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Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001614-ME

J.A.D. APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE HUGH SMITH HAYNIE, JUDGE
ACTION NO. 06-AD-500056

COMMONWEALTH OF KENTUCKY, CABINET FOR HEALTH AND FAMILY SERVICES; C.M.D., JR.; M.T.D.; H.A.A.; S.F.A. A.M.A. APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: MOORE AND THOMPSON; JUDGES; GRAVES,[1] SENIOR JUDGE.

GRAVES, SENIOR JUDGE: J.A.D. appeals from orders of the Jefferson Circuit Court terminating her parental rights to her children C.M.D., Jr.; M.T.D.; H.A.A.; S.F.A.; and A.M.A.[2] For the reasons stated below, we affirm.

[1] Senior Judge J. William Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statute 21.580.

[2] To protect the privacy of the minor children we use the initials of the principal parties involved in this appeal.

FACTUAL AND PROCEDURAL BACKGROUND

J.A.D. is the mother of C.M.D., Jr., a male born December 19, 1994; M.T.D., a male born September 9, 1996; H.A.A., a female born September 8, 2001; S.F.A., a female born September 8, 2001; and A.M.A, a female born September 30, 2002. C.M.D., Sr. is the legal father of the five children inasmuch as the children were born during his marriage to J.A.D. However, T.A.A. is the putative father of H.A.A., S.F.A. and A.M.A. and was thus named as a party to the termination proceedings pursuant to KRS[3] 625.065.[4]

The present petition was filed February 14, 2006.[5] The petition sought to terminate the parental rights to the children of J.A.D., C.M.D., Sr., and T.A.A. A hearing on the petition was held on July 6, 2006. Following the hearing the family court issued orders granting the Cabinet's petition. This appeal by J.A.D. followed.

STANDARD OF REVIEW

Our standard of review in termination of parental rights cases is set forth in *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116-17 (Ky.App. 1998), as follows:

> The trial court has a great deal of 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*, 552 S.W.2d 672,

[3] Kentucky Revised Statutes.

[4] C.M.D., Sr. and T.A.A are not named as parties to the present appeal.

[5] Prior petitions had been filed by the Cabinet involving some or all of the children on January 19, 2001; October 8, 2002; October 21, 2002; November 29, 2004; and October 27, 2005.

> 675 (Ky.App. 1977). This Court's standard of 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*, 706 S.W.2d 420, 424 (Ky.App. 1986).
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> "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, 726, 70 S.W.2d 5, 9 (1934).

KRS 625.090 permits the termination of parental rights only upon a finding, by clear and convincing evidence, of all of the following: (1) that the child has been adjudged or shown to be abused or neglected as defined in KRS 600.020(1);[6] (2) that

[6] KRS 600.020(1) defines an abused or neglected child as follows:

"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:

(a) Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
(b) Creates 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;
(c) Engages 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;
(d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
(e) Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
(f) Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
(g) Abandons or exploits the child;
(h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person

termination would be in the child's best interest after taking into consideration the grounds listed in KRS 625.090(3);[7] and (3) the existence of at least one of the grounds listed in KRS 625.090(2).[8]

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exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child; or
(i) Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months;

[7] KRS 625.090(3) provides as follows:

In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:

(a) Mental illness as defined by KRS 202A.011(9), or mental retardation as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;
(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.

[8] KRS 625.090(2) provides as follows:

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:

ISSUES PRESENTED

Before us, J.A.D. contends that (1) the findings of the family court in support of the involuntary termination of her parental rights were not proven by clear and convincing evidence, were clearly erroneous and were not supported by substantial evidence, and (2) that family court's decision to transfer of custody of the children to the Cabinet ignored a viable alternative (to place the children with their maternal

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(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;
(d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;
(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;
(f) That the parent has caused or allowed the child to be sexually abused or exploited;
(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;
(h) That:

1. The parent's parental rights to another child have been involuntarily terminated;
2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and
3. The conditions or factors which were the basis for the previous termination finding have not been corrected;

(i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect; 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.

grandmother) and was, therefore, clearly erroneous and not supported by substantial evidence. We consider these issues in turn.[9]

SUBSTANTIALITY OF EVIDENCE

We first consider J.A.D.'s argument that the findings of the family court in support of the involuntary termination of her parental rights were not proven by clear and convincing evidence, were clearly erroneous, and were not supported by substantial evidence.

