

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2019-CA-1462-MR

ALECS CROSSLAND

APPELLANT

v. APPEAL FROM ADAIR CIRCUIT COURT  
HONORABLE JUDY VANCE MURPHY, JUDGE  
ACTION NO. 18-CI-00162

GORDON NEAL, JR. AND LINDA  
NEAL

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, LAMBERT, AND K. THOMPSON, JUDGES.

THOMPSON, K., JUDGE: Alecs Crossland appeals from an order of the Adair Circuit Court granting maternal grandparents Gordon Neal, Jr., and Linda Neal (collectively the Neals) permanent custody of Alecs's son L.F.C. (child) based on parental unfitness.

The parties disagree on almost everything, therefore we will begin with only the uncontroverted facts before exploring their diametrically opposed

evidence. Alecs and Brittany Marie Crossland are child's parents. Alecs and Brittany both have a history of drug abuse. They were involved in a tumultuous relationship which has been marked by violence.

While Brittany was pregnant with child, Alecs and Brittany lived with Alecs's mother Valeree Crossland and Alecs's sister Shayla in a two-bedroom, one-bathroom trailer. Shayla is disabled and confined to a wheelchair.

Brittany frequently left this home to go stay with her brother Gordon T. Neal, III (Taft). Shortly before child was born in November 2017, Alecs and Brittany married. Child was born addicted to Subutex and required a month-long hospital stay in Louisville. While child was hospitalized, Brittany, Valeree, and Shayla stayed in the Ronald McDonald House near child's hospital. Alecs visited on the weekends because he was working. During this time, Alecs's and Brittany's stay at the Ronald McDonald House was terminated.

Child did not go home from the hospital with his parents. Instead, child was placed with Valeree by the Cabinet for Health and Human Services (the Cabinet) due to parental unfitness of both parents as adjudged in an Adair District Court dependency, neglect, and abuse (DNA) case.<sup>1</sup> Alecs and Brittany were

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<sup>1</sup> Although matters in the DNA proceeding were extensively referenced in this custody proceeding, and the circuit court reviewed these files, they are not part of the record on appeal. We refer to matters in the DNA case as they were revealed by the testimony.

allowed supervised visitation with child but were not allowed to live in Valeree's trailer. The physical conflicts between the parents ended after child was born.

In January 2018, the water pipes connected to Valeree's trailer froze and the trailer was without running water for a time. The Cabinet removed child from Valeree's care due to concerns relating to lack of running water, child's hygiene, the discovery of a drug pipe at the residence, and finding urine in the refrigerator. The Cabinet placed child in the temporary custody of Taft. Valeree stipulated to dependency, and child was not returned to her care.

Taft was working full time and had the Neals watch child. This eventually evolved into the Neals having child the majority of the time and then exclusively, although Taft continued to have temporary legal custody of child pursuant to a court order in the DNA case. Although Linda requested temporary custody in the DNA case, the district court denied Linda's motion.

Child required a variety of medical appointments and needed his tongue clipped and tubes put in his ears; Taft and Linda took child to these appointments. Child suffered from severe ear infections even after the placement of the tubes.

The Cabinet worked on reunifying child with Alecs and Brittany. While Brittany continues to have supervised visitation, Alecs went from supervised visitation to unsupervised visitation, back to supervised visitation after a positive

test for marijuana in June 2018, back to unsupervised visitation which was extended to weekend visitation.

On September 24, 2018, the Neals filed a petition before the circuit court seeking custody of child entitled Verified Petition for De Facto Custody. Although the petition focused on *de facto* custody, the Neals also alleged “[Alecs and Brittany] are unfit custodians to care for the minor child and have waived their superior right of custody of said child[,]” indicated “[i]t is in the best interest of said child that custody of him be awarded to the [Neals]” and asked for custody.

The circuit court chose to bifurcate the hearing, first conducting a hearing on *de facto* status and then once it determined that *de facto* status was not available to the Neals, it conducted a further hearing on the unfitness of the parents and whether the parents had waived their superior right to custody. During these hearings, the witnesses for the Neals and the witnesses for Alecs disagreed on almost everything. Brittany did not oppose the Neals assuming custody.<sup>2</sup>

Witnesses for the Neals, Linda, Taft, and Gordon, testified that Alecs was abusive to Brittany, having been in numerous fights with her before child was born. They testified that the police were frequently called to intervene, and that

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<sup>2</sup> Because Brittany neither opposed the Neals assuming custody, nor appealed the award of custody to them, apparently recognizing that she was not fit to parent child and being satisfied in having supervised visitation with child, we only discuss her actions and findings in which she is mentioned when they are relevant to Alecs’s appeal.

