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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2023-CA-0290-ME

D.R.B. APPELLANT

v.

APPEAL FROM ANDERSON CIRCUIT COURT
HONORABLE S. MARIE HELLARD, JUDGE
ACTION NO. 22-AD-00001

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
E.L.K.; AND J.L.K., A CHILD APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CALDWELL, JONES, AND TAYLOR, JUDGES.

CALDWELL, JUDGE: D.R.B. ("Mother") appeals from the termination of her parental rights to J.L.K. ("Child").[1] We affirm.

[1] To protect the privacy of the minor child, we do not identify him or his natural parents by name. The family court also terminated the parental rights of E.L.K., Child's biological father ("Father") in the same proceeding. Father has not filed his own appeal, nor has he filed a brief in Mother's appeal.

FACTS

In May 2018, Child (then three years old) was acting oddly after spending a weekend with Mother and her boyfriend at the boyfriend's home in Frankfort. (Mother, Child, and Child's maternal grandmother ("Grandmother") lived together in Anderson County and the boyfriend was not Child's father.) After Mother and Child returned home, Mother and Grandmother took Child to a Frankfort hospital for treatment.

Treating personnel noted bruises and bite marks over much of Child's body and linear marks on his buttocks. They also found out that Child had marijuana and amphetamines in his system.

Mother and her boyfriend were charged with Criminal Abuse, First Degree and Wanton Endangerment, Third Degree of Child in Franklin Circuit Court. Mother went to jail.

Meanwhile, the Cabinet for Health and Family Services ("the Cabinet") filed a Dependency, Neglect, and Abuse ("DNA") petition about Child in Anderson Family Court. Mother stipulated there were reasonable grounds for removal. The family court entered an order in June 2018 placing Child in the care of relatives and forbidding Mother from having any contact with Child. In late July, following an adjudication hearing, the family court entered an adjudication order continuing Child's placement with the same relatives.

Shortly thereafter, Mother agreed to plead guilty to the reduced charge of Criminal Abuse, Second Degree, as well as to Wanton Endangerment, First Degree. In August 2018, the Franklin Circuit Court entered an order releasing Mother from jail pending sentencing and subject to certain conditions – including that Mother not have contact with Child "absent the entry of an Order of a Court of applicable jurisdiction permitting such contact." Mother was later sentenced to a maximum term of eight years' imprisonment, probated for five years.

Also in August 2018, Mother received her first case plan from her social worker. The case plan established tasks for Mother including having assessments done, attending parenting classes and therapy, submitting to random drug screens, remaining sober, and complying with all court orders.

In September 2018, the family court entered an order for Mother to be evaluated by psychologist Dr. Paul Ebben. The court also ordered Mother to pay child support – which Mother consistently did, even paying ahead.

Mother met Dr. Ebben for an evaluation in February 2019 and Dr. Ebben released his report in late April 2019. Dr. Ebben's report noted that Mother said she had done nothing wrong and that she denied noticing bruises or bite marks on Child. He also stated she denied using drugs or seeing her boyfriend use drugs when he was with her and Child. While noting he was limited by not observing

Mother and Child together, Dr. Ebben expressed concern about Mother's protective capacity. He found Mother needed education about protective capacity.

Dr. Ebben recommended parenting classes, continuing mental health treatment, and consideration of Parent-Child-Interaction Therapy ("PCIT") if there were any issues about bonding or communication. He indicated he would need to observe Child with Mother to make more recommendations.

Around the same time Dr. Ebben's report was released, the relatives who had been caring for Child in their home advised they were no longer able to do so. As Mother's suggestions for other relative placements were not found to be appropriate, Child entered foster care in the spring of 2019 and has lived with the same foster family since that time.

After Child entered foster care, the Anderson County Attorney filed a motion for establishing Father's visitation with Child. The family court entered an order permitting Father to have supervised visitation, but it did not order such supervised visitation for Mother.

Mother filed a motion for visitation. She claimed the Cabinet had failed to provide reasonable services to her or to keep in touch with her. And she requested that Dr. Ebben's recommendations be followed – such as allowing a follow-up evaluation where Dr. Ebben could observe Mother with Child. (Based

on our review of the written motion, she may not have clearly requested recurrent supervised visitation at that time, however.)[2]

Several weeks later the parties entered into an agreement reflected in an agreed order issued by the family court. This allowed Mother to have another assessment with Dr. Ebben with Child present if she made arrangements for the assessment and paid for it. The terms of the agreed order also required that Mother obtain an order from Franklin Circuit Court stating that she could have contact with Child.

