

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

NO. 2023-CA-0129-ME

I.L.D.

APPELLANT

v.

APPEAL FROM TRIGG CIRCUIT COURT  
HONORABLE JAMES R. REDD, III, JUDGE  
ACTION NO. 21-AD-00016

B.C.R.; C.L.R.; AND L.J.D., A MINOR  
CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, DIXON, AND McNEILL, JUDGES.

ACREE, JUDGE: Appellant, I.L.D. (Father), appeals the Trigg Circuit Court's December 27, 2022 order terminating Father's parental rights to L.J.D. (Child) and corresponding judgment granting B.C.R.'s (Stepfather) petition to adopt Child.

We affirm.

## **BACKGROUND**

Father is the biological father of Child. Stepfather is married to C.L.R. (Mother), Child's mother and Father's ex-wife. Child has lived with Mother and Stepfather since March 2021.

Father is currently incarcerated. In 2016, Father was convicted of sexual abuse, first degree, for his sexual assault of M.R., Child's half-sister and Father's former stepdaughter. A domestic violence order (DVO) prevents Father from having contact with Mother or any of her children, including Child. Father's release and the expiration of the DVO will occur in 2025. Although Father applied for parole, the Parole Board is requiring Father to serve out his entire sentence. Child will be twelve years old when Father is released.

On October 12, 2021, Stepfather filed a petition to adopt Child without Father's consent; Mother consented to the adoption. The Cabinet for Health and Family Services submitted a report recommending the circuit court to grant the adoption.

The circuit court held an evidentiary hearing on the petition on November 3, 2022. Stepfather testified he has adopted two of Mother's biological children by an earlier marriage, M.R. and A.R., and wants to provide stability and permanency for Child by adopting him as well. Stepfather helps Child with his schoolwork and engages in activities with him such as riding bikes and going to

carnivals. Stepfather takes Child to medical appointments and picks him up from the bus stop. He testified that Child occasionally refers to Stepfather as his “Dad,” but usually calls Stepfather by his first name. Child uses Stepfather’s surname when signing his schoolwork.

M.R. testified regarding Father’s behavior that she witnessed while living with him. Because Father worked nights as a police officer, he was often charged with taking care of M.R., A.R., and Child during the day while Mother worked. More than once, M.R. observed Father pick up Child by one arm and toss him, scream at Child to “shut up,” and cover Child’s mouth when Child cried. Father would leave Child by himself so that Father could play video games or watch TV. Father slaps A.R. on the back of his neck to discipline him, at least once shoved A.R.’s face into the dishwasher, and hit A.R. with wooden spoons. Father would scream at A.R. and call him “stupid.” M.R. testified that Father once made A.R. eat his own vomit. M.R. testified that her sexual abuse by Father occurred while A.R. and Child were present in the house. She feared to call the police because Father himself was a police officer.

A.R. testified he witnessed Father put Child, who was then an infant, in a room alone so that Father could play video games and watch TV. He witnessed Father tell Child to “shut up.” Father would smack A.R. for little reason and would frequently yell at A.R., and on one occasion Father pulled A.R. up by

the neck when A.R. did not pick up trash as directed. Father would discipline A.R. by making him do pushups and other exercises.

Mother testified regarding the DVO, which applies to her and her three children. She has not seen Father since his incarceration. She received Veterans Administration benefits from Father's time in the military, but testified she had to seek out these benefits herself and that Father never voluntarily gave Mother these benefits. Father fought against paying Mother child support. She testified Father withdrew all cash from their joint savings and checking accounts after Father's abuse of M.R. was discovered. She believed Father's discipline of the children was excessive and that, when she confronted him, Father would ask Mother how she could dare question him. She acknowledged on cross-examination that the amount she receives in V.A. benefits is greater than what Father would be required to pay in child support and, therefore, Father is not required to pay any extra child support. Mother does not believe Father was a loving parent to Child.