Brittany was “kicked out” of the trailer while pregnant. Taft testified that Brittany frequently came to stay with him and on one occasion he observed bruises around Brittany’s neck. Linda testified she had seen bruises and marks on Brittany. Linda explained that while Alecs denied causing the injuries to Brittany, Linda did not believe they could be self-inflicted by Brittany.

Taft and Brittany testified Alecs had a problem with anger. Taft testified Alecs used Brittany’s medication to get high, becoming angry when it ran out, and seldom held down a job for long. Linda and Gordon testified that Alecs told them about a plan to get Brittany pregnant and on disability so that she and child could draw checks and Alecs could live off them.

Taft indicated that Alecs and Brittany lived with Valeree when they were not supposed to when Valeree had temporary custody of child. Taft testified that when he picked up child from Valeree’s trailer that garbage was stacked up next to the crib and the conditions he observed could not be explained by the residents preparing to move.

Taft, Linda, and Gordon testified about child’s poor condition when Taft received child, which according to Linda included child being “underweight,” “despondent,” “very hungry,” and “nervous.” She testified that child had weak muscles indicating a lack of tummy-time and could not hold his head up when on his stomach, had a flat head on the back of his head from being on his back too

much, and she was instructed by child's doctor on how to work with him to help strengthen his stomach muscles and help him to become secure. Linda testified she faithfully worked with child to improve his condition per these instructions.

Linda, Taft, and Gordon testified that child required doctors' appointments with specialists in Louisville, had not been taken as needed by Valeree, and these appointments had to be rescheduled. They reported that child had to be taken to Louisville more than twenty times and this included appointments with a neonatal disease specialist because Brittany had Hepatitis C and child needed to see an ear, nose, and throat doctor due to having repeated ear infections.

As to Alecs's conduct towards child, Linda, Taft, and Gordon testified that Alecs neglected child by failing to attend doctors' appointments for child despite being told about them. Linda testified she had told Alecs about some appointments and believed Taft had told Alecs about the other appointments. Linda reported Alecs failed to ask how child was after child's surgery and did not seem interested in how child was doing. Linda testified, based on her calendar, that Alecs missed numerous scheduled visits with child and sometimes picked child up late or dropped him off early.

Linda, Taft, and Gordon also testified to concerns they had about how Alecs was caring for child when he had unsupervised visitation. They reported he

repeatedly returned child with severe diaper rash. They also testified that on two recent weekend visits, Alecs failed to give child any medication for his ear infection as established by them weighing the liquid and drop medication before and after Alecs's parenting time, and the line not going down on the bottle. They testified that child's ears became so inflamed and crusty that child required immediate treatment and they withheld the next visit because they were worried about child's health.

Linda testified they always allowed Alecs to see the child, except on this one occasion, and had been flexible in rescheduling visitation and allowing Alecs extra visitation when Alecs had relatives visiting.

Brittany testified she has concerns with Alecs caring for child because Alecs has anger issues and she worries what he might do, but she also indicated she believes Alecs capable of caring for child. Brittany admitted her behavior after child was born was poor, attributing this to having a severe post-partum reaction.

Linda, Taft, and Gordon testified child is bonded to Linda and Gordon, child's health has dramatically improved in their care, and he is well taken care of in their care. They testified that while child enjoys seeing Alecs, child enjoys being in the company of people generally. They testified that the district court in the DNA case was well aware that Taft had placed child in the Neals' care

and had not objected to his doing so but chose not to grant Linda temporary custody because this matter would be sorted out in the circuit court.

The witnesses for Alecs told a very different version of the same events. Valeree and Alecs testified that the conflicts between Brittany and Alecs before child were born were caused by Brittany's acting as the aggressor and attacking Alecs or arose from conflicts with Alecs's other sister, Samantha. Valeree and Alecs also testified that Brittany had also hit Valeree. Valeree and Alecs disagreed about how often the police were called, with Valeree stating it was rarely, but Alecs admitting it happened more often, with the police showing up so many times that they quit doing anything. Alecs testified he could be sleeping and be awakened by Brittany attacking him. He denied ever using Brittany's medication for himself or kicking Brittany out of the trailer when she was pregnant, explaining that Brittany chose to periodically leave, and it was just her pattern.