In October 2019, the Franklin Circuit Court entered an order clarifying that its previous no-contact order was subject to further orders of the Anderson Family Court and deferring to the Anderson Family Court's judgment on the matter of visitation.

In early 2020, the goal was still returning Child to parents. The Cabinet's written reports indicated Mother was making progress at that time.

Mother and Child met with Dr. Ebben in January 2020. Dr. Ebben issued a supplemental report in late March 2020 – after visits had shut down in mid-March due to the COVID-19 pandemic.

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[2] The written record for the DNA case was included within the record on appeal for the instant Termination of Parental Rights ("TPR") case. Also included in the record on appeal is a videorecording of the termination trial. However, the record on appeal does not contain any other videorecording of the DNA proceedings or other hearings in the TPR proceeding. Thus, we have not been able to review any oral arguments or oral findings from the DNA or the TPR proceedings except for those made at the termination trial.

Dr. Ebben reported that Mother and Child's observed interactions appeared positive and appropriate. He noted Mother was motivated to regain custody of Child. Given the bond between Mother and Child which he observed, he opined that traditional parent/child therapy was indicated rather than PCIT.

Dr. Ebben still expressed concern about Mother's protective capacity, however, stating she might intellectually understand the concept but lacked "emotional appreciation of what it means" and how to accurately assess risk. He noted Mother planned to have Grandmother provide childcare while Mother was at work, despite indications of a history of neglect on Grandmother's part (*i.e.*, Mother's describing how Grandmother failed to protect Mother from verbal abuse from Mother's father or from Mother's witnessing Grandmother being subjected to physical abuse from Mother's father).

Dr. Ebben opined Mother needed help with assessing risk and selecting child-care providers. And he stated, "I do not believe she is at a point where she can accurately assess risk. Frankly, I am not sure she will ever reach a satisfactory level of skill in that regard."

In mid-June 2020, the family court determined that it was not necessary for the Cabinet to make further reasonable efforts. *See* KRS[3] 610.127. Its written order stated the reasons for this determination were the two years Child

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[3] Kentucky Revised Statutes.

had been out of the home and Child's having already been moved from a relative placement that did not work out into an appropriate foster home.

Mother filed a motion for an order compelling the Cabinet to allow Child to participate in therapy with her. The family court's docket notes say it passed that motion for a few weeks to see if Cabinet would request a goal change. In July 2020, the family court entered an order for the Cabinet to facilitate therapy if Dr. Ebben opined such sessions were appropriate.

In August 2020, upon Mother's counsel's request, Dr. Ebben sent a letter stating PCIT was not necessary, but that traditional parent/child therapy (also known as family therapy) was needed. Despite this statement in the letter, there was some confusion later about which type of therapy he recommended with a perception (or misperception) by some that PCIT was required.

In late August, the family court entered an order stating it was adopting the Cabinet's recommendations and directing counsel to have a conference call with Dr. Ebben – evidently to address any confusion about what type of therapy was recommended. The August order also indicated the matter would be reviewed in November.

In October 2020, the Cabinet filed a report recommending that Child remain in its custody and requesting a goal change to adoption. In November

2020, the family court entered an order changing the goal to adoption and adopting the Cabinet's recommendations. It set review for February 2021.

In February 2021, the Cabinet filed a report requesting that Child remain in its custody but also requesting that the no-contact order be lifted to permit Mother to participate in parent/child therapy as recommended by Dr. Ebben. The Cabinet recommended all contact occur in a therapeutic setting. The family court entered an order adopting the Cabinet's recommendations.

According to an April 2021 Cabinet report, Dr. Ebben had recommended parent/child therapy with Dr. Heather Risk. This report also states that Mother had contacted Dr. Risk and was waiting for therapy to begin.

According to a July 2021 Cabinet report, Dr. Risk wanted more time to see if her firm could accept the case, and there were concerns that the therapy might not be in Child's best interest based on the amount of time which had passed. In October 2021, the Cabinet requested that it keep custody of Child and that visitation occur only for therapeutic services if deemed appropriate. The Cabinet also stated that the social worker had been unable to contact a therapist Mother found and that therapy had not yet begun.

