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Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001413-ME

J. S. B.

APPELLANT

APPEAL FROM WARREN FAMILY COURT
v. HONORABLE MARGARET RYAN HUDDLESTON, JUDGE
ACTION NO. 11-AD-00035

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY, AS PETITIONER AND
NEXT FRIEND OF A. P. J., A MINOR CHILD;
J. J., FATHER; AND A. P. J., A MINOR CHILD

APPELLEES

AND

NO. 2012-CA-001414-ME

J. S. B.

APPELLANT

APPEAL FROM WARREN FAMILY COURT
v. HONORABLE MARGARET RYAN HUDDLESTON, JUDGE
ACTION NO. 11-AD-00036

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY, AS PETITIONER AND
NEXT FRIEND OF E. J. J., A MINOR CHILD;
J. J., FATHER; AND E. J. J., A MINOR CHILD

APPELLEES

AND

NO. 2012-CA-001415-ME

J. S. B.

APPELLANT

v. APPEAL FROM WARREN FAMILY COURT
HONORABLE MARGARET RYAN HUDDLESTON, JUDGE
ACTION NO. 11-AD-00037

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY, AS PETITIONER AND
NEXT FRIEND OF M. E. J. B., A MINOR CHILD;
AND M. E. J. B., A MINOR CHILD

APPELLEES

AND

NO. 2012-CA-001416-ME

J. S. B.

APPELLANT

v. APPEAL FROM WARREN FAMILY COURT
HONORABLE MARGARET RYAN HUDDLESTON, JUDGE
ACTION NO. 11-AD-00038

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY, AS PETITIONER AND
NEXT FRIEND OF S. A. N. B. D., A MINOR CHILD;
S. D., FATHER; AND S. A. N. B. D., A MINOR CHILD

APPELLEES

AND

NO. 2012-CA-001417-ME

APPEAL FROM WARREN FAMILY COURT
v. HONORABLE MARGARET RYAN HUDDLESTON, JUDGE
ACTION NO. 11-AD-00039

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY, AS PETITIONER AND
NEXT FRIEND OF Z. A. B., A MINOR CHILD;
W. H. B., FATHER; AND Z. A. B., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, DIXON AND LAMBERT, JUDGES.

LAMBERT, JUDGE: J.S.B. (“Mother”) has appealed from the orders of the Warren Family Court terminating her parental rights to five of her children. We have carefully considered the record and the parties’ arguments and, finding no error or abuse of discretion, we affirm.

We shall begin by identifying the five children involved in these proceedings in chronological order by their dates of birth. E.J.J., a girl, was born in 1998 in Texas (Child 1). A.P.J., a boy, was born in 1999 in Phoenix, Arizona (Child 2). Child 1 and Child 2 have the same father, who was involved in a domestic violence dispute with the Mother in 2000. As a result, the Warren Circuit Court entered a domestic violence order (DVO) on May 8, 2000, and later

amended the DVO to order the father not to return to Kentucky. Z.A.B., a boy, was born in 2001 in Indiana (Child 3). His father has never participated in any of the proceedings. S.A.N.B.D., a girl, was born in 2006 in Wisconsin (Child 4). M.E.J.B., a girl, was born in 2008 in Warren County, Kentucky (Child 5). Child 4's and Child 5's respective fathers are unknown.

The family's involvement with the Cabinet for Health and Family Services ("the Cabinet") began in May 2008 when the four oldest children were removed and committed to the Cabinet's custody based upon the deplorable conditions of the Mother's home. Reports indicate that the home was infested with field mice and that mouse and human feces were found throughout the home, including mouse feces on the canned goods in the kitchen. The children were placed in foster care for a few months until they were all placed in the maternal grandfather's care. The Mother lived in the same house, which was owned by her brother, who also lived there, and she provided care for the children on a daily basis. In July 2008, the Mother gave birth to Child 5, who was hospitalized shortly after her birth for failure to thrive and was subsequently removed by the Cabinet. She was placed with a foster family upon her release from the hospital, and the Mother has continued to exercise visitation with Child 5, at first on an unsupervised basis, then on a supervised basis. Child 5 has remained in foster care throughout this time. The Mother stipulated to neglect as to her older children and to dependency for Child 5.

The family – except Child 5 – remained together in the house under the grandfather’s care until November 2009, when the brother told them they had to leave; the children were destroying the house and the Mother could not control them. The children were placed into foster care and were later split up among four different foster families because of the children’s severe behavioral issues. The Mother moved to Tennessee in early 2010 and married J.S., with whom she had a sixth baby later that year. This child is not involved in the Kentucky proceedings. Just prior to the child’s birth, the Mother and J.S. were involved in a domestic violence incident. The Mother divorced J.S. and moved in with J.R., a relative of J.S., in Cedar Hill, Tennessee, where she presumably continues to live. While she has lived in Tennessee, the Mother has continued to exercise supervised visitation with her children in Kentucky. In November 2010, the goal in the individual juvenile actions was changed to adoption.

