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NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2013-CA-000045-ME

K.A.J.B.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE JOAN BYER, JUDGE  
ACTION NOS. 12-AD-500172, 12-AD-500173,  
12-AD-500174, AND 12-AD-500175

CABINET FOR HEALTH AND FAMILY  
SERVICES, COMMONWEALTH OF  
KENTUCKY; H.N., S.B., S.B. JR., S.K.B.,  
INFANT CHILDREN; and S.A.B.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: LAMBERT, MOORE, AND VANMETER, JUDGES.

MOORE, JUDGE: K.A.J.B., (hereinafter “Mother), appeals the Family Court

Division of Jefferson Circuit Court’s order terminating her parental rights

regarding her four youngest biological children, H.N. (DOB 4/29/02), S.B. (DOB

6/7/07), S.B. JR. (DOB 2/9/06), and S.K.B. (DOB 7/28/09).<sup>1</sup> After a thorough review of the record, we affirm.

## I. FACTUAL AND PROCEDURAL BACKGROUND

This family has a long and detailed record with the Cabinet with numerous disturbing allegations made involving all of Mother's children.<sup>2</sup>

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<sup>1</sup> Mother has several older children who are not involved in this appeal. None of the children's biological fathers are parties to this appeal.

<sup>2</sup> For example on May 5, 2009, Mother stipulated to abuse or neglect of A.J. (DOB 11/19/91). In the DNA Petition regarding A.J. (age 17 at the time), A.J. informed the social worker (the Affiant) that:

She is the one who takes care of her siblings. She stated that [Mother] and [Stepfather] always hit her and pull her hair. She stated that they have often told her that they were going to kill her. She stated that [Stepfather] has choked her. Affiant spoke with [H.N.,] who stated that her parents are mean. She stated that they kick her brother and hit her. She stated that she is afraid of [Mother] and [Stepfather]. She stated that [Stepfather] uses marijuana. Affiant didn't observe any marks or bruises to children. On or about 10/11/08 the hotline received a report stating that [A.J.] had ran away due to physical abuse and was at the YMCA Safe Place. She stated that she had not been involved with the family prior. She stated that she removed [Mother's older] daughter . . . and placed her with her father due to allegations of sexual abuse by [Stepfather]. She stated that [the older daughter] and [A.J.] have the same father and would fax any paperwork needed. She stated she is very worried about the children in the home. [Mother] has extensive history with DCBS. [Mother] has three other children that are in the permanent custody of their paternal uncle due to drug use by both [Mother] and there [sic] [Natural Father]. [Mother], [Stepfather] and children are currently staying at The Salvation Army Family Shelter in Lexington. [Child] refuses to return to [Mother] and is fearful. [Child] is a month pregnant. Affiant believes that child is at risk of physical abuse if sent back home to her parents. . . .

In regard to the DNA Petition, dated May 25, 2006, for child A.B.N.J.N. (DOB 8/22/96), the report stated that:

Child has reported that mother's paramour [Stepfather], whips the children with a belt. She reported that bruises are often visible due to the whippings. She reported that he yells at them a lot also. Child stated that [Stepfather] smokes marijuana. There have been recent reports that [Natural Father] is using drugs, possibly crack

Relevant to the children involved in the present appeal, on November 18, 2008, the court placed H.N., S.B., and S.B. JR.,<sup>3</sup> in the temporary custody of the Cabinet for various allegations of serious neglect. In regard to the four children involved in this appeal, the court entered an order dated January 20, 2009, that Stepfather<sup>4</sup> have no contact with the children due to allegations that he sexually assaulted one of Mother's older daughters, who is not a party to the present appeal.<sup>5</sup> On May 12, 2009, Mother "stipulated to having neglected ... three children ... [two older children who are not involved in this appeal and H.N., who is involved in this appeal], [and] admitted that "[H.N. and the two older children] missed excessive

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cocaine. [Natural Father] left his mother's home with child and took her to the home of her natural mother . . . . He stayed in the home with the child for a couple of days and has since been coming and going from in the home. [Stepfather] also lives in the home with [Mother]. On August 17, 2006, the court ordered that child was to have no contact with [Stepfather]. [Mother] had a drug test on August 17, 2006. She tested positive for marijuana. The child was withdrawn from JCPS on August 24, 2006. [Mother] reported that child was attending school at Flaherty Elementary. Meade County Board of Education reported that child did not enroll in school in Meade County on August 24, 2006, and was withdrawn on September 7, 2006. There is a prior court order that the child is to attend school daily unless medically excused.