Alecs admitted to having pled to assault, explaining that he had been breaking up a fight between Brittany and Samantha. He stated he pled guilty even though he was not guilty as he believed a guilty plea would be a faster way to resolve the matter. He stated he completed anger management as part of that plea.



Alecs stated he still did not understand why he was removed from caring for child while child was still at the hospital and blamed it on Brittany's being volatile at the hospital.

Alecs admitted he had wanted to get Brittany on disability but claimed that was for her benefit. He denied ever having a plan to get Brittany pregnant or wanting her to have a child for extra benefits.

Alecs testified about his frustration with being denied visits with his son and denied missing more than a couple of visits to see child while in Taft's custody, explaining that if he had to miss a visit, he rescheduled it. He argued that the Neals denied him visits and wished to raise his son as their own. Video of a verbal confrontation between Gordon and Alecs supported Alecs's claim that Gordon wanted to adopt child.

Valeree and Alecs testified they supported Brittany through the delivery and afterwards in Louisville when child was transferred to a hospital there for jaundice, when the Neals were not involved at all.

Valeree testified that when she was caring for child he received good care, she took him to the pediatrician and one appointment in Louisville had to be cancelled due to the weather. She admitted there had been a broken water pipe at the trailer but explained this occurred due to the weather and the delay in getting it fixed was due to the landlord's failing to act quickly. Valeree and Alecs testified

they had gotten water from an alternative source, child was kept clean, and Alecs and Brittany did not live in the trailer. Valeree denied the trailer's being unfit, explaining it was cluttered as she packed to move. She denied ever neglecting child or failing to give him appropriate tummy time or that he had trouble holding up his head. Valeree and Alecs denied that the drug pipe which was found in the trailer belonged to either of them and attributed it to Brittany. Valeree explained the urine in the fridge was from Shayla, who is permanently catharized, so that Valeree could have Shayla's urine tested for a urinary tract infection rather than to supply clean urine for drug testing. Valeree claimed she stipulated to dependency regarding child because she was afraid a finding of neglect would result in her losing her counseling credentials.

Alecs admitted to being on Suboxone to treat a drug addiction and to having a former addiction to marijuana. He admitted he used to smoke marijuana every day and thought it had benefited him by helping him calm down and gain weight. He admitted to buying marijuana in the past and occasionally growing a plant. Alecs denied using marijuana after his one positive drug test in June 2018 and stated he would never use marijuana again while it was illegal in Kentucky but would smoke if it were legal.

Alecs spoke at length about his desire to parent child and the efforts he has made. Alecs implored the court to "just give me a chance," explaining he

believed it was his God-given right to raise his son. Alecs testified he cleaned up his act after child was born, was consistently holding down a job, took parenting classes on his own initiative earning “Mommy Bucks,” made every court date, complied with the Cabinet’s case plan, loved his son, and took excellent care of child when he had child.

Although Alecs admitted to currently living with his mother, he stated he would be getting his own place soon. Valeree testified she depended on Alecs’s living with her to help with Shayla and he lived with them to help them rather than the other way around.

Alecs’s grandfather testified that Alecs is a loving, caring father, helps with Shayla’s care, and had “matured ten years since his son was born.” However, he did not see Alecs with child much as he lives in Indiana, and he denied knowing anything about Alecs’s ever having a substance abuse issue.

Alecs and Valeree denied that child was not given his medicine for his ear infection and testified that the medicine was administered as directed on the bottle. Alecs denied being notified by either Taft or the Neals about any appointments for child but one which he was unable to attend because he was only notified the day before work and could not miss work. Alecs testified he was not allowed to take child to a pediatrician appointment that Alecs made because the Neals picked child up from daycare for the appointment before he could. Alecs

testified he never sent child back to the Neals with diaper rash and that the only time they sent child with diaper rash, he did not assume that they were not taking appropriate care of child.