On May 25, 2011, the Cabinet filed petitions for involuntary termination of parental rights related to the Mother’s five children pursuant to Kentucky Revised Statutes (KRS) 625.090. In each petition, the Cabinet alleged that the child had been committed to its custody, that the child was an abused and neglected child, and that it was in the child’s best interest that parental rights be terminated. At the time of the filing of the petitions, the children were residing in state-approved foster homes, and none of the fathers was involved with their respective children. The Cabinet alleged that the Mother (and fathers) had for a period of not less than six months continuously failed or refused to provide

essential parenting care and protection for the children and that there was no reasonable expectation of any improvement. They had also continuously failed to provide essential food, clothing, shelter, medical care, or education reasonably necessary and available for the children's well-being, without any expectation of significant improvement in the parents' conduct. The Cabinet alleged that the children had been in foster care for fifteen of the most recent twenty-two months preceding the filing of the petitions and that it had offered or provided all reasonable services to the family, but the parents failed or refused to change their circumstances, conduct, or conditions that would allow the children to be safely returned. In addition, the Cabinet alleged that the Mother had not completed anything from her treatment plan except a parenting class, but she was unable to demonstrate what she had learned in the class.

The family court appointed a warning order attorney to serve the parents as well as a guardian *ad litem* ("GAL") to represent the children's interests. The GAL had been involved in the case since his appointment in the juvenile actions in 2008. The Mother retained an attorney to represent her interests in the termination proceedings, and she filed an answer to each of the petitions admitting she was the children's mother, but denying the allegations raised in the petitions and requesting dismissal. The family court ordered a University of Kentucky Comprehensive Assessment & Training Services (CATS) evaluation for each child, all of which were completed in June 2011.

The family court held a two-day hearing beginning on May 30, 2012.

The Cabinet called many witnesses to testify regarding the cases, including the Cabinet case workers, foster parents, therapists for both the children and the Mother, as well as the Mother herself.

Sheri Lynn Westover was the first social worker assigned to the family in May 2008, and she continued in that role until July 2009. She testified that the cases were opened due to a report of substantiated neglect based on the home environment. Ms. Westover put a plan in place to create a safe, stable home environment, which included getting rid of the rodents and maintaining a clean house. The Mother was to look into her mental health issues, schedule an assessment, and follow any recommendations. She was also to enroll in parenting classes. Ms. Westover reported that the Mother was opposed to any mental health recommendations and that she did not trust social workers due an incident in Wisconsin. In the Mother's mind, she did not have any mental health issues to work on, despite her report that she was on disability for bipolar disorder. Regarding her treatment plan, Ms. Westover testified that the Mother would not participate in parenting classes because she was not comfortable in group settings, but she did begin working with a therapist at LifeSkills. The Mother wanted to do an online or one-on-one parenting class, but Ms. Westover did not know if any of these were available. Ms. Westover's impression of the Mother's mental and psychological health was that she was depressed and bipolar.

When Ms. Westover first received the cases in May, the Mother was pregnant with Child 5, who was born in July. The Mother called her from the hospital, and Ms. Westover stayed with her to make sure the baby was alright. Shortly after Child 5's birth, the child was hospitalized for failure to thrive; she had been losing weight and was very docile. The Mother refused to supplement Child 5's diet. She began gaining weight the first day she was in the hospital. Child 5 was then placed into foster care, where she has remained since that time.

The four older children were in foster care when Ms. Westover was assigned their cases. She noted that Child 1 and Child 2 were having a difficult time in foster care, and Ms. Westover worked with the maternal grandfather to move the children to his home, where the children were placed on July 18, 2008. The Mother lived in the same household and continued to help care for the children on a daily basis.

Ms. Westover testified regarding the children's behavior issues in foster care. She stated that both Child 1 and Child 2 had been placed into crisis units, and that Child 1, Child 2, and Child 3 were all placed into therapy. Child 1 had been diagnosed with Asperger's syndrome. She noted that the Mother would go to school for the children's meetings and to therapy with the older children.

Myra Mattingly took over as the ongoing treatment worker for the family in July 2009. She was aware from the Cabinet's records that the children had been in the care of the Cabinet since May 2008. She provided additional observations from the original report: Child 1 and Child 3 were not very clean,

Child 3 appeared to be delayed, and Child 1 was inappropriately dressed in a heavy winter coat when it was hot outside. There was trash on the floor, mouse feces everywhere including on the canned goods in the cabinets, human feces running down the toilet, and the floor was sticky. At the time she took over the case, the children were living in the grandfather's home while in the custody of the Cabinet.