We begin our review by setting forth the family court's relevant findings of fact in support of its termination decision as contained in its July 6, 2006, Findings of Fact and Conclusions of Law:

> 6. The Jefferson Family Court first became involved with this family when the Cabinet filed a petition on approximately January 19, 2001 alleging
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> > [T]he child, [C.M.D., Jr.], defecates on himself at school two or three times a week, sometimes more than one time a day. The mother reports that he does that at home also. The child is very submissive in school and will seldom talk to anyone. When he has these accidents he becomes very fearful and cries when school staff try to take him home. The child is reported to be very hungry at school as though he has not eaten. On or about 11/16/00, he told school staff that he had not eaten dinner the night before nor breakfast that morning at home. School staff report[ed] that the child comes to school very dirty and sometimes has had dried feces on his clothing. This problem of the child defecating on himself has been an

[9] J.A.D. concedes that these issues were not properly preserved for appellate review. However, we nevertheless address the issues raised.

> ongoing problem since at least June yet the mother has not taken the child to counseling for this problem. School personnel have urged the mother to get help for the child. The child's physician also told the mother on or about 11/24/00 to take the child to Seven Counties Services for the problem. The child was also referred for counseling on 09/10/00 by Kim Grisold who was a target assessor assigned to the mother through KTAP. The referral was made due to the child defecating on himself and behavior problems at home. The mother took the child to the first appointment only and never returned. The child recently had to be sent home from school due to head lice.

A sibling petition was filed on the child [M.T.D.] that reads similarly. The respondent mother retained custody of the boys despite the filing of this petition upon the condition that both children and mother cooperate with counseling. The respondent mother was also subsequently ordered, within court action on this petition, to seek employment, to cooperate with treatment for the family through Children's First, to provide visits to the boys' father [C.M.D., Sr] in prison if possible, to cooperate with medical appointments and treatment for the boys, and to enroll the boys in summer school.

On July 25, 2001, the respondent mother stipulated to neglect of both [C.M.D., Jr.] and [M.T.D.], admitting that "At the time of the Petition, mother failed to obtain appropriate medical and/or psychological care for both children and mother failed to follow the school personnel's recommendations regarding the children." On that date, the Court ordered that the boys have no contact with [T.A.A.], attend all medical and psychological appointments, take all prescribed mediations, to participate in counseling with their mother and to be in school daily. At a dispositional hearing of the boys' case on October 3, 2001, they were allowed to continue in their mother's custody on conditions of no contact with [T.A.A.], daily school attendance, continued participation by the family in counseling, medical and

psychological treatment compliance, medication compliance, and reasonable visits to be provided t[o] their father [C.M.D., Sr.] upon his release from prison.

The next court involvement for this family came after the birth of their three (3) daughters. On October 8, 2002 the Cabinet filed a petition on the three (3) girls alleging

> [O]n or abut 10-4-02 the child's [A.M.A.] twin siblings, [H.A.A.] and [S.F.A.], were admitted to Kosair's due to suspected failure to thrive. At the time of admission, the children weighed 12.1 lbs and 11.0 lbs. The twins were unable to crawl, sit up or walk. According to Dr. Brenda Osborne, the average weight for a one-year old female is 22 lbs. [A.M.A.] was born on 9-30-02. An ECO was obtained by Judge Joan Byer on or about 10-7-02. On or about 10-7-02, the child was discharged from Norton's Hospital and placed in foster care. The affiant believes the child is at a high risk of neglect due to the condition of her twin siblings.

A similar petition was filed for each of the three girls and resulted in their being placed in the temporary custody of the Cabinet on October 15, 2002 and orders that the parents have substance abuse treatment, psychological evaluations, and parenting training.

On October 21, 2002 the Cabinet filed additional petitions on the boys alleging

> [O]n or about 10-14-02 telephone contact with Advanced Dental Center revealed that [C.M.D., Jr.] and [M.T.D.] have dental needs that have not been met. [M.T.D.] has never been seen and [C.M.D. Jr.] needs multiple fillings for cavities. Neglect was previously substantiated on these children on or about November 2000 and the court orders have not been followed. The neglect was due to significant behavioral indicators with the children of maltreatment,

> other's failure to get medical or mental health treatment, and the children not eating properly. The mother and children's case with Seven Counties Services was closed due to noncompliance despite that this was court ordered. There is also a court order that the children are to have no contact with [T.A.A.] who resided in the mother's home. The children have had contact with him. The children's siblings, [S.F.A.], [H.A.A.] and [A.M.A.] were removed from the mother on or about 10-7-02 due to [S.F.A.] and [H.A.A.] being diagnosed [with] failure to thrive. These children were severely malnourished. The children, [C.M.D., Jr.] and [M.T.D.] are currently staying with the maternal grandmother by agreement.