Kaylynn Barnett from the Cabinet testified she was the Cabinet worker assigned to the case in February 2019 and was not very familiar with the file but would file a report in the DNA case and give an update. Barnett testified that Alecs usually has drug screens two times a month, with most testing positive for Suboxone which he is prescribed, with his last test positive for anything else was his June 2018 test which tested positive for marijuana. Barnett testified that Alecs had missed a few tests but was considered to be compliant with his case plan, with the last stage to be family reunification. Barnett testified that at her prearranged home visit, Alecs's home met the standards and had appropriate and proper sleeping arrangements, and she believes he is fit and there is no reason why Alecs should not have custody but also believes the Neals are appropriate caregivers. Barnett admitted that based on the Cabinet's policy, Barnett could not recommend placement with the Neals based on the progress Alecs has made.

Barnett noted that Alecs was denied one weekend visitation by the Neals. She explained she attempted to mediate between Alecs and the Neals regarding doctors' appointments for child as there was a disagreement as to whether Alecs was given appropriate notice, with Taft indicating he gave notice

and Alecs indicating he did not get notice. Barnett also noted that there is hostility between the Neals and Alecs and opined that both parties love child but disagree on what is best for him.

On June 12, 2019, the findings of fact, conclusions of law, and order were entered. The circuit court recognized the care the Neals had given child and made several findings of fact against Alecs's position that he was a fit father:

10. Testimony revealed that the child was removed from Mr. Crossland's mother's single wide mobile home due to living in deplorable, unlivable, unsanitary conditions. A drug pipe was also found in the home and that Mr. Crossland's mother, Valeree Crossland, has a history of substance abuse.

11. Mr. Crossland currently resides with his mother in deplorable conditions and has made no effort to obtain his own residence. The home is dysfunctional and is a volatile environment. Mr. Crossland is unable to provide the child a stable, clean and secure environment in which to live.

12. At the time the child was born the Respondents were living on Highway 80 in Adair County, Kentucky, in a home that did not have running water. It was unsanitary. . . .

. . .

14. The Court finds that Alecs Crossland has an ungovernable temper and was ordered by the Adair District Court to attend anger management classes and serve time in jail. He was abusive to his wife, Brittany Crossland, during their relationship, and at times left visible marks on her neck. On numerous occasions, occurring approximately every three weeks, Alecs

Crossland displayed his uncontrollable anger. The police were called on many of those occasions. Mr. Crossland kicked his wife out of their home when they would have physical arguments. Such conduct occurred the week prior to Brittany giving birth to the minor child. Fights would ensue while they were under the influence or because there were no pills to take.

15. Alecs Crossland had a positive drug screen for marijuana in June 2018 and each of the Respondents have a history of drug abuse. Mr. Crossland testified that if marijuana became legal he would continue to use the same and would use same for medical purposes.

16. Per the testimony of Kaylynn Barnett, social worker with the Cabinet for Health and Family Services, Mr. Crossland had missed a few drug screens; and the drug screens that Mr. Crossland did submit to have been positive for Suboxone.

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18. Ms. Barnett's home visits with Petitioners reflect positively on their continued ability to be appropriate caretakers for the minor child, and no deficiency of any kind was noted;

19. Petitioners have taken the minor child to every doctor's appointment and to the specialist in Louisville, Kentucky, on every required occasion. Respondents have been given notice of all doctor appointments of the child. However, Respondents have failed to be present for any of the appointments. Alecs Crossland has never communicated with Petitioners concerning any of the appointments, the child's diagnosis, or his progress. During the child's surgery neither of the Respondents was present.

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21. The subject child receives twenty-four hour care from the Petitioners, and they are full-time parents to the child. All his needs, including food, shelter, car seat, clothing, toys, diapers, and medicine are provided by them. Due to the recommendations of the child's doctors, Petitioners have worked extensively rehabilitating the child with at home therapy to correct his posture and [child] has made great strides in his development. . . .

22. Given the fragile medical condition and medical needs of the child, the Court finds that neither Respondent is able to properly care for the child's needs and administer medication as required. While the child was in Alecs Crossland's care he neglected the child's hygiene. Mr. Crossland has returned the child to the Petitioners with severe diaper rash on several occasions after his visitation, and on another occasion he returned the child and his prescribed medicine without use despite being advised by Petitioners of the required dosage.