Ms. Mattingly held a case conference with Ms. Westover and, pursuant to the case plan, the Mother was to address issues of neglect, poor parenting, and her mental health, and she was to obtain stable housing and employment. The Mother was to cooperate with the Cabinet and the family court in naming a father for one of the children, schedule therapy sessions, cooperate with Cabinet workers and foster parents, and provide the name and contact information of her therapist and the list of her medications to Ms. Mattingly. She was also to keep the children safe from abuse and neglect. The Mother's biggest issue was with the parenting classes due to her anxiety about groups. The Mother asked about an online class; Ms. Mattingly told her that she needed to show the Cabinet the online curriculum for approval before taking the class. The Mother did not provide the Cabinet with any information about the course, but instead completed it without receiving any approval, so the Cabinet did not accept it. The Mother also completed one-on-one parenting classes in Tennessee, which met the criteria for approval. The Mother refused to sign any releases for her mental health providers, claiming that the Cabinet did not need to know what was going on with her business, despite Ms. Mattingly's explanation that the Cabinet did not need the

details, but just needed to know that she was in compliance with her plan and medications. The only parts of her plan that the Mother had completed were parenting classes as well as visitation with the children. Most of Ms. Mattingly's initial interactions with the Mother were confrontational; she did not want any social services at all. Ms. Mattingly believed this got them off on the wrong foot. Ms. Mattingly never had any contact with any of the children's fathers, but she had tried to contact them by mail.

The children were removed from the grandfather's care in November 2009, when the Mother's brother, who owned the house in which they were living, did not want the family living there any longer. He said that the children were tearing up the house and that the Mother could not control them. Ms. Mattingly told the Mother what she needed to do to get appropriate housing and asked what she had done. The Mother told her that she could not find suitable housing with the money she had and that she needed the children's disability checks to obtain it. Ms. Mattingly told her she needed to find a way to do it herself, and she suggested going to the housing authority and exploring Section 8 housing.

The children were placed into foster care at the end of November 2010. The children were in the same foster home initially, until individual behaviors worsened, and they were split into different families in separate counties. Ms. Mattingly observed some of the visitations between the Mother and the children. She stated that the early sessions, where all of the children were together, were chaotic, with the children yelling and running around. The Mother did not

have any control over them. The Mother would try to redirect negative behavior, but the children would refuse and she did not discipline them. Ms. Mattingly also testified that she observed inappropriate behavior from the Mother. She had her favorites as well as one she “dumped on” all the time – Child 3 – and she blamed him for all of the family’s problems. The Mother would bring an overabundance of food to the visitations, which took place around dinner time. She would not listen to the Cabinet’s recommendations about food, and she would always bring something she had been told not to bring, including sugary foods. At the beginning of the visits, the Mother and the children would not greet each other, and the children never ran up to her in excitement. Ms. Mattingly estimated that the Mother missed 35% of her visits due to various excuses, including the weather, lack of childcare for her child in Tennessee, doctor visits, and sickness. Ms. Mattingly cut off telephone contact between the Mother and the children at some point, noting that she was not required to provide her with telephone contact because such contact was up to the foster parents. Telephone contact was stopped because the Mother had been discussing inappropriate topics with the children, including the case and her disagreement with a foster parent’s punishment of one of the children.

The Mother moved to Clarksville, Tennessee, in early 2010, and she informed Ms. Mattingly when she did so. The Mother was living with and then married J.S. Ms. Mattingly reported problems contacting the Mother. She testified that two interstate home evaluations had been completed in Tennessee. Both

evaluations had been denied, the first due to the small size and condition of the trailer, as well as mental health issues. The second was denied for essentially the same reasons. This home was better, but it contained an inappropriate pet – a snake – and there had been a domestic violence incident with the Mother’s husband, J.S. The Mother requested a third evaluation, but this request was denied because two had already been performed. Regarding the domestic violence incident, which took place at some point between August and October 2010, J.S. had beaten the Mother and threatened to kill her for refusing to have sex with him while she was 35 weeks pregnant. Ms. Mattingly noted that the Mother had been denying that she was pregnant until this time. After she left (and later divorced) her husband, the Mother moved in with her husband’s half-brother, J.R. They now live in Cedar Hill, Tennessee. After the domestic violence incident, the goal changed to adoption. Ms. Mattingly testified that she provided the Mother with information about the children, but that the Mother kept requesting the same information. She finally had the Mother sign a form indicating that she had once more received the information, and the Mother did not make any further requests for information.

Ms. Mattingly expressed several concerns about the Mother. Ms. Mattingly testified that the Mother told Child 3 that he was the reason they were in foster care, and that he was stupid and bad. The Mother did not pay any child support, although Ms. Mattingly did not believe the court had ever ordered her to do so, and she was aware that the Mother received disability benefits. Neither the

Mother nor the fathers had shown ability to parent the children or to provide necessities of life to the children, and there was no reasonable expectation of any improvement. Ms. Mattingly stated that the proper services had been offered, and no others were available. When asked what the Mother could do to demonstrate more proper parenting during visits, Ms. Mattingly responded that there was nothing she could do because she (the Mother) did not believe she was doing anything wrong. She had never taken responsibility for anything that had happened with the children. Ms. Mattingly believed that the better result for the children was termination of parental rights and adoption, noting that there was a good chance that they would be adopted.