Mother's other children, who are not part of this appeal, include T.N. (DOB is 5/17/99); A.R.L.J.N. (DOB 4/12/95); and R.L.N., Jr. DOB 10/21/97.

<sup>3</sup> S.K.B. was not yet born.

<sup>4</sup> Stepfather is referenced several ways in the record. He is referenced as Mother's paramour, stepfather and as the biological father of the younger children. For ease of reference, and because he is not a party to this appeal, he will be referenced as Stepfather herein.

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As noted in note 2 *supra*, a no contact order had been entered by the court as early as August 24, 2006, in reference to Stepfather and at least one of the older children. Regardless of whether this earlier no contact order had any reference to the children involved in the present appeal, it is undisputed that an order was entered by the court in January of 2009 that Stepfather have no contact with these children due to allegations of sexual assault. It appears that Stepfather pleaded guilty to this offense.

days of school causing them to be neglected [and S.B., and S.B. JR.,] were placed at risk of neglect.” The children were then committed to the Cabinet’s custody.

Thereafter, the Cabinet filed a petition on July 31, 2009, alleging that S.K.B., DOB 7/28/09, was a dependent child. The court issued an emergency custody order for him on the same day. Mother stipulated on September 16, 2009, that S.K.B. was a dependent child. S.K.B. was thereafter committed to the Cabinet’s custody.

Upon determining that Mother was compliant with the terms of her case plan, the children were returned to her custody. However, the no contact order regarding Stepfather remained intact until he completed sex offender treatment, which he never did.

On October 28, 2011, the Cabinet filed new petitions alleging that the children had been abused or neglected again. The genesis of these allegations surrounded a report the Cabinet received from H.N.’s school regarding fresh wounds on the child’s head and blood in her hair, a mark under her right eye and a mark on her forehead. When a social worker attempted to talk to H.N. about the wounds and marks, H.N. stated that she was afraid to talk to the social worker because she gets in trouble at home if “she talks about bad things.” H.N. reported to the social worker that the wounds were from Mother but the child stated she could not remember where the mark on her face came from. H.N. also stated that she and her siblings have contact with Stepfather.

Thereafter, the court placed the children in the temporary custody of the Cabinet. Although Mother was initially allowed supervised visitation with the children, the court later amended its order and ruled that Mother was to have no contact with the children. Mother stipulated on May 15, 2012, that Stepfather had contact with the children in violation of the no contact order.

After a trial in which Mother was represented by counsel, the family court terminated Mother's parental rights to the four children involved in this case. She timely appealed. Because the record contains substantial evidence supporting the findings of the family court, we affirm.

## II. STANDARD OF REVIEW

We may “set aside the trial court’s findings when those findings are clearly erroneous.” *Vinson v. Sorrell*, 136 S.W.3d 465, 470 (Ky. 2004). “To determine whether findings are clearly erroneous, reviewing courts must focus on whether those findings are supported by substantial evidence.” *Id.*

“[S]ubstantial evidence” is [e]vidence that a reasonable mind would accept as adequate to support a conclusion and evidence that, when taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in the minds of reasonable men. Regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court. Thus, [m]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal, and appellate courts should not disturb trial court findings that are supported by substantial evidence.

*Id.* (internal quotation marks omitted). Accordingly, the standard for Mother to prevail on appeal is very high.

