

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-002718-MR

J.F.M. and B.M., her husband

APPELLANTS

ON REMAND FROM THE SUPREME COURT  
ACTION NO. 1999-SC-0902-DG

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE LEWIS G. PAISLEY, JUDGE  
ACTION NO. 97-AD-00026

CABINET FOR FAMILIES AND CHILDREN,  
COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: KNOPF, MILLER, AND SCHRODER, JUDGES.

MILLER, JUDGE: This matter is before us on remand by the Kentucky Supreme Court in Morris v. Cabinet for Families and Children, Ky., 69 S.W.3d 73 (2002). The Court reversed and remanded our opinion rendered August 5, 1999 and ordered that the case be reconsidered upon the merits. Upon reconsideration, we affirm.

C.J.M. was born December 17, 1988. At the time of his birth, his mother, J.F.M., and his father, B.M., were neither married nor cohabitating. B.M.'s criminal history included charges of disorderly conduct in 1982, terroristic threatening in 1992, and a sodomy conviction in 1986. B.M. had at least two

charges of driving under the influence of alcohol by August 1998. In 1995, B.M.'s daughter filed an Emergency Protective Order against him.

J.F.M. had three other children by different fathers. In July of 1992, J.F.M. was diagnosed with multiple sclerosis. B.M. then moved in with J.F.M., C.J.M, and J.F.M.'s three other children. In December 1993, the Fayette District Court issued a Domestic Violence Order (DVO) on behalf of C.J.M. and one of J.F.M.'s other children, G.W.C. The petition alleged B.M. struck J.F.M. and G.W.C., and threatened to kill J.F.M. The petition further alleged the use of a weapon in a prior incident and that B.M. was considered armed and dangerous.<sup>1</sup> C.J.M. and G.W.C. were removed from J.F.M.'s custody June 22, 1995 by order of the Fayette Juvenile Court. The record indicates that J.F.M. had been evicted and that she and the children were homeless. J.F.M. repeatedly refused assistance offered through the Cabinet for Human Resources, now Cabinet for Families and Children (CFC), appellee herein. B.M.'s whereabouts were at that time unknown. G.W.C. was placed with his biological father and C.J.M. was placed in foster care.<sup>2</sup>

Approximately one month after the children's removal, B.M. returned, and he and J.F.M. were married.<sup>3</sup> Pursuant to

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<sup>1</sup>J.F.M. later claimed this was a conspiracy by the Fayette District Court and that her signature on the Domestic Violence Petition was forged.

<sup>2</sup>J.F.M.'s remaining two children eventually moved in with their respective fathers.

<sup>3</sup>The record indicates one of the reasons they married was  
(continued...)

C.J.M.'s removal, the CFC recommended J.F.M. and B.M. receive parenting assistance and follow all recommendations therefrom. It was further recommended that B.M. cooperate with treatment for alcohol use, complete an anger management course, and either provide verification of completion of sexual offender treatment or initiate current treatment. None of the recommendations was followed, primarily because B.M. denied any issues therein.

A psychiatric evaluation of J.F.M. indicated she suffered from dementia related to multiple sclerosis, and psychotic disorder. A neurological evaluation of J.F.M. indicated that as she was wheelchair bound she would need "supplemental services" to continue parenting. J.F.M. continued to refuse assistance primarily because she denied her physical condition. She further denied B.M. had domestic violence, or sexual abuse issues.

In March of 1997, the CFC filed an action in the Fayette Circuit Court to terminate J.F.M. and B.M.'s parental rights to C.J.M. The action went to trial August 4 and 5, 1998. The circuit court found the following: (1) for reasons other than poverty alone, J.F.M. and B.M. failed to provide a safe home, and essential care for C.J.M., (2) C.J.M. was at risk for being a victim or perpetrator of sexual abuse, (3) the CFC made reasonable attempts at reunification of the family over a period of about three years, (4) J.F.M. and B. M. did not follow recommendations, and there was no reasonable expectation of

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<sup>3</sup>(...continued)  
because J.F.M. was informed by a caseworker they stood a better chance of having C.J.M. returned to them if they were married.

improvement, (5) C.J.M. made substantial improvement in foster care, and (6) termination of J.F.M. and B.M.'s parental rights was in C.J.M.'s best interest.