In addition to the caseworkers, the Cabinet introduced testimony from Court-Appointed Special Advocate (“CASA”) volunteer Charlotte Rather, who had observed the family at the grandfather’s house and then on-site during visitations after they were removed. She reported her observation of the children’s behavior and interactions. In particular, she noted problems with food, which were later worked out. Ms. Rather did not observe a lot of interaction between the Mother and the children as far as doing things together. The Mother generally brought toys, electronic games, and movies, and the children played on their own. The Mother would sometimes ask about school while it was in session, but she never asked about their lives or foster homes. Ms. Rather stated that Child 5 had no psychological problems, noting that she had never lived in the environment with her siblings. The other children were making progress, but slowly. Child 3 and 4

had been progressing, while Child 1 and 2 were back and forth. Ms. Rather did not believe that the children should be returned to the Mother.

Pamela Stump is a social services aide with the Cabinet who supervised the Mother's visitations with the children beginning in February 2010. She stated that the Mother attended 66 visits and had canceled 27 visits. She stated that at the beginning, the Mother visited with all of the children at the same time, but that later on the visitations with the children were split between different sessions. Ms. Stump observed a lack of limits and boundaries during the visitations as well as problems with the overabundance of food the Mother would bring for the children to eat. She provided several examples of the Mother's lack of parenting skills during the visitation sessions, including her lack of control over them when she attempted to correct them and her lack of attention. She noted that Child 2 was the Mother's favorite child and that Child 3 would be called out many times. She described the Mother as argumentative and confrontational. Ms. Stump testified that the Mother would bring gifts and toys on occasion, and that she acknowledged their birthdays.

The Cabinet also introduced testimony from several therapists. Julie McCoy and Chance Groves testified about the children's diagnoses and behavioral issues. Child 1 might have Asperger's syndrome or be autistic, and had oppositional defiant disorder and attachment disorder. Child 4 was described as aggressive with adults. She had threatened a child in her foster family, stating that she was going to slit the child's throat and suck out the blood. The therapists noted

that Child 4 was doing much better at present, while Child 1 had not made as many improvements. They related that the Mother came to very few case conferences. Child 4's therapist, Katie Kihrkop, stated that the Mother was always invited to, but never attended, quarterly case management meetings, although she had met her a few times prior to visitation.

Jessica Lee Mershon was Child 3's therapist until Child 3 was discharged into foster care in December 2011. She described him as verbally and physically aggressive and stated that he displayed self-aggression, anger, hostility, and social problems. Child 3's diagnoses upon his admission to St. Joe's for residential treatment were ADHD, mood disorder NOS, and adjustment disorder. He had been placed in the facility for homicidal ideation against his siblings. Ms. Mershon noted that Child 3 had increased anxiety when he went into a foster home, but then did better once he transitioned and had improved during his residential stay. Ms. Mershon testified that the Mother attended only one treatment team meeting and had only visited twice, both visits being in December 2010. She noted that Child 3 was very worried about the Mother and wanted to know how she was. Ginny Westman was Child 3's primary therapist for foster family therapy. They talked about his home environment and permanency. Child 3 told her that the Mother and his grandfather were particularly negative to him and told him he was not a good child. He reported that the grandfather had held a knife to him, but that had taken place after he was out of the home. Child 3 had done well recently with his grades in school, and Ms. Westman stated that his school was supportive,

noting that he had had problems adapting socially to the school setting and environment. He had spread feces in the school bathroom, had issues with incontinence, and was clingy to his teacher. However, Ms. Westman stated that he had come a long way. Ms. Westman never had any contact with the Mother.

Erin Warfel was the therapist for Child 2 from March 2010 through January 2011. His presenting problems were anger and aggressive behavior with his siblings and peers. His diagnoses were oppositional defiant disorder and adjustment disorder, and she saw him at least every other week. Ms. Warfel reported that Child 2 made progress with her, noting that he was insightful, and wanted help and coping skills. In describing his home life with the Mother and grandfather before being placed in foster care, Child 2 stated that he took responsibility for helping the Mother get housing and for taking care of his siblings. He told Ms. Warfel that the Mother had hit him and his siblings, including with a fly swatter, and that his grandfather was also physically aggressive. Ms. Warfel tried to contact the Mother three times without any response, and she did not recall the Mother or father ever attending any planning conferences.