J.A.L., Father's mother, testified on Father's behalf. She believes Father wants to remain a part of Child's life. Father has been approved to live with J.A.L. upon his release. On cross-examination, J.A.L. acknowledged Father has an older daughter for whom he consented to terminate his parental rights when the daughter was fourteen years old.

V.L. is Father's sister and testified on his behalf. She lived with Father, Mother, and the three children at one point. V.L. testified that Father was present for the children, that Father is remorseful, and that he wants to resume his relationship with Child when he is released.

A.J., a man with whom Father served in the Army, testified. A.J. is a Christian minister and has been in phone or email contact with Father since either 2016 or 2017. A.J. testified Father wants to be present for Child upon his release and that Father is repentant. However, he testified he has no knowledge of Father's parenting skills.

Father himself testified. Father is a combat veteran, and in 2013 he became a police officer at the Hopkinsville Police Department. He worked there until his 2016 arrest. Father has tried to get into an electrician program while incarcerated. He has participated in several courses in prison, including multiple courses on parenting. Though he misses Child, he did not request visitation while incarcerated because he did not believe it would work logistically. He receives disability benefits from the V.A. and intends to financially provide for Child when he is released. He testified M.R. was thirteen when he sexually abused her. He stated he is repentant for having hurt M.R. and A.R.

The circuit court entered both a judgment of adoption and an order terminating Father’s parental rights to Child on December 27, 2022, as well as corresponding findings of fact and conclusions of law. Father now appeals.

### **ANALYSIS**

This Court is acutely aware of what is at stake during actions for adoptions without the consent of a biological parent. “[P]arental rights are a ‘fundamental liberty interest protected by the Fourteenth Amendment’ of the United States Constitution.” *R.P., Jr. v. T.A.C.*, 469 S.W.3d 425, 426 (Ky. App. 2015) (quoting *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394, 71 L. Ed. 2d 599 (1982)). Adoption without the consent of a biological parent is, in effect, a proceeding to terminate parental rights. *See Moore v. Asente*, 110 S.W.3d 336 (Ky. 2003).

We therefore apply the standard of review used in termination cases, which is “confined to the clearly erroneous standard in CR<sup>[1]</sup> 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.” *M.P.S. v. Cabinet for Hum. Res.*, 979 S.W.2d 114, 116 (Ky. App. 1998) (citing *V.S. v. Cabinet for Hum. Res.*, 706 S.W.2d 420, 423 (Ky. App. 1986)).

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<sup>1</sup> Kentucky Rules of Civil Procedure.

“Clear and convincing proof does not necessarily mean uncontradicted proof.”

*Rowland v. Holt*, 70 S.W.2d 5, 9 (Ky. 1934). “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.” *Id.*

An action for adoption without consent involves the following considerations:

(1) did the petitioner comply with the jurisdictional requirements for adoption; (2) have any of the conditions outlined in KRS<sup>[2]</sup> 199.502(1) been established; (3) is the petitioner of good moral character, of reputable standing in the community and of ability to properly maintain and educate the child as required by the first portion of KRS 199.520(1); and (4) finally, will the best interest of the child be promoted by the adoption, and is the child suitable for adoption as required by the final portion of KRS 199.520(1).

*A.K.H. v. J.D.C.*, 619 S.W.3d 425, 431 (Ky. App. 2021) (footnote omitted).

Father’s challenge to the circuit court’s judgment is limited to the court’s application of the KRS 199.502 conditions.

“[A]n adoption may be granted without the consent of the biological living parents of a child if it is pleaded and proved as part of the adoption proceeding that *any* of” certain enumerated conditions exist with respect to the proposed adoptive child. KRS 199.502(1) (emphasis added). Therefore, by its

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<sup>2</sup> Kentucky Revised Statutes.

plain language, it is sufficient if one – and only one – of the statutory grounds is established. The circuit court in the present case relied on the following grounds to grant Stepfather’s adoption of Child:

(a) That the parent has abandoned the child for a period of not less than ninety (90) days;

....