The trial court has broad discretion in determining whether the child fits within the abused or neglected category and whether the abuse or neglect warrants termination. This Court's review in a termination of parental rights action is confined to the clearly erroneous standard in CR 52.01 based upon clear and convincing evidence, and the findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings. 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.

*R. C. R. v. Commonwealth Cabinet for Human Resources*, 988 S.W.2d 36, 38-39 (Ky. App. 1998), *as modified* (Jan. 29, 1999) (internal quotation marks and citations omitted). "In a trial without a jury, the findings of the trial court, if supported by sufficient evidence, cannot be set aside unless they are found to be clearly erroneous. This principle recognizes that the trial court had the opportunity to judge the witnesses' credibility." *Id.* at 39 (internal quotation marks and citations omitted).

### III. ANALYSIS

Pursuant to KRS 625.090, the family court may involuntarily terminate parental rights only if:

based on clear and convincing evidence, a circuit court finds: (1) that the child is abused or neglected as defined in KRS 600.020(1); (2) that termination is in the child's

best interests; and (3) the existence of one or more of ten specific grounds set out in KRS 625.090(2).

*M. B. v. D. W.*, 236 S.W.3d 31, 34 (Ky. App. 2007).

Among the grounds in KRS 625.090(2) are:

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

.....

(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; [or]

.....

(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[.]

.....

(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.

KRS 625.090(2)(a), (e), (g), and (j). Mother does not challenge the family court on these grounds. Nonetheless, as an aside, we note that the family court found that all of these grounds were met in this matter.

KRS 600.020(1)(a) defines an “abused or neglected” child as one whose

parent:

1. Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
2. 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;
3. 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;
4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
5. Commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon the child;
6. Creates or allows to be created a risk that an act of sexual abuse, sexual exploitation, or prostitution will be committed upon the child;
7. Abandons or exploits the child;
8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child’s well-being. . . .

In the present case, Mother’s sole argument is that KRS 625.090(1) has not been satisfied, *i.e.*, she argues that there has been no valid determination based on clear and convincing evidence that the children were neglected and/or abused by her. However, the record is replete with substantial evidence to the contrary.



We have reviewed the record and termination proceedings in detail. We agree with the findings made by the family court and will not belabor the point given the disturbing record involving this family. Mother's argument that a finding of neglect/ abuse has not been satisfied is simply disingenuous--at best. The evidence in the record supports a finding that these children have been the victims of abuse and neglect for quite some time. Regardless of how Mother tries to twist her words now, she stipulated on May 12, 2009, that H.N. had missed excessive days of school causing her to be neglected and that S.B. and S.B., Jr., were at the time placed at the risk of neglect. Furthermore, although Mother makes light and glosses over her violating the court's order that the children were not to have any contact with Stepfather, the no contact order was due to allegations that Stepfather sexually assaulted one of Mother's older daughters (who is not a subject of the termination case *sub judice*). A no contact order was entered as early as 2006 regarding Stepfather's contact with at least one of the Mother's older daughters. Moreover, the family court's findings of fact are very detailed and fully supported by the record. Rather than cite them in full, we quote from a summary statement of the family court as follows:

[T]he totality of the evidence presented at trial is sufficient to convince this Court the Petitioner children and other siblings have been abused or neglected within the meaning of KRS 600.020(1) while in parental custody. This resulted from the Petitioner children and other siblings being subjected to scenes of domestic violence in the home, to inappropriate discipline, to substance abuse by their caregivers, to sexual assault, to neglect of their material, emotional, and healthcare

needs, to educational neglect, and to having been abandoned for a period of not less than ninety (90) days. The Petitioner children have been further abused or neglected by the Respondent parents' failure or inability to comply with this Court's remedial orders and the Cabinet's court-approved case treatment plan so that the Petitioner children could be safely returned to parental custody, and by the failure or inability [of] the Respondent parents to do what is necessary to materially support the children.

Upon a thorough review of the record, we conclude that substantial evidence supports the family court's findings of abuse and neglect. Accordingly, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

David S. Davis  
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BRIEF FOR APPELLEE:

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