Lisa Wilkins is a therapist from LifeSkills, and she first saw the Mother in September 2008. At that time, the Mother was not reporting any problems, and Ms. Wilkins believed social services told her to make the appointment. The next time she saw the Mother, a month or two later, she reported having some anxiety and panic attacks. Ms. Wilkins scheduled follow-up

appointments, which the Mother kept. She saw the Mother every three weeks until the end of 2009. Ms. Wilkins noted that she had made some progress related to anxiety, but was still having panic attacks that increased with stress. She closed the Mother's case in early 2010 after she moved to Tennessee. Ms. Wilkins reported that early in the treatment, she could tell the Mother did not think she needed any help. This improved later, when the Mother opened up more, became more engaged, and worked towards her goals. Toward the end, she was following her advice and making progress. Ms. Wilkins noted another problem the Mother had was her diagnosis of bipolar disorder, which was made around the time she moved out of state. During the treatment, they worked on stress management and healthy relationships with adults (significant other relationships), but never about her children because the Mother had never requested this. The Mother told Ms. Wilkins that her priority was to get her children back and that she needed to get her mental health in better shape to accomplish this.

The Cabinet presented testimony from several of the children's foster parents. S.L. was Child 1's foster parent from March 2010 through September or October 2011. She reported that Child 1 was very abusive and physically aggressive, and that she kicked in walls and lied constantly. Child 1 also had problems in school, cursing at the teachers and getting into fights. S.L. would have to go to the school to calm her down. S.L. also reported that Child 1 was abusive to her, noting that she still had scars from where she had kicked and hit her. She reported that Child 1 did something in the bathroom to her nose, which produced a

lot of blood, and she wrote on the mirror with her blood. She had also started a fire in the bathroom with toilet paper. S.L. reported that Child 1's behavior had improved, on and off, and that her therapist was helping her.

M.M. was a foster parent for Child 2 from July 2010 through August 2011. At that time, Child 2 had been diagnosed with oppositional defiant disorder and had been wetting the bed. She reported that his oppositional defiance was getting better and that he had been working with psychiatrists and therapists, and taking his medication. Child 2's bed-wetting only went away when the Mother canceled visits for a five-month period. When the visits resumed, his bed-wetting began within two weeks. M.M. did not observe any physical contact between Child 2 and his mother at the start of visitations, and noted that the Mother canceled visitations through the Cabinet frequently.

D.S. is the foster parent for Child 4 and had been for close to two years at the time of the hearing. When Child 4 came into her home, she had several attachment issues, anger, and oppositional defiance. She progressed every day, but it was still a battle. Child 4's biggest issue was attachment, and she was especially attached to her foster mother. Child 4 saw Christy Helm for therapy, and she only had contact with the Mother during visitations. At the visitations, Child 4 would sometimes go to the Mother, but would sometimes have to be told to do so. D.S. did not observe any physical contact between them at visits. D.S. noted that when she took her to visitations, Child 4 would get loud in the car as they got closer to the offices. On the way home, Child 4 would become very

aggravating to other children in the car, displaying insulting and degrading behavior, and poking and prodding at them. At school, Child 4 had behavior issues for three days after her visitations, displaying defiant and disrespectful behavior, and threatening to hit other students, which she had done before. Visitation was supposed to be every two weeks, but it was sporadic at best. D.S. stated that the Mother missed more visits than she made.

J.S. has been the foster parent for Child 5 since August 26, 2008, when she was four weeks old. He noted her initial problems were failure to thrive and feeding issues. She later developed multiple ear infections, requiring two different surgeries. She had bilateral ear tubes inserted and then had them replaced at age 2½, when she also had her adenoids removed. She was doing “great” at the time of the hearing. Child 5 visited with the Mother every other week for two hours, but the Mother typically did not show up for visitations. J.S. noted that the visitation supervisor would usually take her into the area for the visit. Following visitation, J.S. began noticing changes in Child 5’s behavior, which had begun about a year prior to the hearing. Child 5 would cry out in the night. For the last eight months, she had been wetting her pants for a week after visitations.

The Cabinet also introduced testimony from licensed psychologist Robert Fane, who performed a court-ordered psychological evaluation of the Mother in mid-2009. At this time, the Mother was still living with her father (the children’s grandfather) along with four of her children. Dr. Fane reported that the Mother presented herself defensively and that she had a long history of problems.

She was very evasive when asked why her children had been removed and did not want to answer the question. She reported that her children were removed due to the field mice found in their house and that her youngest child had been removed because she lost weight “like all children do.” Dr. Fane stated that the Mother’s judgment and insight were very poor. As a part of the evaluation, the Mother completed the Minnesota Multiphasic Personality Inventory (MMPI) as well as other tests, and he reviewed her records. The MMPI indicated severe pathology, and he diagnosed her with borderline personality disorder with a secondary diagnosis of mood disorder. She also showed indications of social problems and anxiety in other areas. The Mother scored high on negative treatment therapy, meaning that she did not think she needed therapy. She had difficulty relating to other people and did not believe that she needed to change her behavior. Her inability to pick good partners and leave when she had abusive problems was related to her personality disorder, which Dr. Fane stated does not generally change. Regarding her parenting skills, Dr. Fane noted weaknesses with discipline and healthcare techniques. The Mother told Dr. Fane that she had been diagnosed with a long list of problems, including anorexia. She had experienced sexual abuse as a child as well as with a boyfriend and the fathers of her children.