Resultantly, on October 23, 2002, [C.M.D., Jr.] and [M.T.D.] were placed in the temporary custody of their maternal grandmother, Ellen Dean. The Court further ordered that the boys be in counseling and that their mother have supervised visits with them as well (as with the girls).

On November 20, 2002, at a pretrial conference regarding the cases for all five (5) children, the Court ordered that the parents were to produce documentation less than 24 hours old from the health department demonstrating that they were free of lice before each supervised visit with the children. The Court continued to order that the boys receive counseling and medical treatment as well.

On December 12, 2004 both [J.A.D.] and [T.A.A.] completed their psychological evaluations pursuant to Court order. [T.A.A.'s] evaluation noted that he had a self-defeating pattern of behavior that led to mistrust and intervention by those in authority and that the tended to become antagonistic, argumentative and defensive in justifying his behaviors. The evaluation recommended that [T.A.A.] receive relationship and individual counseling.

[J.A.D.'s] evaluation diagnosed her with dysthymic disorder and noted that she adapted to what others expected of her at the expense of her self-identity. The evaluator further noted an undercurrent of depression, significant emotional neglect from her own childhood, and that she was overwhelmed by rearing five children. The evaluator recommended relationship and individual counseling for [J.A.D.].

At Court for all five (5) children on February 19, 2003, both [J.A.D.] and [T.A.A.] stipulated to neglect of the children noting "Parents filed to meet the medical/dental and nutritional needs of the children at the time of the petition. Therefore, the children were neglected."

On March 28, 2003, the Home of the Innocents conducted a parenting assessment of the family, including the children, [J.A.D.] and [T.A.A.]. The assessor noted concerns about the family including: 1. parents denial that twins were underweight or delayed at removal; 2. prior CPS history; 3. [C.M.D., Jr.'s] encopresis and mother's denial of that being a problem; 4. the boys' behavioral problems; 5. the parents' prior criminal histories which include numerous drug charges; 6. the parent's belief that there are no family problems; 7. the parents' paranoia that CPS took the children simply to let others adopt them; 8. that the parent provided the assessor with false information; 9. the previous physical abuse to [M.T.D.] by [T.A.A.]; and, 10. [J.A.D.'s] failure to comply with the no contact order between [T.A.A.] and [M.T.D.]. The assessor recommended psychological evaluations, random drug screens for the parents, and in home worker for the family, individual counseling and possible Alcoholics Anonymous for [J.A.D.], Alcoholics Anonymous for [T.A.A.] and possible permanent placement of the girls outside of this family.

In anticipation of the dispositional hearing on the children's most recent petitions, Peggy Kinnetz, Jackie Ralston, and Brenda Gary (Seven Counties Services therapists for the family members) submitted a letter to the Court reporting that the parents had completed their Baby School program with the girls and that [J.A.D.] was near completion of another parenting program group in their agency. Both [J.A.D.],

[C.M.D., Sr.] and the boys had participated in individual therapy and the family had also received family therapy - all through Seven Counties Services. The family had excellent attendance in these treatment but the providers continued to be concerned about the level of parenting skills and decision making abilities of these parents. Both parents had been repeatedly urged to more openly participate in group and yet they only rarely joined in discussions and when they did, they offered only vague statements. Neither of these parents evidenced a comprehensive understanding of parenting or an ability to problem solve. The providers observed these parents to have limited parenting skills with their daughters in that their interactions with them were very limited in scope and did not stimulate intellectual or emotional growth in the children. Furthermore, their verbal interactions were few and their eye contact limited with the girls. The parents also showed little interest in [A.M.A.] and never developed as much interest in her as they had in the twins. Similarly, [A.M.A.'s] actions suggested anxiety around their parents. Both boys continued to have severe behavioral and emotional problems (including school adjustment problems and oppositional defiance) but their behaviors were improving as they adjusted to their new placement. The providers recommended that the boys be returned to their mother's custody but that the girls remain out of the home.

On May 28, 2004 the Court returned custody of the boys to their mother on the conditions that they remain in counseling. The girls were committed to the Cabinet and permitted to have supervised visits weekly with their parents. On January 14, 2004, the parents' visits with the girls were expanded to unsupervised weekly visits. On June 23, 2004, the parents visits with the girls were again expanded, to include weekend overnight visits.