Though not discussed in the Cabinet's October 2021 written report, the social worker later testified at the termination trial that the Cabinet had determined that Dr. Risk's rates were too high for the Cabinet and/or Mother to

pay. Apparently, Mother attempted to find other qualifying therapists to perform parent/child therapy or PCIT, but such therapy had not begun by October 2021.

In late October 2021, the family court entered an order stating PCIT therapy had not begun[4] and could cause Child harm at this point, and stating the Cabinet was not required to accommodate PCIT therapy or therapeutic services. The family court otherwise adopted the Cabinet's recommendations.

In a January 2022 report, the Cabinet again recommended Child remain in its custody and stated the Cabinet was pursuing termination of parental rights at that time. The Cabinet filed a petition to terminate Mother's parental rights in late January 2022.

Also, in January 2022, Mother went to see Dr. Rhonda Fairweather, who offered PCIT in Anderson County. Mother suggested she was unable to find another available therapist who offered PCIT earlier and perceived that she had to seek PCIT rather than traditional parent/child therapy.

In April 2022, Dr. Fairweather's report was filed. Dr. Fairweather noted that a hearing on terminating parental rights was already set. Dr. Fairweather reported she asked Mother "if it is determined that PCIT is not in the

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[4] Based on our review of the written record, it appears possible that the family court and/or the parties may have at times either regarded PCIT and traditional parent/child therapy as being the same process or confused the two types of therapy – despite Dr. Ebben's describing significant differences between PCIT and traditional parent/child therapy.

best interest of [Child], would you still want to go ahead with it?" and Mother said yes, she wanted Child to know she did everything she could to fight for him. Dr. Fairweather also noted that Mother blamed others for Child's removal from the home.

Dr. Fairweather opined that PCIT was not in Child's best interest – in part because the end goal was no longer for reunification. She also stated that PCIT was designed so that a parent and child could practice strategies and techniques learned in PCIT sessions outside of the therapy office. She indicated that as such practice outside the office was not currently possible in this case and it would be difficult to determine if progress was actually being made.

The case proceeded to trial in late January 2023. The family court entered findings of fact and conclusions of law and an order terminating Mother's parental rights in March 2023. This appeal followed.[5]

Mother argues she complied with substantially all case plan requirements, thus demonstrating reasonable expectations for improvement in her view. And she points out that except for the one-time meeting with Dr. Ebben with Child present in early 2020, she never got to visit with Child after family court

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[5] Though we elect not to impose any sanctions, *see* Kentucky Rules of Appellate Procedure ("RAP") 31(H)(1), we note that the index to the appendix to Mother's appellant brief fails to state where in the record the documents attached in the appendix (the judgment and Dr. Ebben's reports) may be found in the record. *See* RAP 32(E)(1)(d).

proceedings commenced. She complains the Cabinet failed to offer her supervised visitation or protective capacity classes, thus failing to make reasonable efforts at reunification in her view.

ANALYSIS

Standards Governing Courts in Termination of Parental Rights Cases

Termination of parental rights is a grave action requiring "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. 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 termination of parental rights).

Even so, a circuit court's decision to involuntarily terminate parental rights is accorded great deference on appellate review and its factual findings are reviewed under the "clearly erroneous" standard of CR[6] 52.01,[7] meaning these findings shall not be disturbed unless they are not supported by substantial

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[6] Kentucky Rules of Civil Procedure.

[7] 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."

evidence. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998).

Nonetheless, a circuit court cannot properly terminate parental rights unless it finds, by clear and convincing evidence,[8] that three requirements in KRS 625.090 are met. 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, the circuit court must find at least one ground of parental unfitness described in KRS 625.090(2).[9] Third, termination must be in the child's best interest. KRS 625.090(1)(c). In determining the child's best interests and whether there are ground(s) for termination, the circuit court must consider the factors listed in KRS 625.090(3).

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[8] *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." *Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010).

[9] A family court must make a finding of at least one of several alternative grounds described in KRS 625.090(2) – in addition to the findings required by KRS 625.090(1) and (3) – in order to terminate parental rights. The alternative grounds described by KRS 625.090(2) are often described as "grounds of parental unfitness" in our precedent. *See e.g.*, *J.R.E. v. Cabinet for Health and Family Services*, 667 S.W.3d 589, 593 (Ky. App. 2023) ("A family court may not terminate parental rights unless the court 'also finds by clear and convincing evidence the existence of one (1) or more' of the grounds listed in KRS 625.090(2) indicating parental unfitness."). For example, a parent may be "deemed unfit" if a court makes a finding of a specific factor described in KRS 625.090(2) such as failure or inability to provide essential parental care and protection for at least six months with no reasonable expectations of improvement in such care and protection considering the child's age as described in KRS 625.090(2)(e). 667 S.W.3d at 594.