Based upon the results of the evaluation, Dr. Fane stated that the Mother had tried to present herself in a favorable manner, noting that she had scored high on the faking and lie scale and that she had difficulty owning up to any frailties. Dr. Fane had concerns about the Mother’s ability to care for the children,

and he could not recommend that they be returned to her because her life was too disjointed. He did believe that she could obtain training to improve her decision-making skills. He discussed the chronic instability in her relationships and that her personality disorder caused her to permit people to be around her who were not healthy for her children. Dr. Fane also discussed the Mother's history of bipolar tendencies and stated that there were medications for this disorder. However, there were no medications available for borderline personality disorder. Dr. Fane stated that if there had been no substantial changes since his evaluation, his recommendation not to return the children to her custody would absolutely not change.

The last witness to testify was the Mother. She reported that she had been married twice, including to the father of one of her children before the court, and that she currently lived in Cedar Hill, Tennessee. She described the situation in Wisconsin with social workers, explaining that her three children had been placed into foster care for two months after she had been stopped with them in the car while she was driving on a suspended license without any insurance. She explained that she was a single mother and had to drive to doctor's appointments and to cash her check. When asked why her children were currently in foster care, she blamed vindictive neighbors who she claimed had been baiting her house with loaves of bread in order to keep mice out of their own house. The Mother continued to stay in the house until July, when the house, which she had been renting, was foreclosed on. At this point, she was still pregnant with Child 5 and

she moved across the street to her father's home where she lived until late November 2009. She then moved to Clarksville, Tennessee, and later to Springfield and finally Cedar Hill. Her understanding of why she was in court was because the Cabinet was trying to take her children away, and she claimed that what she had accomplished had never been enough for the Cabinet. She said she moved out of her house, had her father's home approved, went through counseling, met with her children's therapists and providers, but admitted that she had not taken parenting classes because of the group setting. She found individual parenting classes in Tennessee, and she attended all of the sessions.

Regarding her health, the Mother stated that she had been diagnosed with bipolar disorder, panic attacks with agoraphobia, high blood pressure, and post traumatic stress disorder, for which she took various medications. She believed she had been misdiagnosed with bipolar disorder. She had recently had surgery on her arm and was on medication for that. She was currently seeing a therapist in Springfield every two weeks as well as a psychiatrist in Clarksville. The Mother had not provided Ms. Mattingly with much information, stating that she did not trust her and had trust issues with people in general. Regarding her treatment providers, the Mother admitted that she was resistant to treatment with Ms. Lisa Wilkins in the beginning, but then began working on her parenting skills with Ms. Wilkins a couple of months later. She had also seen Dr. Kinneman on referral from her therapist. She did not want to work with Dr. Fane because she

did not feel like she could trust him. She was not comfortable confiding in him, so she saw no point in continuing to see him.

Regarding her case plan, the Mother stated that she had fulfilled her tasks including maintaining a clean home, obtaining a mental health assessment and psychiatric evaluation, and completing parenting classes. She discussed the online parenting class with Ms. Mattingly, and indicated that she had printed out the curriculum and brought it to court, but that Ms. Mattingly would not accept it. The Mother stated that she moved to Tennessee and married her husband in order to help get her children back. They divorced in June 2011, and she began living with her current boyfriend, J.R., in October 2010 after the domestic violence episode with her husband. She was taken to the hospital after the domestic violence incident because she was experiencing contractions and was later released to a safe place with J.R. Her sixth child was born in October 2010 and was healthy. She reported that her former husband made several false reports of neglect to social services.

The Mother described her relationship with Ms. Mattingly as poor after the goal changed to adoption. She said she had obtained some information about the children from Ms. Mattingly in March, but had not received any information for the prior two years regarding school or medical appointments. She said she had not been receiving letters from the Cabinet, despite her claim that the Cabinet had her e-mail address, mailing address, and telephone number. The Mother said she could not visit with Child 3 because of the long distance between

their homes and that she could not leave her baby for that long in Tennessee. She stated that she would not take the baby to Louisville for fear that she would be taken. The Mother described visitations in general as stressful and short. The children were happy to see her, were physically affectionate, and asked when they were coming home. She said that she and J.R. lived in a double wide trailer on a solid block with an addition to make it a four-bedroom home, meaning that there was room for all of her children. She had clothes given to her for them to wear and more than enough food. She reported that the house belonged to J.R. and that he had “willed” the house to her. She did not believe they were ever going to break up, but that if they did, she would stay in the house. The Mother did not want the court to terminate her parental rights.

