsibility for Child's care. Specifically, it found that Father did not complete "any significant part of his plan" and further stated:

> He did not even complete the programs required back in Washington. He has not seen [Child] since 2013-15; never went back to Court in Washington (even pro se), did not try to hire an attorney in Washington, and did not timely

> complete DV [domestic violence] classes in Washigton.[sic]. He also did not pass an ICPC in Washington State.

(R., p. 220). Father has not disputed that he failed to complete such programs or classes (notwithstanding his statement in his brief that he had "almost" completed domestic violence class requirements), that he has not had in-person contact with Child in several years, and that he never actually initiated a court case in Washington to change prior court orders and obtain custody of Child. Given substantial evidence of lack of significant contact with Child and lack of action to enable him to provide essential care and protection and a safe home environment for Child, the trial court's finding of the ground of parental unfitness stated in KRS 625.090(2)(e) (failure or inability to provide essential parental care and protection for at least six months) is not clearly erroneous.

Family Court's Finding of No Reasonable Prospects for Improvement in Providing Care and Protection was Supported by Substantial Evidence

Father argues that the family court erred in finding no reasonable expectation of improvement in his providing care and necessities to Child and erroneously focused only on his past failures. But upon our review of the record, there is substantial evidence to support the family court's finding of no reasonable expectation of improvement in Father's ability to provide essential parental care and

protection to Child, considering Child's age.[11] For instance, abundant evidence indicates that Father had failed to fully address the long-standing domestic violence issues which the family court reasonably found to impede his ability to provide essential parental care and protection to Child. By his own admission, Father had never completed all domestic violence classes related to domestic violence occurring in the home when Child lived with him and Mother several years beforehand. And Father admitted to more recent domestic violence charges from 2017 and having completed some but not all domestic violence classes imposed for this by the time of the 2019 termination trial.

Also supporting the family court's finding of no reasonable prospects of improvement in providing essential parental care and protection is evidence that Father failed to take advantage of recent opportunities to re-establish a connection with Child after years of limited or no contact. The social worker testified to Father being offered Skype visits with Child facilitated by Child's therapist but Father not taking advantage of this opportunity while Child was in foster care.[12] She also

[11] We do not reach the question of whether the family court's finding of no reasonable expectation of improvement in providing necessities such as food and shelter is supported by substantial evidence because we do not reach the issue of whether the family court properly found the parental ground of unfitness stated in KRS 625.090(2)(g).

[12] We are aware that Father testified to having some Skype visits with Child while Child was briefly returned to Mother's care in early 2017. However, the social worker testified to Father being offered the opportunity to have Skype visits with Child facilitated by the therapist beginning in September 2016 but such visits never occurring during the almost three years prior to trial in which Child remained in foster care with the exception of his two-month trial home visit.

testified that Father did not contact her—to inquire about Child or for any other reason implicitly including seeking some sort of contact with Child—between the first days of trial in May 2019 and the concluding days of trial in August 2019.

Given evidence of Father's recent failure[13] to follow through with steps to fully address domestic violence issues and to re-establish a bond with Child during Child's stint in foster care after years of little to no Father-Child contact, we cannot say that the family court's finding of no reasonable expectation of improvement in providing essential parental care and protection was clearly erroneous.

Any Error in Finding that Father Was Not Prepared to Deal with Child's Special Needs was Harmless

Father's request for relief includes not just reversal of the termination decision, but also directions for the family court to order a new ICPC evaluation so that he could better prepare for it by reviewing Child's medical and mental health records which he was unable to review before the prior ICPC evaluation. Father raises good arguments that he could not be expected to fully understand Child's

[13] Although some authority suggests that focusing only on the past and not the future is not proper in assessing whether there are reasonable expectations of improvement, *see generally M.E.C.*, 254 S.W.3d at 855, it is impossible to offer evidence of future events. In this case, the family court cited evidence of recent actions or inactions—such as Father's not following through to obtain Skype visits over the last two or three years and his still not having completed all required domestic violence classes by the 2019 trial. As the family court here considered recent failures to make efforts to establish a bond with Child and to complete required domestic violence classes, we cannot conclude that its finding of no reasonable expectation of improvement was overly rooted in the past and not sufficiently forward-looking.

special needs before he had received full information about Child's diagnoses. And as he points out, the medical or mental health evidence was conflicting about Child's diagnoses—for example, the difference in the assessment by the psychiatric nurse practitioner versus that of the Weisskopf Center.

To a certain extent, the family court may have accepted the ICPC evaluator's opinion of Father not fully understanding Child's special needs as it referred to Father's "lack of understanding of medical conditions of the child which predated removal" in the order denying Father's motion to alter, amend, or vacate. (R, p. 24.) But any such lack of understanding of Child's special needs is not a primary basis for the termination of Father's parental rights. We note that the family court's lengthy and detailed amended findings of fact and conclusions of law do not substantively discuss the ICPC evaluator's opinion of Father not understanding or being prepared to deal with Child's special needs. The family court simply indicates therein that the ICPC evaluation did not recommend placement with Father.

Instead, the primary bases for the family court's determinations that Father neglected Child and failed to provide essential care and protection and that termination was in Child's best interest were Father's lack of any contact with Child for significant lengths of time, including lack of any in-person contact for several

years,[14] and failure to address domestic violence issues. These findings are well supported by substantial evidence. Thus, regardless of Child's exact diagnoses, any error in the family court's statement regarding the extent of Father's understanding of Child's special needs was harmless since its decision to terminate is supported by substantial evidence on other grounds. *See* CR 61.01. We see no need to order a new ICPC evaluation as the family court's decision was not substantially based on the ICPC evaluator's opinions regarding the extent of Father's understanding of Child's special needs.

Although this case—like many termination of parental rights cases—presented difficult issues, the family court made all statutorily required findings to support its termination decision. Its findings of Father's neglecting Child, Child's best interest being served by termination of parental rights, and at least one ground of parental unfitness are supported by substantial evidence, so we must affirm.

[14] We recognize that Father's lack of in-person contact with Child stemmed at least in part from geographic distance and financial constraints, but nonetheless the lack of any in-person contact for several years was an appropriate factor for consideration. Father testified to eventually being able to save up and find affordable airfare to travel to Kentucky for the purpose of attending the termination proceedings. The family court may have reasonably inferred that Father could have but failed to make similar arrangements to travel to Kentucky to try to see Child over the last several years and may not have found credible Father's testimony that any attempts to see Child would have been futile due to threats of Mother seeking protective orders against him in Kentucky. As fact-finder, the family court had the unique opportunity to determine the credibility of witnesses, CR 52.01, and could draw reasonable inferences from the evidence—although it should not compound inference on inference. *K.H. v. Cabinet for Health and Family Services*, 358 S.W.3d 29, 32 (Ky. App. 2011).

Father's lack of significant contact with Child for many years may have begun for reasons beyond his control including geographic distance and limited funds for travel. Nonetheless, substantial evidence supports findings that Father did not follow through with recent opportunities to re-establish a connection and did not fully comply with recommendations for addressing prior domestic violence issues in order to provide a safe environment and essential parental care and protection of Child. Although we commend the efforts of counsel for all parties for their hard-fought efforts in grappling with the difficult issues in this proceeding, the family court's decision must stand.

CONCLUSION

For the foregoing reasons, the judgment of the Christian County Family Court is hereby **AFFIRMED**.

ALL CONCUR.

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