

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-000965-MR

V.S.S.<sup>1</sup>

APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT  
HONORABLE LEWIS D. NICHOLLS, JUDGE  
ACTION NO. 00-AD-00020

CABINET FOR FAMILIES AND CHILDREN, AS  
PETITIONER AND NEXT FRIEND OF T.M.S.,  
A CHILD, M.I.S., A CHILD, AND  
T.R.S., A CHILD

APPELLEE

OPINION  
AFFIRMING

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BEFORE: BUCKINGHAM, DYCHE AND JOHNSON, JUDGES.

JOHNSON, JUDGE: V.S.S has appealed from separate orders entered by the Greenup Circuit Court on April 8, 2002, which terminated her parental rights to three of her children, T.M.S., M.I.S., and T.R.S. Having concluded that the trial court's decision to terminate V.S.S.'s parental rights is supported by clear and

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<sup>1</sup> In order to protect the privacy of the children, we will use initials to identify the parents and children.

convincing evidence that her children were abused or neglected while under her care and that it is in their best interests to have their mother's parental rights terminated, we affirm.

V.S.S. is the biological mother of six children. This appeal concerns the termination of her parental rights to T.M.S., who was born on March 26, 1996; M.I.S., who was born on February 15, 1997; and T.R.S., who was born on February 22, 1998. V.S.S.'s husband, R.E.S., is the biological father of T.M.S., M.I.S., and T.R.S.<sup>2</sup> In June 1998, M.I.S. was brought to Cincinnati Children's Hospital in Cincinnati, Ohio, where he was diagnosed with multiple and chronic subdural hematomas and retinal hemorrhaging. On June 30, 1998, Angela Estep, a supervisor with the Kentucky Cabinet for Families and Children, received a referral from the hospital concerning M.I.S.'s condition. Shortly thereafter, Estep contacted Dr. Bloom, one of the doctors who treated M.I.S. Dr. Bloom informed Estep that he believed M.I.S. had been abused and that his symptoms were consistent with "shaken baby syndrome." Dr. Bloom also informed Estep that M.I.S. had bruises on his back, thighs, and buttocks. Estep also spoke with Judy Woods, a social worker,

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<sup>2</sup> V.S.S. and R.E.S. are also the biological parents of J.S., who was born on June 9, 1999, and V.S., who was born on March 26, 2001. V.S.S. currently has custody of J.S. and V.S. R.E.S. is also the biological father of three other children, all of whom were born prior to his marriage to V.S.S. R.E.S.'s parental rights to the children born prior to his marriage to V.S.S. have been terminated.

who informed her that neither the father nor the mother had been to see M.I.S. at the hospital for several days.

On July 7, 1998, the Cabinet filed in the Greenup District Court a petition for an emergency custody order pertaining to M.I.S., alleging that M.I.S. had been physically abused. The Cabinet also petitioned the Greenup District Court for emergency custody orders with respect to T.M.S. and T.R.S., alleging that T.M.S. and T.R.S. would be seriously endangered if left in the care of their parents. On July 9, 1998, the Greenup District Court ordered these three children to be removed from the family home and temporarily placed in the Cabinet's custody. The district court further ordered the parents to pay child support for each child in the amount of \$60.00 per month. On August 10, 1998, the district court ordered the parents to each obtain a G.E.D. and to complete parenting classes. The father was subsequently charged with assault in the first degree<sup>3</sup> (child abuse), and on May 27, 1999, the father pled guilty to the charge of criminal abuse in the second degree.<sup>4</sup>

On November 27, 2000, the Cabinet filed a petition in the Greenup Circuit Court for the involuntary termination of R.E.S.'s and V.S.S.'s parental rights to T.M.S., M.I.S., and T.R.S. The case was tried before the circuit court on March 22,

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<sup>3</sup> Kentucky Revised Statutes (KRS) 508.010.

<sup>4</sup> KRS 508.110.