Mother does not dispute that the family court made its findings by clear and convincing evidence. Nor does she argue any error in the family court's findings of other KRS 625.090 requirements in her appellate briefs.[10] However, Mother claims that the family court erred in finding no reasonable expectations of improvement and in its best interest findings. First, we address her argument about reasonable expectations of improvement.

Despite Mother's Completion of Case Plan, No Reversible Error in Family Court Not Finding Reasonable Expectations of Improvement

In her brief and citing to *F.V. v. Commonwealth, Cabinet for Health and Family Services*, 567 S.W.3d 597, 609 (Ky. App. 2018), and *M.E.C.*, Mother argues KRS 625.090 requires that the Cabinet prove by clear and convincing evidence that there is no reasonable expectation of improvement by the parent. Her argument is not entirely correct.

For parental rights to be terminated, the Cabinet must prove, *inter alia*, one or more grounds of parental unfitness set forth in KRS 625.090(2). Some grounds of parental unfitness set forth in KRS 625.090(2) do require some sort of finding of no reasonable expectations of improvement. For example, to find KRS 625.090(2)(e) grounds (failure to provide essential parental care and protection), the family court must find, *inter alia*, "there is no reasonable expectation of

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[10] Before addressing the merits of any particular findings, we note the family court made the findings required for termination pursuant to KRS 625.090 based on our review of its judgment.

improvement in parental care and protection, considering the age of the child[.]" And to find KRS 625.090(2)(g) grounds (failure to provide necessities such as food and shelter), the family court must find, *inter alia*, "there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child[.]"

Both *F.V.* and *M.E.C.* concerned allegations of KRS 625.090(2)(e) & (g) grounds. *See F.V.*, 567 S.W.3d at 607; *M.E.C.*, 254 S.W.3d at 852. Statements in these cases regarding the Cabinet's burden to prove no reasonable expectations of improvement apply to proving the grounds in KRS 625.090(2)(e) and KRS 625.090(2)(g) – but not necessarily to proving other grounds of parental unfitness in KRS 625.090(2).

Unlike KRS 625.090(2)(e) & (g), other grounds of parental unfitness in KRS 625.090(2) do not explicitly require a finding of no reasonable expectations of improvement. For example, KRS 625.090(2)(j) solely requires a finding that "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" – with no explicit requirement to prove no reasonable expectation of improvement.

Among other KRS 625.090 grounds, the family court found Child had been in foster care under the Cabinet's responsibility for more than fifteen of the

most recent 48 months preceding the filing of the termination petition. *See* KRS 625.090(2)(j). Mother has not disputed this finding about the time Child spent in foster care under the Cabinet's responsibility. And only one KRS 625.090(2) ground must be proven to support involuntary termination so long as other statutory requirements are met. *T.N.H.*, 302 S.W.3d at 663.

Next, we address Mother's arguments about Child's best interest and whether the Cabinet made reasonable efforts at reunification.

Family Court's Findings on Best Interest and Reasonable Efforts are Supported by Substantial Evidence

Specifically, Mother argues the family court erred in finding the Cabinet made reasonable reunification efforts because she was not offered supervised visitation or protective capacity classes. *See* KRS 625.090(3)(c). Mother, in her brief, contends:

> The Cabinet's case against [Mother] ultimately rests upon Dr. Ebben's admittedly subjective opinion that she may not have adequate protective skills as [a] parent. While this opinion is should be [sic] concerning to everyone involved with [Mother]'s case plan, it does not rise to the level of clear and convincing evidence justifying termination of her parental rights – especially when all treatment modalities available to address this concern have not been offered to [Mother].

The Cabinet points out that "reasonable efforts" are just one part of several factors to be considered in deciding what is in a child's best interest. *See* KRS 625.090(3). The Cabinet contends, correctly, that no specific checklist of

particular services must be offered and what amounts to reasonable efforts depends on the circumstances of the case. *See K.M.E. v. Commonwealth*, 565 S.W.3d 648, 658 (Ky. App. 2018).