At the conclusion of her testimony, the Mother testified about the children’s unidentified fathers. She thought S.D. had been Child 4’s father, but he was excluded by DNA testing. The court took judicial notice that S.D. had been dismissed from Child 4’s juvenile action. She did not recall who Child 4’s or Child 5’s respective fathers were.

At the conclusion of the hearing, the court took judicial notice of the juvenile and domestic violence actions, the CATS assessments on each child, the LifeSkills records, and the order of dismissal in Child 4’s case. The parties, including the GAL, filed memoranda in support of their respective positions following the hearing. The GAL, in particular, pointed to the Mother’s mental health problems as not permitting her to properly raise her children. The GAL

stated that the Mother was in denial about her mental health condition, refused to accept treatment, and took no blame for losing her children or for the problems from which they were suffering.

By orders entered July 13, 2012, the family court entered its findings of fact and conclusions of law, and terminated the Mother's (and fathers') parental rights to all five children. The court found that each child was an abused or neglected child pursuant to KRS 600.020(1); that termination of parental rights would be in each child's best interest; that the legal or putative fathers had abandoned their child or children for at least ninety days; that the Mother (and fathers) had continuously failed or refused to provide essential parental care and there was no reasonable expectation of improvement; that the Mother (and fathers) had for reasons other than poverty failed to provide essential food, clothing, shelter, medical care, or education reasonably necessary and available for the children's well-being and there was not reasonable expectation of significant improvement; that the children had been in foster care for fifteen of the most recent twenty-two months prior to the filing of the petition; and that it had considered the factors set forth in KRS 625.090(3). The court also found that the Mother had done nothing on her treatment plan except complete a parenting class, but she was unable to demonstrate what she had learned in the class. Accordingly, the family court terminated the parental rights of the Mother and the putative or legal fathers and declared the children to be wards of the Commonwealth. These consolidated appeals by the Mother follow.

On appeal, the Mother contends that the family court failed to follow Kentucky Rules of Civil Procedure (CR) 52.01 because the orders contained findings that were not supported by substantial evidence of record and it failed to prepare its own findings and conclusions; that there were insufficient grounds to support termination; and that she did not receive effective assistance of counsel. The Cabinet disputes each of the Mother's arguments.

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):

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*, Ky.App., 552 S.W.2d 672, 675 (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*, 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, 726, 70 S.W.2d 5, 9 (1934).

The Mother's first argument is that several of the family court's findings of fact are not supported by substantial evidence because they contain

factual errors and are therefore clearly erroneous. We disagree, although the Mother is correct in that some of the findings were arguably incorrect. She points to the finding in Child 4's order naming S.D. as her putative father, when he had been excluded as her father by DNA testing and in fact had been dismissed from the juvenile action. She also points to a finding in Child 5's order to the effect that she was removed from the house due to the rodent problem in May 2008, when she had not yet been born, but rather was removed for failure to thrive shortly after her birth. Neither of these findings is correct, but they make no difference in the scheme of the family court's rulings. The family court clearly took judicial notice that S.D. had been dismissed from the Child 4's juvenile action, and mistakenly naming S.D. as the father and terminating his rights in the order had no effect whatsoever on whether the Mother's parental rights should be terminated. And, regarding Child 5, there is no argument that she had not yet been born when the older four children were removed because of the deplorable conditions of the house. However, the family court also included the finding that she had been removed due to failure to thrive, and there is substantial evidence in the record to support this particular finding.

In addition to those two specific factual findings, the Mother takes issue with the family court's findings in each order that she had "done nothing on her treatment plan except she did complete a parenting class. However, she cannot demonstrate what she learned." As Ms. Mattingly testified, the Mother's plan included addressing issues of neglect and poor parenting, obtaining stable housing

and employment, addressing her mental health issues, cooperating with the Cabinet and family court in naming the father for one of her children, scheduling therapy sessions, cooperating with Cabinet workers and foster parents, providing the name and contact information of her therapist and the list of her medications to Ms. Mattingly, and keeping the children safe from abuse and neglect. Ms. Mattingly also testified that the only portions of the plan she completed were the parenting classes and visitation. Based upon the substantial evidence of record, we cannot agree with the Mother that she had followed through on her case plan, other than finally completing a one-on-one parenting class once she moved to Tennessee. Ms. Mattingly testified about the Mother's absolute refusal to sign any release regarding her mental health treatment, and the documents she claimed to have provided were discussed during the trial and excluded because they were not certified copies. Throughout the process, the Mother failed to acknowledge that she needed any help with her mental problems, or that her mental problems affected her ability to parent her children.

Accordingly, we hold that the family court's findings of fact are supported by substantial evidence of record and are therefore not clearly erroneous. Furthermore, we find no merit in the Mother's argument that she is entitled to a reversal because the family court delegated the preparation of the findings of fact and conclusions of law to counsel for the Cabinet.