2002, and V.S.S. and R.E.S. both testified. Estep and Angela Keeton, a social worker with the Cabinet, also testified at the trial. On April 8, 2002, the trial court entered orders terminating R.E.S.'s and V.S.S.'s parental rights to T.M.S., M.I.S., and T.R.S. In sum, the trial court found that each child was an abused and neglected child as defined by KRS 600.020(1) and that the termination of R.E.S.'s and V.S.S.'s parental rights was in T.M.S.'s, M.I.S.'s, and T.R.S.'s best interests. This appeal followed.<sup>5</sup>

V.S.S., the mother, takes issue with several of the trial court's findings.<sup>6</sup> More specifically, V.S.S. contends the trial court's determination that she continuously or repeatedly refused to provide or has been substantially incapable of providing essential parental care and protection for T.M.S., M.I.S., and T.R.S., and that there is no reasonable expectation of improvement is clearly erroneous. V.S.S. further contends that the trial court's determination that she continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care or education for T.M.S., M.I.S., and T.R.S., and that there is no reasonable expectation of significant improvement in her conduct is clearly erroneous. V.S.S. next contends that the trial court's finding

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<sup>5</sup> T.M.S., M.I.S., and T.R.S. have remained in foster care since they were removed from the family home in July 1998.

<sup>6</sup> R.E.S., the father, did not file an appeal.

that the termination of her parental rights was in the best interests of T.M.S., M.I.S., and T.R.S. is clearly erroneous. V.S.S. also contends that the trial court's determination that T.M.S. and T.R.S. are abused and neglected children as defined by KRS 600.020(1) is clearly erroneous.

KRS 625.090 governs the termination of parental rights. The statute provides, in pertinent part, as follows:

(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:

(a) 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;

2. The child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding;  
[and]

. . .

(b) Termination would be in the best interest of the child.

(2) 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:

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

(b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;

(c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;

. . .

(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;

. . .

(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; [or]

. . .

(j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights.

- (3) In determining the best interest of the child . . . the Circuit Court shall consider the following factors:

. . .

(b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;

(c) 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;

(d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;

(e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and

(f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

In summary, the statute requires a finding that: (1) the child is an abused or neglected child;<sup>7</sup> (2) termination would be in the best interests of the child; and (3) one or more of the factors set out in KRS 625.090(2)(a)-(g) are present.<sup>8</sup>

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<sup>7</sup> Pursuant to KRS 600.020(1), an abused or neglected child means:

[A] child whose health or welfare is harmed or threatened with harm when his parent, guardian, or other person exercising custodial control or supervision of the child: [ ] [i]nflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means; [ ] [c]reates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means; [ ] [e]ngages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005(12); [ ] [c]ontinuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child; . . . [a]bandons or exploits the child; or [ ] [d]oes not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being.

<sup>8</sup> See R.C.R. v. Commonwealth, Cabinet for Human Resources, Ky.App., 988 S.W.2d 36, 38 (1999).



The standard of review governing an appeal from an order terminating parental rights is well established. As this Court stated R.C.R., supra:

The trial court has broad discretion in determining whether the child fits within the abused or neglected category and whether the abuse or neglect warrants termination. Department for Human Resources v. Moore, Ky.App., 552 S.W.2d 672, 675 (1977). This Court's review in a termination of parental rights action is confined to the clearly erroneous standard in CR 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. V.S. v. Commonwealth, Cabinet for Human Resources, Ky.App., 706 S.W.2d 420, 424 (1986). "Clear and convincing proof does not necessarily mean uncontradicted proof. 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." Rowland v. Holt, [ ] 253 Ky. 718, 70 S.W.2d 5, 9 (1934).<sup>9</sup>

We conclude that the findings challenged in this appeal are supported by clear and convincing evidence. The mother testified that she witnessed the father physically abuse M.I.S. on two separate occasions. More specifically, she stated that she witnessed the father attempt to pull M.I.S. off the floor by his earlobes because the child would not walk. Moreover, the mother testified that she failed to pay child

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<sup>9</sup> Id. at 38-9.