The Cabinet asserts that Mother failed to take responsibility and was therefore ineligible for protective capacity classes, citing to a social worker's testimony at the termination trial. It also points to Dr. Ebben's opinion that he did not believe Mother could properly exercise protective capacity to make good decisions about child-care providers in real-world situations despite her likely being able to give the right answers in a classroom setting. So, the Cabinet suggests that such classes would also be unlikely to lead to a parental adjustment permitting Child's safe return home, *see* KRS 625.090(3)(d); KRS 625.090(4). It also suggests such classes would have been unavailable to Mother because, at least in its view, she failed to take responsibility for the harm Child suffered. *See* KRS 620.020(13) (indicating a service must be available to be considered part of reasonable efforts).[11]

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[11] KRS 620.020(13) defines *reasonable efforts* as: "the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community in accordance with the state plan for Public Law 96-272 which are necessary to enable the child to safely live at home[.]" KRS 620.020(14) defines *reunification services* as: "remedial and preventive services which are designed to strengthen the family unit, to secure reunification of the family and child where appropriate, as quickly as practicable, and to prevent the future removal of the child from the family[.]"

The testimony of Dr. Ebben and the social worker qualify as substantial evidence supporting an inference that the Cabinet was not required to offer protective capacity classes in order to make reasonable efforts in this case. And we are mindful of our Supreme Court's direction to defer to the family court's unique ability to determine witness credibility and weigh the evidence:

> Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court.

Moore v. Asente, 110 S.W.3d 336, 354 (Ky. 2003) (internal quotation marks and footnotes omitted).

As for the Cabinet not offering Mother supervised visitation, Mother was prohibited by court orders from having any contact with Child for much of the time the family court proceedings were pending. A social worker testified that supervised visitation was not offered since Mother's having contact with Child was prohibited by court order. And the record provided to us does not show a clear request by Mother to lift the no-contact order before the family court proceedings had been ongoing for some time.

Moreover, despite the Cabinet's not offering protective capacity classes or supervised visitation to Mother, the record reflects that the Cabinet

offered her other services and certainly did not rush into seeking a goal change from reunification to adoption nor rush into filing a petition for termination of parental rights. *Cf. M.E.C.*, 254 S.W.3d at 854 (reversing TPR based partly on lack of reasonable efforts because the "goal from reunification to termination was changed after only eight months time, of which M.E.C. was either incarcerated or hospitalized."); *K.D.H. v. Cabinet for Health and Family Services*, 630 S.W.3d 729, 739-40 (Ky. App. 2021) (reversing TPR partly because "the Cabinet sought to be relieved of its obligation to provide reasonable reunification efforts for this family less than one year from the temporary adjudication order" so the parents were not given "a fair opportunity to make changes" which could enable the children's safe return home).

Furthermore, though not substantively discussed in the family court's judgment or the parties' appellate briefs, the need for the family court to address whether the Cabinet made reasonable efforts prior to filing the termination petition was limited by the family court's previous KRS 610.127 determination – *i.e.*, that the Cabinet was no longer required to make reasonable efforts as of mid-June 2020.

KRS 625.090(3)(c) states that in assessing a child's best interest, the family court must consider:

> If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made

> reasonable efforts as defined in KRS 620.020 to reunite the child with the parents *unless* one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court[.]

(Emphasis added.)

KRS 610.127 states reasonable efforts are not required if a "court of competent jurisdiction" makes certain written findings – including that the parent subjected the child to aggravated circumstances as defined in KRS 600.020[12] or that other circumstances make "continuation or implementation of reasonable efforts to preserve or reunify the family inconsistent with the best interests of the child and with the permanency plan for the child." KRS 610.127(1)-(8).

The family court made the KRS 610.127 determination that reasonable efforts were not required in June 2020 – about two years after the Cabinet filed the DNA case. Specifically, the family court identified the two-year length of time the DNA case was pending and the fact that Child had already gone from his original home to a relative placement to an appropriate foster care family

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[12] Aggravated circumstances include the parent having not had contact with the child for 90 days or more and the parent causing the child serious injury. KRS 600.020(3)(a)-(e). Mother pled guilty to Second-Degree Criminal Abuse and First-Degree Wanton Endangerment, offenses which generally entail putting someone at risk of serious physical injury, if not necessarily causing actual serious physical injury. *See* KRS 508.110; KRS 508.060. In its mid-June 2020 order determining reasonable efforts to be no longer required, the family court made no explicit finding of Mother actually causing Child serious injury. *See* KRS 610.127(1) & (3); KRS 600.020(3)(e).

as reasons for no longer requiring reasonable efforts. Presumably, the family court viewed these factors as, "Other circumstances in existence that make continuation or implementation of reasonable efforts to preserve or reunify the family inconsistent with the best interests of the child and with the permanency plan for the child." *See* KRS 610.127(8).