On August 2, 2004, Seven Counties therapist Peggy Kinnetz provided another report to the Court on this family's progress in treatment and noted that while the parents, [J.A.D.] and [T.A.A.], had been consistent in their appointments she continued to have concerns about the parents' failures to address ongoing, daily problems within the home and the supervision of the children. She did note that progress had

been made and that these parents had demonstrated that they could maintain regular and consistent care for the children and therefore "cautiously" recommended that the girls be returned to their parents' custody so long as they continued in treatment and were in protective daycare.

On August 4, 2004, the Court allowed unlimited overnight visits for the girls with their parents (supervised placement). At the annual review of the girls' case, on November 24, 2004, [A.M.A.] was brought to court by her parents with bruises on her face. The Court immediately remanded the supervised placement noting that the girls remained committed to the Cabinet. A new petition was filed regarding the girls on November 29, 2004 alleging

> On or about November 24, 2004 the family was scheduled to appear on Family Court, Division 2, for an Annual Review. When the family arrived above the named child [A.M.A.] had a bruise on the right side of her fact, the bruise had the appearance of a hand print. Natural parents stated that the bruise occurred at daycare on November 19, 2004. Phone conversation with the Director, Kristie Rice, revealed that the bruise did not occur at the daycare and the child did not attend daycare on November 22nd or 23rd. Judge Hugh Smith Haynie ordered that the child be evaluated by a Forensic specialist to determine if the bruise was indeed caused by a hand print. The examiner determined that the bruise was the result of someone smacking the child. The child was placed with her two sisters in a foster home per the court order of November 24, 2004.

On December 1, 2004 the court ordered that the girls remain committed, that their parents cooperate with the Brooklawn Lifeskills Program and that the family continue in counseling. On December 27, 2005 Michele Isham, with Brooklawn Lifeskills Program, visited [J.A.D.], [T.A.A.] and the children at their home (during a supervised visit with the girls) and

noted that the visit did not go well, that the girls screamed throughout the visit and refused to interact with their mother and that [J.A.D.] was angry and yelling throughout the visit. Despite these concerning behaviors, both parents denied any wrongdoing or family problems that could be addressed through Brooklawn, instead blaming "the state" for removal of the girls and any family problems they had. Resultantly, Brooklawn closed their case with the family given the parents' unwillingness to accept any responsibility or treatment for the family's current circumstances.

On January 26, 2005, Peggy Kinnetz reported that she had referred the parents to individual counseling (as they had discontinued treatment with Seven Counties Services, despite Court orders to the contrary, after the children were returned to their home). She further noted that [J.A.D.] was only minimally cooperating with treatment and lacked in ability to care for all five (5) of these children.

Beginning in approximately February 2005, the Cabinet began receiving increasingly frequent reports from the boys' schools that [M.T.D.] and [C.M.D., Jr.] coming to school inappropriately clothed (clothes either far to small or large), dirty and disheveled, often missing days of school due to head lice, with worsening behavior problems that were minimized by [J.A.D.], and with reports by [M.T.D.] of [T.A.A.] having hit him, sometimes leaving marks. The Cabinet addressed these reports and concerns with [T.A.A.] and [J.A.D.] who continued to deny any wrongdoing and minimized each concern.

On February 9, 2005, the most recent petition on the girls was informally adjusted upon conditions of their receiving no corporal punishment. The girls were returned to supervised placement with their parents on this date.

From February 2005 through October 2005, therapists, counselors, teachers, and daycare providers continued to report with increasing frequency concerns about the children and their home environment. Reports of the boys' deteriorating behaviors and appearance at school continued. [M.T.D.] ultimately required hospitalization for his behaviors

in April 2005. The girls' daycare providers, and then teachers in the fall of 2005, also reported significant concerns about their absenteeism due to lice infestations and their conditions (dirty, inappropriate clothing). Both school and daycare reported having sought assistance from [J.A.D.] that she continued to minimize their concerns.

In March 2005, [T.A.A.] was incarcerated and remained so until October 2005. [J.A.D.] was on the Home Incarceration Program from March until June 2005. The underlying conviction for both parents was Criminal Abuse II, regarding the twins' failure to thrive during the first year of their lives.

Seven Counties Services also continued to report growing concerns about the family, on May 25, 2005, noting that "despite the efforts of several mental health agencies [Seven Counties Services, Home of the Innocents In-Home Services, Brooklawn Family Services, Caritas Peace, and U of L Child Evaluation Center] it does not seem as if this family is developing and functioning effectively." The letter goes on to itemize the innumerable services provided to this family since 2000 and concludes by indicating that "We have serious concerns about this mother's ability to parent."