For her second argument, the Mother contends that there were inadequate grounds to support termination of her parental rights. The Cabinet

argues that it established the grounds to support termination by clear and convincing evidence. We agree with the Cabinet.

The General Assembly provided the mechanism for the involuntary termination of parental rights in KRS 625.090. Pursuant to this statute, the Cabinet must meet a three-prong test and establish that 1) the child is abused or neglected; 2) termination would be in the child's best interest; and 3) one of several listed grounds exists. In deciding the second and third prongs, the circuit court is required to consider several enumerated factors, including “[i]f 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[.]” KRS 625.090(3)(c).

In her brief, the Mother contends that the Cabinet did not meet its burden of proof on the third prong of the test; namely, the grounds stated for termination pursuant to KRS 625.090(2)(e) or (g), and that the Cabinet failed to provide her with reasonable services in order to reunite her with her children. KRS 625.090(2) provides:

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;

(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.

In order to determine whether a ground exists, the court must consider several enumerated factors set forth in KRS 625.090(3):

(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 620.020¹ 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;

¹ “Reasonable efforts” is defined as “the exercise of ordinary diligence and care by the department to utilize all preventative 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(11).

(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 this case, the Mother contends that the Cabinet did not establish that she failed to provide essential parental care and protection for her children pursuant to KRS 625.090(2)(e) because she was not given credit for any of the proof she provided to Ms. Mattingly. We disagree. There is ample evidence in the record supporting the family court's finding that the Mother was unable to provide essential care to her children. As the Cabinet points out in its brief, the Mother had not fully complied with her case plan and was unable to recognize that her mental health issues were directly affecting her ability to adequately parent her children. She was unwilling to provide Ms. Mattingly or the Cabinet with the releases they required to monitor her progress and ensure that she was following her plan. Intertwined in this argument is the Mother's assertion that the Cabinet did not provide her with all reasonable services to reunify the family pursuant to KRS 625.090(3)(c). She states that no reunification services were offered once Ms. Mattingly became the caseworker in August 2009, and both she and Ms. Mattingly testified that no services were offered after the goal was changed to adoption in November 2010. We disagree with this argument; the Cabinet continued to provide services to the Mother throughout the process, including home visits until she moved out of state, therapy, visitation, and interstate home evaluations.

The Mother also argues that the Cabinet did not establish that she had failed to financially support her children for reasons other than poverty alone pursuant to KRS 625.090(2)(g). While it is true that the Mother did not pay any child support, the record is clear that the children were receiving disability checks for their own special needs. Therefore, the Mother was apparently not required to pay child support. There was also evidence admitted into the record that the Mother would bring gifts, toys, and food to the children during visitation. However, the court only needed to rely upon one of the grounds listed in KRS 625.090(2). We have already held that the Cabinet met its burden and the family court's findings are supported by substantial evidence related to the Mother's ability to provide essential parental care and protection. Furthermore, the Mother has not disputed that the children had been in foster care for fifteen of the most recent twenty-two months pursuant to KRS 625.090(2)(j), other than mentioning that this ground was negated by the Cabinet's acts of adding tasks to her case plan so that she would not be able to complete it. The record does not offer any support for this allegation.

Accordingly, we hold that clear and convincing evidence supports the orders of the family court terminating the Mother's parental rights and that this decision was certainly in the children's best interests. The four older children have been diagnosed with severe behavioral issues and there is no possibility that the Mother would be able to deal with these issues, given her own mental health issues. Ample testimony about the visitations and how the children would react both before and after their visitations with the Mother, as well as the Mother's history of

domestic violence and mental illness, clearly supports that termination is in all of the children's best interest.

For her final argument, the Mother asserts that her attorneys in the juvenile actions were ineffective. She contends that she has a constitutional right to representation, citing *R.V. v. Com., Dept. for Health and Family Services*, 242 S.W.3d 669, 672-73 (Ky. App. 2007), in which this Court held that “pursuant to both the due process clause of the Fourteenth Amendment to the United States Constitution and KRS 625.080(3) and 620.100(1), that the parental rights of a child may not be terminated unless that parent has been represented by counsel at every critical stage of the proceedings.” She states that she had three different attorneys during the juvenile stage of the proceedings who she claims did not provide her with adequate representation. There is no evidence that her prior attorneys did not provide her with adequate advice, and it appears that the Mother did not agree with how they were practicing the cases. She does not allege that she was ever without an attorney at a critical stage in the cases, including when her second attorney passed away. Furthermore, she was certainly represented through the termination proceedings. We note that *R.V.* only requires that a parent be represented; there is no equivalent to *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984), or Kentucky Rules of Criminal Procedure (RCr) 11.42 in the termination statutes or associated caselaw that the Mother has brought to our attention.

For the foregoing reasons, the orders of the Warren Family Court terminating the Mother's parental rights to her five children are affirmed.

ALL CONCUR.

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