23. Alecs Crossland has missed numerous scheduled visits with the minor child. The Petitioners have been accommodating to Alecs Crossland's requests for visits to be changed due to extended family visits from Indiana.

24. Based on the testimony of Mrs. Neal, the child was prescribed medication for a severe ear infection. She and Mr. Neal weighed the medication before sending the child with Mr. Crossland. Upon return she and Mr. Neal weighed the medication again and it was the same weight. Mrs. Neal also testified that as a result of not receiving the medication, the child had to return to the doctor for a severe ear infection that had reached the outer surface of his ear. The Court finds that Mr. Crossland did not administer the prescribed medication to the child properly or at all (see paragraph 22 above).

25. Mr. Crossland testified that he does not want to work with the Petitioners regarding the rearing of the child. . . .

26. The child is well adjusted to the home of Petitioners; and has been well cared for at the home of Petitioners; all of the child's needs are being met at the Petitioners' home; the child has bonded strongly with Petitioners and is thriving due to their devotion and care. The Court finds that the Petitioners can provide the child with a safe, clean, loving and stable environment.

In the circuit court's conclusions of law, the circuit court concluded that the Neals failed to qualify as *de facto* custodians and there was no evidence that Alecs waived his superior right to custody. However, as to unfitness and the best interests of child the circuit court concluded:

4. Regarding Petitioners['] third prong for their quest for custody of the subject minor child, the Court is of the opinion that the proof is overwhelming that both Respondents are unfit for custody of their son based on the Findings of Fact contained herein above and that therefore, the Petitioners should be granted custody of the minor child, to-wit: [child].

5. The Court further concludes that domestic violence and abuse has occurred between Respondents, but primarily by Alecs Crossland against his wife, Brittany Crossland as stated in the above Findings of Fact and pursuant to [Kentucky Revised Statutes (KRS)] 403.270(2)(g) as defined in KRS 403.720.

6. The findings of this Court are based not only on the preponderance of the evidence, but that the Court is also of the opinion that said evidence is clear and convincing with respect to the fitness of each of the Respondents.



The circuit court then granted the Neals permanent custody of child, Alecs visitation every other weekend, and Brittany supervised visitation.

Alecs, through substitute counsel, filed a one-page long motion to alter, amend, or vacate on the following basis:

[T]he Cabinet’s Report and the Court’s Findings of Fact, Conclusions of Law and Judgment are polar opposite, further, absent of finding that the Petitioners are *de facto* custodians, their petition contains no grounds by which they have standing to seek custody of the minor child. Therefore, the Court’s Findings of Fact Conclusions of Law and Order, entered June 12, 2019, should be altered to strike all findings and conclusions made by the Court after the Court’s conclusion that the Petitioners are not *de facto* custodians.

Following a hearing, the circuit court denied this motion via a docket order and Alecs appealed.

Alecs argues on appeal that: (1) the pleadings and judgment are insufficient for standing by the Neals in that: (a) the Neals failed to adequately assert standing to present a claim for custody when they failed in their claim for *de facto* custody; (b) the Neals failed to sufficiently assert that Alecs and Brittany waived their superior right to custody or were unfit; (c) the circuit court failed to make a finding or conclusion of law that the Neals were a “person acting as a parent” pursuant to KRS 403.800; (d) the circuit court failed to conclude by clear and convincing evidence that there was no reasonable expectation that Alecs or

Brittany will improve in their ability to provide parental care and protection as is required before it can permanently award custody to a non-parent; (2) the circuit court abused its discretion and was clearly erroneous in making its findings and conclusions by: (a) relying on opinion testimony by lay persons; and (b) being factually selective to the point of abuse of discretion; and (3) the circuit court erred by failing to make any conclusions of law regarding the relevant factors necessary for a finding of unfitness or those factors required by KRS 403.270(2) and did not associate any particular finding of fact with any specific relevant or required factor.

In reviewing a child-custody award, the appellate standard of review includes a determination of whether the factual findings of the [circuit] court are clearly erroneous. A finding of fact is clearly erroneous if it is not supported by substantial evidence, which is evidence sufficient to induce conviction in the mind of a reasonable person.

*B.C. v. B.T.*, 182 S.W.3d 213, 219 (Ky.App. 2005) (footnotes omitted). “Hence, a finding of fact is viewed as clearly erroneous if not supported by substantial evidence of a probative value.” *Maxwell v. Maxwell*, 382 S.W.3d 892, 895 (Ky.App. 2012).

