

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2003-CA-002089-ME

R.W.

APPELLANT

v. APPEAL FROM JESSAMINE CIRCUIT COURT  
HONORABLE C. HUNTER DAUGHERTY, JUDGE  
ACTION NO. 03-AD-00007

COMMONWEALTH OF KENTUCKY,  
CABINET FOR FAMILIES AND CHILDREN,  
AND N.F.W., A CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BARBER, MINTON, AND TACKETT, JUDGES.

MINTON, JUDGE: In this expedited appeal, R.W. asks us to reverse the circuit court's order terminating his parental rights to his daughter following his conviction in a separate criminal prosecution for having sexually abused this child.<sup>1</sup>

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<sup>1</sup> This appeal was filed in 2003 and is being heard on an expedited basis because the parental rights to a child are at issue. On the surface, the issuance of an opinion some two years after the appeal was filed does not appear expedited. But the delay in the issuance of this opinion is entirely attributable to the fact that R.W. did

The evidence supporting the court's termination order is overwhelming. So we affirm.

Following an Alford<sup>2</sup> plea, R.W. was sentenced to a maximum of five years' imprisonment for committing first-degree sexual abuse against N.F.W. There is no indication that R.W. has attempted an appeal or a collateral attack on the judgment of conviction and sentence. After R.W.'s final sentencing, the Cabinet for Families and Children filed a petition in circuit court for involuntary termination of R.W.'s parental rights as to N.F.W. Even though R.W. had originally signed a petition for the voluntary termination of his parental rights as to N.F.W., the termination proceedings were conducted as if the termination were involuntary.<sup>3</sup> Counsel was appointed for R.W. An evidentiary hearing was conducted on the petition at which R.W. was personally present. Following the hearing, the circuit court entered findings of fact, conclusions of law, and a separate order, all of them entered September 10, 2003,

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not, for various reasons, submit his appellant's brief until July 31, 2005. Thus, the regrettable delay is not of our making.

<sup>2</sup> So named because of North Carolina v. Alford, 400 U.S. 25 (1970), an Alford plea is "[a] guilty plea that a defendant enters as part of a plea bargain, without actually admitting guilt." BLACK'S LAW DICTIONARY (8<sup>th</sup> ed. 2004).

<sup>3</sup> For example, the trial court's findings of fact and conclusions of law make several explicit references to the termination action being conducted on an involuntary basis.

terminating R.W.'s parental rights as to N.F.W. R.W. then filed this appeal.

It is difficult to discern precisely the issues R.W. wants us to resolve due to the confusing nature of his pro se briefs. Many of the contentions in R.W.'s briefs appear to be attacks on his criminal conviction. But the criminal case is not before us as the only orders R.W. mentions in his notice of appeal are those entered in the termination case on September 10, 2003. So this opinion will address only the termination of R.W.'s parental rights as to N.F.W. If R.W. believes that irregularities exist in his criminal conviction, he must raise them in post-conviction proceedings in the criminal case.

We construe R.W.'s issues as a generalized attack on the propriety of terminating his parental rights. Our review of termination orders is limited to determining whether the lower court's decision is clearly erroneous.<sup>4</sup> The trial court's findings will not be overturned on appeal unless they are not supported by substantial evidence.<sup>5</sup>

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<sup>4</sup> M.P.S. v. Cabinet for Human Resources, 979 S.W.2d 114, 116 (Ky.App. 1998).

<sup>5</sup> *Id.*

Kentucky Revised Statute (KRS) 625.090 governs terminations of parental rights cases. Under subsection one of that statute, a parent's rights may be terminated if the trial court finds by clear and convincing evidence that the child in question is abused or neglected and the termination is in the child's best interest. And a court must find by clear and convincing evidence at least one additional enumerated ground, including "[t]hat the parent has caused or allowed the child to be sexually abused or exploited[.]"<sup>6</sup>

In the record of the termination hearing, a physician who specializes in child sex abuse cases testified that she had examined N.F.W. and that N.F.W. had credibly described, in detail, R.W.'s sexual abuse of her. In addition, N.F.W.'s therapist testified that N.F.W. had detailed to her the sexual abuse perpetrated by R.W. Furthermore, the therapist testified that N.F.W. did not want to have further contact with R.W. but, instead, wanted to be adopted by her foster parents. Finally, R.W.'s wife, who is N.F.W.'s mother, testified that N.F.W. had told her of R.W.'s sexual abuse in a believable manner.<sup>7</sup>

Based on this testimony, we find that the trial court's findings that N.F.W. was an abused child, that R.W. had

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<sup>6</sup> KRS 625.090(2)(f).

<sup>7</sup> R.W.'s wife was convicted of complicity to commit sexual abuse toward N.F.W. R.W.'s wife's parental rights toward N.F.W. were also terminated.

sexually abused her, and that termination of R.W.'s parental rights was in N.F.W.'s best interests, to be amply supported by substantial evidence. Thus, we affirm.

ALL CONCUR.

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