The girls returned to Court on July 20, 2005, and the Court opined that "CHFS has provided every conceivable service to NM [natural mother] but concerns still exist. NM is compliant. GAL, CA & CHFS all agree there is no basis, legal basis for continued commitment. Return custody to mother."

Soon thereafter, even the physical condition of the family home began to deteriorate and the Cabinet social worker noted an increasing number of roaches during each month's home visits and in October, [M.T.D.'s] teacher reported that when the child opened his backpack at school about 30 roaches crawled from it. [J.A.D.] repeatedly voiced an intention to move to more suitable housing but failed to do so.

By October 2005, [J.A.D.] and the infant petitioners were in crisis. Seven Counties Services reported that many, if not most, of the family's recent counseling appointments had been

unattended, [M.T.D.] was no longer taking his prescribed medication, and no progress had been made by the family. The boys' schools reported that their behaviors continued to worsen and that they continued to come to school wearing clothes either far too large or small. The girls' school reported that they had only attended a few days and were in danger of losing their placements in Head Start due to their chronic lice infestations. The school further reported that when the twins did attend school they are so dirty (often with dried feces on their backs and buttocks) that school staff washes them off in the bathroom each morning before classes begin. The children's medical appointments and tests had also been ignored by [J.A.D.] and the family was completely noncompliant with Cabinet recommendations and Court orders.

On October 27, 2005 the Cabinet filed a petition on all five (5) children alleging[10]

> On or about October 20, 2005, affiant was notified by JCPS personnel that said child's [C.M.D., Jr.] sibling had head lice. It was reported that JCPS had made several attempts to contact [J.A.D]., natural mother, by phone to pick sibling up, but had been unable to reach her. Head lice have been an ongoing issue with siblings and said child since August 2004. Said child has currently missed 7.5 days of school, he has been tardy 7 times. It was reported that absences were due to head lice on two occasions. JCPS personnel also have reported concerns that the child comes to school dirty. It is reported that child had a foul odor most of the time. Peggy Kinnetz, Seven County Services has reported to affiant that natural mother has failed to bring said child to counseling consistently. Child has been involved with CPS on and off since 1997 for neglect.

On November 2, 2005 [] at a temporary removal hearing for the infant petitioners, Judge Hannie noted "Ct [court] finds

[10] The October 27, 2005, petition is the petition presently under consideration.

that due to the children's extreme & continuing hygiene problems, children are clearly at risk of abuse &/or neglect & removal is absolutely necessary. Family has very long CHFS history & children were on supervised placement w/NM @ time of latest pet. Problems such as head lice etc. . . . are so severe school & daycare have refused to allow children to attend on repeated occasions. Due to the long & repetitive nature of this case - WAIVE REAS. [reasonable] EFFORTS. TC of children to CHFS." The infant petitioners have remained continuously in the Cabinet's care and control since this removal date. As of this date, this removal petition has not been finally adjudicated.

Upon removal, the girls were placed in foster care and the boys were placed with their maternal grandmother. At a treatment meeting held on November 3, 2005, the parents ([J.A.D.] and [T.A.A.]) agreed to complete individual counseling and family counseling with the children.

Within two (2) weeks of the children entering the Cabinet's custody, each of their school[s] reported drastic improvements in the children's health and appearance and behaviors. Despite the waiver of reasonable efforts, the Cabinet assisted and encouraged the parents in resuming counseling services. The respondent father noted to the Cabinet on December 5, 2005 that he simply had too much going on in his life right then to do counseling. He did however ultimately resume counseling and has completed approximately three (3) months of individual counseling. The respondent mother resumed counseling with Linda Spain at Seven Counties Services (and Peggy Kinnetz) but that ended with her incarceration in December 2005 upon a plea of guilty to Endangering the Welfare of a Minor (regarding her failure to appropriately supervise [M.T.D.] prior to his removal from her home and his being found on the streets by a police officer). As a result of this conviction, her probation for the Criminal Abuse II conviction was revoked and she was sentenced to serve 185 days. She remained incarcerated until June 29, 2006. She had not contacted Linda Spain or the Cabinet since her release in order to resume her counseling. These most recent periods of counseling for the parents, as in the past, have not resulted in any significant improvements in

that they both continue to deny responsibility for the children's history of abuse/neglect and removal from their care and they both fail to identify any areas of their life that they feel might benefit from further treatment, instead repeatedly indicating that they only attend because the Cabinet has told them to, not because they actually need or desire any treatment.