“Questions as to the weight and credibility of a witness are purely within the province of the court acting as fact-finder and due regard shall be given to the court’s opportunity to judge the witness’s credibility.” *Truman v. Lillard*, 404 S.W.3d 863, 868 (Ky.App. 2012). “If the testimony before the trial court is

conflicting, . . . we may not substitute our decision in place of the judgment made by the trial court.” *Id.* at 868-69. This is because “the [circuit] court is in the best position to evaluate the testimony and to weigh the evidence[.]” *B.C.*, 182 S.W.3d at 219.

Therefore,

[i]f the findings of fact are supported by substantial evidence and if the correct law is applied, a [circuit] court’s ultimate decision regarding custody will not be disturbed, absent an abuse of discretion. Abuse of discretion implies that the [circuit] court’s decision is unreasonable or unfair. Thus, in reviewing the decision of the [circuit] court, the test is not whether the appellate court would have decided it differently, but whether the findings of the [circuit] court are clearly erroneous, whether it applied the correct law, or whether it abused its discretion.

*Id.* at 219-20 (footnotes omitted).

Alecs is incorrect that the Neals did not have standing to pursue custody based on parental unfitness. The Neals sought custody on three bases: *de facto*, parental unfitness, and waiver. We agree with the circuit court that under notice pleading, these three grounds were amply specified and that the Neals pled and proved that they had ongoing physical custody of child even if Taft had legal custody.<sup>3</sup>

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<sup>3</sup> If this were a DNA case, the Neals could have standing based on KRS 620.027, which states in relevant part: “In any case where the child is actually residing with the grandparents in a stable relationship, the court may recognize the grandparents as having the same standing as a parent

As noted in *Mullins v. Picklesimer*, 317 S.W.3d 569, 574-75 (Ky. 2010), pursuant to KRS 403.822(1)(b)1., there is standing for “a person acting as a parent” which is defined in KRS 403.800(13) as including a person who “[h]as physical custody of the child . . . and . . . claims a right to legal custody under the law of this state[,]” with this physical custody not requiring that person have exclusive care and supervision of the child. *See Coffey v. Wethington*, 421 S.W.3d 394, 398-99 (Ky. 2014) (confirming that there is no six-month possession requirement if the person currently has custody of the child).

Accordingly,

[w]hen a non-parent does not meet the statutory standard of de facto custodian in KRS 403.270, the non-parent pursuing custody must prove either of the following two exceptions to a parent’s superior right or entitlement to custody: (1) that the parent is shown by clear and convincing evidence to be an unfit custodian, or (2) that the parent has waived his or her superior right to custody by clear and convincing evidence.

*Mullins*, 317 S.W.3d at 578 (footnote omitted). *See Truman*, 404 S.W.3d at 868.

“This standard is difficult to meet because in Kentucky ‘[p]arents of a child have a fundamental, basic, and constitutional right to raise, care for, and control their own

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for evaluating what custody arrangements are in the best interest of the child.” *See L.D. v. J.H.*, 350 S.W.3d 828, 830-31 (Ky.App. 2011) (discussing this provision).

children.” *Chadwick v. Flora*, 488 S.W.3d 640, 646 (Ky.App. 2016) (quoting *Mullins*, 317 S.W.3d at 578).

Under the first exception, the nonparent must first show by clear and convincing evidence that the parent has engaged in conduct similar to activity that could result in the termination of parental rights by the state. Only after making such a threshold showing would the court determine custody in accordance with the child’s best interest.

*Moore v. Asente*, 110 S.W.3d 336, 360 (Ky. 2003) (footnotes omitted). *Moore* continues to be controlling law. See *Lambert v. Lambert*, 475 S.W.3d 646, 652 (Ky.App. 2015) (relying on *Moore* for this proposition).

As noted in *Moore*, the type of evidence a third party must establish by clear and convincing evidence under the parental unfitness exception is that said parent engaged in contact similar to that which could result in the termination of parental rights, which could be any one of the following:

- (1) evidence of inflicting or allowing to be inflicted physical injury, emotional harm or sexual abuse;
- (2) moral delinquency;
- (3) abandonment;
- (4) emotional or mental illness; and
- (5) failure, for reasons other than poverty alone, to provide essential care for the children.