Mother does not explicitly claim error in the family court's determining reasonable efforts were not required as of June 2020. Instead, her argument is that the Cabinet failed to make reasonable reunification efforts since it did not offer her supervised visitation or protective capacity classes. But though we may not entirely understand the timing of or reasons behind certain events in the record, we conclude there is substantial evidence to support the family court's findings that the Cabinet made reasonable reunification efforts and termination was in Child's best interest.[13]

The family court specifically stated regarding KRS 625.090(3)(c) concerns (reasonable efforts), "it is clear to this Court that the Cabinet made appropriate referrals to substance abuse counseling, parenting classes, random drug screens, supervised visitation sessions, mental health counseling, and various other services." This finding appears to be made regarding both natural parents

[13] This is particularly so as the written record suggests the Cabinet continued to make some efforts toward reunification even after the family court found it was no longer required to do so.

collectively and not specifically about Mother individually. (The findings of fact and conclusions of law addressed whether the parental rights of both parents should be terminated, and the family court did not specify whether this finding applied only to one parent or to both parents.)

The family court also noted a social worker's testimony that, given the circumstances of this case, the social worker was not aware of any other services which the Cabinet could offer which would allow for safe reunification within a reasonable period given Child's age. And the family court stated its agreement with the social worker's assessment, especially considering the factor of parental efforts and adjustments to make it in Child's best interest to return home within a reasonable time considering his age. *See* KRS 625.090(3)(d). The court noted Mother completed case plan tasks, but the court found Mother continued to express "concerning attitudes about her child's well-being and her own protective capacity."

In its conclusions of law, the family court also stated the Cabinet had provided or attempted to provide all services which might be expected to lead to family reunification. And it concluded, "Given the efforts made by the Cabinet and the Anderson Family Court to reunify this family," no additional services were "likely to bring about parental adjustments" allowing safe return of Child to his parents "within a reasonable time, considering the age of the child."

While the family court clearly found that the Cabinet had made reasonable reunification efforts, the family court did not specifically discuss in its findings of fact and conclusions of law the social worker's testimony about why protective capacity classes were not offered to Mother. However, the family court's findings of fact noted Dr. Ebben's testimony that he believed that Mother could not learn to exercise protective capacity in real-life situations even though she would likely learn how to give the right verbal answers in a classroom setting. And though not mentioned in the family court's findings of fact and conclusions of law, the social worker also testified that Mother was not eligible for protective capacity classes due to perceived failure to take personal responsibility.[14] The testimony of Dr. Ebben and the social worker is substantial evidence supporting the family court's findings that the Cabinet made reasonable efforts and that there were no additional services which would likely lead to adjustments permitting Child's safe return to Mother's home within a reasonable time. *See* KRS 625.090(3)(c) & (d); KRS 625.090(4).

Unlike the family court's finding of reasonable efforts, Mother does not specifically allege any errors in the family court's findings on other factors

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[14] *See also Mark D. Dean, P.S.C. v. Commonwealth Bank & Tr. Co.*, 434 S.W.3d 489, 496 (Ky. 2014) ("If an appellate court is aware of a reason to affirm the lower court's decision, it must do so, even if on different grounds.").

affecting Child's best interest. *See generally* KRS 625.090(3). Thus, we need not specifically discuss the family court's other best interest findings. However, based on our careful review of both the family court's judgment and of the videotaped trial, its other findings on best interest factors also appear to be supported by substantial evidence and not clearly erroneous. *See generall*y CR 52.01.

In short, there was substantial evidence to support the family court's findings that the Cabinet made reasonable efforts and that termination was in Child's best interests so we cannot reverse on these bases. *See R.M. v. Cabinet for Health and Family Services*, 620 S.W.3d 32, 42-43 (Ky. 2021) (affirming family court findings that Cabinet made reasonable efforts at reunification and that termination was in children's best interest as these findings were supported by substantial evidence). The family court made all legally required findings for termination and its findings are supported by substantial evidence. Other arguments in the parties' briefs which we do not discuss herein have been determined to lack merit or relevancy to our resolution of this appeal.

CONCLUSION

For the foregoing reasons, we affirm the Anderson Family Court's judgment.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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