J.F.M. and B.M.'s parental rights were terminated by an August 20, 1998 judgment of the Fayette Circuit Court. J.F.M. and B.M. appealed to this Court. The appeal was dismissed for failure to name a necessary party, to wit, C.J.M. The Supreme Court reversed and remanded back to this Court for decision on the merits by opinion dated February 21, 2002. We now address the merits.

J.F.M. and B.M. first contend the circuit court erred in failing "to follow the statutory standard for termination of parental rights." Termination of parental rights is governed by Kentucky Revised Statutes (KRS) 625.090, which reads in pertinent part:

- (1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that the child has been adjudged to be an abused or neglected child by a court of competent jurisdiction or is found to be an abused or neglected child by the Circuit Court in this proceeding and that termination would be in the best interest of the child. No termination of parental rights shall be ordered unless the circuit court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:

. . . .

- (d) 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;

(e) That the parent has caused or allowed the child to be sexually abused or exploited; or

(f) 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.

In the case at hand, J.F.M. has multiple sclerosis and is wheelchair bound. She also suffers dementia, and psychotic disorder. She repeatedly refused parenting assistance from CFC. B.M. has a criminal history, including a DVO taken out on behalf of C.J.M. He likewise refused assistance from the CFC. The CFC made several recommendations to J.F.M. and B.M. that were meant to promote reunification of the family. It appears the only "recommendation" of which they availed themselves was the unofficial suggestion to get married.

C.J.M.'s foster mother, D.B., testified as to C.J.M.'s condition upon arrival at her home. She stated C.J.M. was frail, would not eat, and suffered chronic colds and fevers. At six-and-a-half years of age, C.J.M. wore size four clothing. His hair was matted and his ears so blocked with wax as to require removal by a doctor. C.J.M.'s teeth were decayed to the point of some being rotten and requiring removal. Medication was necessary for a resulting infection. The record indicates

C.J.M.'s dental condition advanced because J.F.M. and B.M. refused to disclose C.J.M.'s social security number to the CFC so that a medical card could be issued. It appears C.J.M. did not receive childhood immunizations. C.J.M. also exhibited sexually inappropriate behavior.

We must conclude the circuit court's judgment was clearly statutorily based. Taking the aforementioned facts together, we are of the opinion that there existed clear and convincing evidence that C.J.M. was an abused and neglected child under KRS 625.090.

J.F.M. and B.M. next contend the circuit court erred by admitting into evidence a prior conviction against B.M. In 1986, B.M. was charged with sodomizing a thirteen year old boy and pled guilty as part of a plea bargain. When questioned at trial, B.M. denied having committed the crime, in spite of the guilty plea. J.F.M. and B.M. point out that the conviction was over ten years old at the time of the trial. They further assert the prior conviction was irrelevant and prejudicial.

It appears J.F.M. and B.M. maintain that because B.M.'s conviction was over ten years old at the time of trial it was, *per se*, inadmissible. We assume this is a reference to Ky. R. Evid. (KRE) 609(b). KRE 609(b) deals with the admissibility of prior convictions for the purposes of impeachment. We do not believe KRE 609(b) applicable to the case at hand. The prior conviction was admitted for substantive purposes rather than impeachment. As such, we do not think B.M.'s conviction was inadmissible because it was over ten years old.

J.F.M. and B.M. also complain B.M.'s prior conviction was irrelevant and prejudicial. Admission of a prior criminal conviction may be relevant in a termination of parental rights action when it reflects on a party's general ability to parent. See G.E.Y. v. Cabinet for Human Resources, Ky. App., 701 S.W.2d 713 (1985). There is abundant evidence in the record to indicate C.J.M. was at considerable risk for sexual abuse in his home environment, and was, indeed, already exhibiting inappropriate sexual behavior. Given the circumstances of the case at hand, we believe B.M.'s sodomy conviction reflected upon his general ability to parent C.J.M., and was, thus, relevant. See Id.

Upon the whole, we are of the opinion the circuit court properly terminated the parental rights of the J.F.M. and B. M..

For the foregoing reasons, the judgment of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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