*Moore*, 110 S.W.3d at 360 n.100 (quoting *Davis v. Collinsworth*, 771 S.W.2d 329, 330 (Ky. 1989)).

We do not interpret *Moore* and *Davis* as requiring a third-party seeking custody to satisfy the identical standards as required for a termination of

parental rights.<sup>4</sup> Obtaining custody is not the same as terminating parental rights as custody decisions do not permanently sever the parental bond – whether custody is granted to another parent, a *de facto* custodian or a third-party; parents continue to have rights and obligations concerning their children over whom they do not have custody, and a different decision may be made as to custody of their children in the future, with continuing jurisdiction being maintained.

As to Alec's argument that the circuit court abused its discretion and was clearly erroneous in making its findings and conclusions by relying on opinion testimony by lay persons, we disagree. We have thoroughly reviewed the testimony. While Linda and others discussed child's medical diagnoses, they did not testify as expert witnesses. Linda was qualified to testify about what she did in response to instructions she received, relate the type of doctors' appointments she took child to, and what she did to care for child in response to what she was told. She also gave appropriate lay opinions based upon personal observations. There

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<sup>4</sup> Parental rights may be terminated through an action brought by the Cabinet or, alternatively, may be terminated through the process of seeking adoption without consent, which is brought by parties seeking to adopt. *See C.M.C. v. A.L.W.*, 180 S.W.3d 485, 489 (Ky.App. 2005). An adoption without consent may be granted under KRS 199.500(4) "if it is pleaded and proved as a part of the adoption proceedings that *any* of the provisions of KRS 625.090 exist with respect to the child." (Emphasis added.) Adoption cases are governed by Chapter 199 and "[p]rovisions of KRS Chapter 625 are applicable *only* as permitted by KRS 199.500(4) . . . and KRS 199.502." *R.M. v. R.B.*, 281 S.W.3d 293, 297 (Ky.App. 2009) (emphasis added). KRS 625.090(3)(c) regarding reasonable efforts and (4) regarding reunification services and additional services are inapplicable if children are not placed with the Cabinet.

was no error in improperly admitting expert opinions through her, and Valeree also testified about child's medical condition of jaundice and about child's needing to attend an appointment relating to exposure to Brittany's Hepatitis C.

As to Alecs's argument that the circuit court's findings and conclusions were not supported by the evidence and were factually selective to the point of abuse of discretion, we also disagree. The circuit court heard diametrically opposed testimony and acted properly within its province in determining whom to believe. The circuit court did not need to discuss every piece of evidence in making its decision. *Truman*, 404 S.W.3d at 867-68. The circuit court did not need to believe the social worker over the other witnesses. While Alecs points out that various findings by the circuit court were contradicted by other witnesses, this does not mean that the circuit court erred by failing to believe Alecs's witnesses over the Neals' witnesses.

We also disagree with Alecs's argument that the circuit court erred by failing to make any conclusions of law regarding the relevant factors necessary for a finding of unfitness or those factors required by KRS 403.270(2) and failing to associate any particular finding of fact with any specific relevant or required factor. While the circuit court did not "connect the dots" as clearly as Alecs appears to have desired, the circuit court's findings clearly relate to parental unfitness and the best interest of child regarding who should have custody. Therefore, because the

circuit court for the most part did not specifically reference the statutory factors as it made its findings, “in our review, we will discuss each factor in particular that the family court referenced in general.” *Maxwell*, 382 S.W.3d at 896.

The circuit court made factual findings that Alecs was an unfit parent based on the first factor listed in *Moore*, that Alecs inflicted or allowed to be inflicted on child physical injury by failing to give child his ear infection medicine and neglecting child’s hygiene, resulting in the worsening of child’s ear infection and child’s developing diaper rash. *See* factual findings 22 and 24. While Alecs disagrees with this assessment, there was ample evidence to support such findings.

Regarding the best interest factors for determining custody of child required by KRS 403.270(2), the circuit court only specifically referenced one of them. However, it is well established KRS 403.270(2) “provides a list of non-exclusive, demonstrative factors to be considered in custodial determinations”; therefore, other relevant factors can be considered also. *Frances v. Frances*, 266 S.W.3d 754, 756 (Ky. 2008).