(e) 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; [and]

....

(g) 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[.]

KRS 199.502(1)(a), (e), (g).<sup>3</sup>

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<sup>3</sup> In his petition, Stepfather also argued that Father “had inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury” under KRS 199.502(1)(b). The circuit court determined clear and convincing evidence did not support Stepfather’s argument.



Clear and convincing evidence supports the circuit court’s conclusion that Father had abandoned Child. Incarceration, alone, is insufficient to support a finding of abandonment. *J.H. v. Cabinet for Hum. Res.*, 704 S.W.2d 661, 663 (Ky. App. 1985). Rather, “[a]bandonment is a matter of intent which may be proved by external facts and circumstances; otherwise, servicemen, prisoners of war, ship captains or persons requiring prolonged hospitalization would be likely candidates to have their parental rights terminated.” *Id.* These external facts and circumstances must “evinced a settled purpose to forego all parental duties and relinquish all parental claims to the child.” *O.S. v. C.F.*, 655 S.W.2d 32, 34 (Ky. App. 1983).

That said, “incarceration is a factor to be considered[.]” *Cabinet for Hum. Res. v. Rogeski*, 909 S.W.2d 660, 661 (Ky. 1995). We believe the nature of Father’s conviction – sexual abuse of Child’s half-sister – supports Father’s intent to abandon Child; Father was a law enforcement officer, and certainly knew, once he was arrested, that he would be removed from his son and incarcerated. Father also argues Mother disallowed him from contacting Child. However, Father took no steps to attempt to contact Child while incarcerated, whether to coordinate visits or to contact Child by phone. Father testified he did not know the 2016 DVO had been extended and remained in effect, and thus was not actually aware he was still prohibited from contacting Child. Further, Father never attempted to have the

DVO amended to allow contact with Child. In combination, these facts and circumstances demonstrate Father's intent to abandon Child and, therefore, the circuit court's finding of abandonment is supported by clear and convincing evidence.

While Father and others testified Father intended to remain involved in Child's life, "[a] family court operating as finder of fact has extremely broad discretion with respect to [the] testimony presented, and may choose to believe or disbelieve any part of it." *Bailey v. Bailey*, 231 S.W.3d 793, 796 (Ky. App. 2007). After all, it is the circuit court here "which had the opportunity to observe the parties and assess their credibility." *Hunter v. Mena*, 302 S.W.3d 93, 98 (Ky. App. 2010) (citing CR 52.01). We will not second guess the circuit court's assignment of weight to the various testimonies presented.

Substantial evidence supports the circuit court's application of KRS 199.502(1)(a), which, without more, is enough to affirm the circuit court. However, substantial evidence also supports the circuit court's application of KRS 199.502(1)(e) and (g). As Mother testified, Father contested paying child support for Child and withdrew cash from their joint bank accounts after his abuse of M.R. was discovered. While Mother received V.A. benefits from Father's military service, Mother had to seek these benefits herself. Father argues on appeal that he will be imminently employable upon release by virtue of his military and law

enforcement background, but presented no evidence to the trial court to support his conclusion. Though Father has completed classes in prison reflecting an intent to improve himself, the circuit court afforded greater weight to Mother's testimony regarding Father's conduct. Again, we will not second guess the weight afforded this testimony by the circuit court. Because substantial evidence supported its conclusions, the circuit court did not err in determining that Father continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for Child under KRS 199.502(1)(e), that he has continuously or repeatedly failed to provide or is incapable of providing for Child's well-being under KRS 199.502(1)(g), and that there is no reasonable expectation of improvement in either respect.

### **CONCLUSION**

For the foregoing reasons, we affirm the Trigg Circuit Court's December 27, 2022 judgment of adoption and order terminating Father's parental rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

Michael W. Cotthoff  
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BRIEF FOR APPELLEES:

H.B. Quinn  
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