support for T.M.S., M.I.S., and T.R.S. prior to 2001.<sup>10</sup> The mother stated that she only began paying child support for T.M.S., M.I.S., and T.R.S. because she did not want to go to jail. The mother further testified that the father had abused her in the past. The mother stated that she only continued her relationship with the father because she was unable to support herself. The mother testified that she earned approximately \$600.00 over the past two years. The mother further testified that her lack of knowledge and failure to obtain a G.E.D. substantially contributed to her inability to support herself and her children. The mother stated that she attempted to obtain a G.E.D. but that she eventually decided to quit attending classes. The mother also stated that she separated from the father a week before the trial because she knew she was coming to court and she was afraid that she might lose her children if she continued staying with him. Nevertheless, the mother testified that she loved the father and that she would prefer to live with him and the children.

In addition, Estep, the Cabinet supervisor, testified that she made several home visits prior to the removal hearing which occurred in July 1998. Estep stated that when she visited the family residence, she usually found the children strapped in car seats on the back porch. Estep testified that

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<sup>10</sup> As previously discussed, the mother was ordered to pay child support in the amount of \$60.00 per month for T.M.S., M.I.S., and T.R.S, in July 1998.

she established a reunification plan with the mother shortly after T.M.S., M.I.S., and T.R.S were removed from her custody and that the mother visited the children on several occasions. Estep stated that while she believed the mother loved her children, she feared the mother would not be able to protect the children from their father. Estep testified that she believed termination of the mother's parental rights was in the best interests of T.M.S., M.I.S., and T.R.S.

Keeton, the Cabinet social worker, testified that she was assigned to the mother's case in August 1999. Keeton explained that she met with the mother and the children on several occasions. Keeton further explained that she observed T.M.S., M.I.S., and T.R.S. as they were returning from visits with their mother and she testified that on several occasions the mother would return T.R.S. with feces in his diaper. Keeton also stated that on one occasion she observed blisters on T.R.S.'s buttocks.

Based on the aforementioned testimony, we are unpersuaded that the trial court's finding that T.M.S., M.I.S., and T.R.S. were abused and neglected children as defined by KRS 600.020(1) is clearly erroneous. The testimony described above clearly demonstrates that T.M.S., M.I.S., and T.R.S. were subjected to a dysfunctional family environment permeated by child neglect, abuse, and violence. Moreover, the mother's own

testimony supports the trial court's finding that she was substantially incapable of providing essential parental care and protection for T.M.S., M.I.S., and T.R.S., and that there is no reasonable expectation of improvement in her parental care and protection of the children. The mother admitted that she failed to pay child support for T.M.S., M.I.S., and T.R.S. for an extended period of time. The mother further testified that she was unable to support herself and her children due to the fact she was unable to obtain suitable employment, yet she admitted that she quit attending classes that would have enabled her to obtain a G.E.D. In addition, the mother's testimony demonstrates her unwillingness to leave the father, despite the fact that he physically abused M.I.S. The testimony introduced at trial further supports the trial court's finding that the mother is incapable of providing essential food, clothing, shelter, medical care or education for T.M.S., M.I.S., and T.R.S., and that there is no reasonable expectation of improvement in her conduct. Furthermore, we conclude that the trial court did not err in finding that the termination of the mother's parental rights was in T.M.S.'s, M.I.S.'s, and T.R.S.'s best interests. While the mother obviously disagrees with the trial court's findings, we simply cannot conclude that "there

exists no substantial evidence in the record to support its findings."<sup>11</sup>

Based on the foregoing reasons, the orders entered by the Greenup Circuit Court terminating V.S.S.'s parental rights to T.M.S., M.I.S., and T.R.S. are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Luke Bentley III  
Vanceburg, Kentucky

BRIEF FOR APPELLEE:

Kirk D. Woosley  
Paris, Kentucky

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<sup>11</sup> R.C.R., 988 S.W.2d at 38 (citing V.S. 706 S.W.2d at 424).