KRS 403.270(2) provides in relevant part<sup>5</sup> as follows:

The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent . . . . Subject to KRS 403.315, there

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<sup>5</sup> We do not include factors which are only relevant when a *de facto* custodian is involved or factors for which there are no relevant findings. We note that some of the factual findings made by the circuit court could potentially apply to best interest factors listed in KRS 403.270(2) other than to the ones which we have assigned them, or to unenumerated factors.



shall be a presumption, rebuttable by a preponderance of evidence, that joint custody and equally shared parenting time is in the best interest of the child. If a deviation from equal parenting time is warranted, the court shall construct a parenting time schedule which maximizes the time each parent . . . has with the child and is consistent with ensuring the child's welfare. The court shall consider all relevant factors including:

. . .

(c) The interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may significantly affect the child's best interests;

. . .

(f) The mental and physical health of all individuals involved;

(g) A finding by the court that domestic violence and abuse, as defined in KRS 403.720, has been committed by one (1) of the parties against a child of the parties or against another party. The court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to each party, with due consideration given to efforts made by a party toward the completion of any domestic violence treatment, counseling, or program;

. . .

and

(k) The likelihood a party will allow the child frequent, meaningful, and continuing contact with the other parent[.]

The circuit court made findings relating to KRS 403.270(2)(c), which covers interactions of the child with his parents and any other person who may significantly affect the child's best interest. The circuit court found that Alecs could not provide child with an appropriate home, failed to attend child's doctors' appointments, and missed numerous visits with child. *See* factual findings 11, 19, and 23. In contrast, the circuit court made findings that the Neals provided an appropriate home and care of child, meeting all of child's needs. *See* factual findings 18, 19, 21, 25, and 26.

Regarding KRS 403.270(2)(f), which relates to the mental and physical health of all individuals involved, the circuit court concluded that Alecs had a positive drug screen for marijuana, has a history of drug abuse, would fight with Brittany "while they were under the influence or because there were no pills to take[,]" Alecs testified he would use marijuana if it became legal, and Alecs continues to take Suboxone. *See* factual findings 14, 15, and 16. While Alecs argues it is legal for him to take Suboxone, and this is correct, that does not mean his reliance on this substance and his history of drug addiction and use are not relevant to his mental health or his present fitness to care for child. Additionally, the findings we referenced regarding KRS 403.270(2)(c), also relate to child's physical health being better while in the Neals' care.

The circuit court made specific findings relating to KRS 403.720(g), specifically “conclud[ing] that domestic violence and abuse has occurred between Respondents, but primarily by Alecs Crossland against his wife, Brittany Crossland as stated in the above Findings of Fact and pursuant to KRS 403.270(2)(g) as defined in KRS 403.720.” As to the findings of fact the circuit court referenced, we believe this referred to its factual finding 14, that Alecs “has an ungovernable temper” and was abusive to Brittany.

As to KRS 403.270(2)(k), the likelihood a party will allow the child frequent, meaningful, and continuing contact with the other parent, the circuit court concluded that the Neals have been accommodating to Alecs’s requests for visits to be changed so that his extended family could visit with child while Alecs did not want to work with the Neals regarding the rearing of child. *See* factual findings 23 and 24.

The circuit court opined in its conclusions of law 4 and 6 that “the proof is overwhelming that both [Alecs and Brittany] are unfit for custody of their son based on the Findings of Fact contained herein above and that therefore, the [Neals] should be granted custody of the minor child” with the court being “of the opinion that said evidence is clear and convincing with respect to the fitness of [Alecs and Brittany].”

Upon our review of the record, we cannot say that the circuit court abused its discretion. The case was vigorously practiced before the circuit court and two lengthy hearings were held on the issues before the circuit court, with extensive testimony provided by a number of witnesses and detailed findings of fact and conclusions of law being given by the circuit court. We cannot say that the circuit court's decision was unreasonable or unfair, or that it was clearly erroneous. There was substantial clear and convincing evidence to support the circuit court's finding that Alecs was an unfit parent and that it was in child's best interest to be placed in custody of the Neals. The appropriate law was applied and there was ample support for the decision rendered.

Accordingly, we affirm the Adair Circuit Court's order granting custody of child to the Neals.

ALL CONCUR.

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