[T.A.A.] has participated in regular visits with the children since their removal and while he plays with them appropriately during these visits, the children's behavioral problems inevitably flare during the visits which then dissolve into chaos. [T.A.A.] fails to discipline or control the children during such episodes, instead relying the the Cabinet social worker on the maternal grandmother to control the children. [J.A.D.] was also participating in visits with the children prior to her most recent incarceration but she, like her paramour, is unable to appropriately control or discipline the children without much oversight and intervention.

[C.M.D., Sr.] had been incarcerated throughout most of the Cabinet's involvement with this family. He did attend Court in 2002 and met with the Cabinet social worker who advised him of her contact information, a visitation plan and treatment services recommended for and available to him thorough the Cabinet. He did participate in one visit with his boys during Thanksgiving 2002 because their maternal grandmother took the boys to see him, but he failed to request or to participate in any other of the visits offered him with the children. The Cabinet mailed him case plans and information about his children and requested his response thereafter but he never again contacted his social worker about the case or his children. The social workers' work address and phone numbers have not changed since she provided them to him in 2002. He has not seen or provided for his children in over two (2) years. He has not suggested any possible relative placements for his children or otherwise expressed any interest in their well being whatsoever. He failed to participate in any of the Cabinet['s] offered treatment programs and even his wife, [J.A.D.], was unaware of his whereabouts until the Cabinet located him in prison during the pendency of this termination action.

> Neither [T.A.A.] nor [J.A.D.] have paid child support for any of these children or otherwise provided any clothes, school supplies, or other necessities of life for them since their placement into the Cabinet's custody. Neither parent is currently involved in any treatment services in an effort to reunite with their children and it is unlikely that any such reunification could occur in the foreseeable future given the parents' current noncompliance, the extensive history of abuse and neglect to these children, and the extent of services previously offered to this family without any lasting progress from the family.

The order went on to determine that the children were abused and neglected children; that the parents, for a period of not less than six months had failed or refused to provide, or have been substantially incapable of providing essential parental care and protection of the children, and that there was no reasonable expectation of improvement; that the parents, for reasons other than poverty alone, have continuously or repeatedly failed to provide or incapable of providing essential food, clothing, shelter, medical care or education reasonably necessary and available to the children's well being and that there is no reasonable expectation of significant improvement in the parents' conduct in the immediately foreseeable future; that the Cabinet had made reasonable efforts to reunite the family and that no additional services are likely to bring about parental adjustments enabling a return of the children to their parents; and that it was in the children's best interest to be committed to the custody of the Cabinet.

Upon the record as a whole, particularly upon the evidence and testimony presented at the July 6, 2006, evidentiary hearing, the foregoing findings and determinations of the family court are supported by clear and convincing evidence. As demonstrated by the extensive findings set forth above, those findings describe a long-term and ongoing pattern of parental neglect, as evidenced by some or all of the children's failure to thrive, soiled clothing, poor hygiene, inadequate medical care, inadequate dental care, and lice infestation. The evidence further demonstrates that some or all of the children were subjected to inadequate supervision, physical abuse, and roach-invested living conditions. The record also demonstrates that the children were subjected to an environment which involved substance abuse.

In short, the family court's determinations that the statutory requirements for the termination of J.A.D.'s parental rights have been met are supported by clear and convincing evidence as reflected in the evidence and testimony presented at the July 6, 2006, evidentiary hearing. As such, we will not disturb the decision of the family court.

ALTERNATIVE PLACEMENT

J.A.D. also argues that the family court failed to properly consider the placement of the children with the children's maternal grandmother, Ellen Dean, as an alternative to placement with the Cabinet. In support of her argument, J.A.D. states as follows:

> Ellen Dean has provided an invaluable service to the Cabinet, to the Appellant and also to these children. To ignore her as an alternative placement for custody is beyond belief. She is ready willing and able to accept these children, and/or to

> assist her daughter. She also has the necessary experience and training to make a difference. She is in the best interest of the children.

This argument consists simply of the conclusory allegations of the appellant. She cites us to no testimony or evidence in support of her position that it would be in the best interest of the children to be committed to the custody of Dean in preference to the Cabinet. As such, we have no basis to disturb the family court's decision to commit the children to the custody of the Cabinet rather than to their maternal grandmother.

CONCLUSION

For the foregoing reasons the judgment of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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