

RENDERED: JANUARY 31, 2014; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2013-CA-000474-ME

R.D.W., SR.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE ELEANORE GARBER, JUDGE  
ACTION NO. 12-AD-500283

R.D.W., JR.; CABINET FOR HEALTH  
AND FAMILY SERVICES,  
COMMONWEALTH OF KENTUCKY

APPELLEES

AND

NO. 2013-CA-000475-ME

R.D.W., SR.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE ELEANORE GARBER, JUDGE  
ACTION NO. 12-AD-500284

T.M.W.; CABINET FOR HEALTH  
AND FAMILY SERVICES,  
COMMONWEALTH OF KENTUCKY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; MAZE AND STUMBO, JUDGES.

ACREE, CHIEF JUDGE: R.D.W., Sr. (Father) appeals from the Jefferson Family Court's decision to terminate his parental rights to T.M.W. and R.D.W., Jr., his two children. In the interest of judicial economy, we have consolidated Father's appeals. Finding no reason to overturn the family court's decision, we affirm.<sup>1</sup>

**I. Facts and Procedure**

R.D.W., Sr. (Father) is the father of two children: R.D.W., Jr. (Junior), and T.M.W (Son).<sup>2</sup> Both Father and the children's mother (Mother) have long struggled as parents, evidenced by a well-documented history of child physical abuse, domestic violence, and neglect.<sup>3</sup>

This pattern of abuse and neglect reached its zenith in September 2007, prompting the children's placement in foster care. Removal occurred after Father broke into Mother's home and beat Mother's new boyfriend (Boyfriend) to death

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<sup>1</sup> We note with disapproval that more than half of the Appellees' twenty-page brief consists of block quotes, presumably copied and pasted from portions of the record, including long quotes from the family court's Findings of Fact and Conclusions of Law. This indolent approach to appellate advocacy is not helpful to this Court, shirks the requirements of Kentucky Rules of Civil Procedure (CR) 76.12(4)(b)(i), and does not reflect well upon the Cabinet.

<sup>2</sup> The Cabinet established Father's presumptive paternity pursuant to Kentucky Revised Statutes (KRS) 213.046(4) by submitting to the family court certified copies of the children's birth certificates identifying the appellant as father.

<sup>3</sup> Mother voluntarily terminated her parental rights on February 1, 2013, and is not party to this appeal.

in front of the children.<sup>4</sup> Father then threatened the children with violence if they told anyone what had happened. Police arrested Father just hours after the attack, and after a long dispute over his competency to stand trial, he was convicted of murder, burglary and various witness tampering and intimidation offenses. Father has been incarcerated since his 2007 arrest and will not be eligible for parole until approximately 2053.<sup>5</sup>

In 2009, the Cabinet filed a Dependency, Neglect, and Abuse (DNA) petition in Jefferson Family Court, alleging the children were abused when they witnessed Father murder Boyfriend. At an evidentiary hearing, the court determined the children were abused or neglected within the meaning of KRS 600.020(1).

On September 13, 2013, the Cabinet for Health and Family Services (Cabinet) filed a petition in Jefferson Family Court seeking the involuntary termination of Father's parental rights. The court conducted an evidentiary hearing on February 1, 2013. Father participated in the hearing from prison via telephone conference call.

At the hearing, the Cabinet presented certified copies of a 2009 DNA petition, Father's felony convictions stemming from the murder of Mother's

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<sup>4</sup> Mother was not in the home when the beating occurred. Later she admitted to relapsing on cocaine, alcohol, and marijuana shortly before the incident.

<sup>5</sup> Cabinet Trial Exhibit 12.2 shows Father was sentenced to life imprisonment without parole until a minimum of 25 years served on the murder conviction. Father also received a 55-year sentence for a host of non-capital offenses to be served concurrently to the murder sentence. Pursuant to KRS. 439.3401, Father is required to serve at least 85% of the 55-year sentence, making him eligible for parole in 46.75 years. We estimate Father will first be eligible for parole sometime in 2053, if at all.

boyfriend, and testimony from social worker, Tina Speight. Speight stated the children had been in foster care for the last five years where their foster parents provided the children's basic needs. Conversely, Speight testified that while Father wrote letters and tried to call the children, he neither provided financial assistance nor made arrangements to support the children during this period. While Speight maintained that the Cabinet's initial goal is to reunify parent and child, the circumstances posed a host of barriers to reunification, including: father's lengthy term of incarceration, his history of substance abuse and mental illness, his failure to make progress required in the Cabinet's case plan, and that fact that he is still bound by court order not to contact the children due to his threats against them. Because of those barriers, Speight concluded that the Cabinet was unable to provide any additional services to reunite Father and children within a reasonable time, given the ages of the children.

Prior to Father's testimony, he moved for a short continuance so he could retrieve his notes for the hearing; the court denied his motion. Father testified in defense of his parental rights, claiming that his incarceration stymied his efforts to support his children. Father stated he earned money by working in the prison cafeteria and that he sent the money to his mother to use for the children. On cross examination, he admitted that he earned less than fifty cents per-hour and that he understood it was not enough to support his children.

Father blamed the Cabinet for his inability to contact the children claiming that despite his willingness to maintain a relationship with his children he received

neither a case plan nor any updates regarding his children's well-being while he was incarcerated. He also believed the Cabinet should have taken the children to visit him in prison.

The family court issued Findings of Facts and Conclusions of Law on February 7, 2013. The court determined, based on clear and convincing evidence that the children were abused or neglected pursuant to KRS 600.020(1) and that terminating Father's parental rights was in the children's best interest. The court found Father was an unfit parent for two reasons: (1) Father was substantially incapable of providing essential parental care and protection for the children and there was no reasonable expectation of improvement, KRS 625.090(2)(e); and (2) Father was incapable, for reasons other than poverty alone, of providing essential food, clothing, shelter, medical care or education reasonably necessary and available for the children's well-being with no reasonable expectation of improvement, KRS 625.090(2)(g).

Father alleges two errors on appeal: (1) the family court terminated Father's parental rights based on insufficient evidence; and (2) that the family court violated Father's right to procedural due process by denying his motion for a continuance.

## **II. Standard of Review**

In reviewing the decision of the family court, this Court must keep in mind that "[t]he trial court has broad discretion in determining whether the child[ren] fit within the abused or neglected category and whether the abuse or neglect warrants termination." *W.A. v. Cabinet for Health and Family Services*, 275 S.W.3d 214,

220 (Ky. App. 2009). The family court's decision will only be reversed if it is clearly erroneous; that is, the decision will only be reversed if there is no substantial evidence to support it. *Id.* Substantial evidence is evidence which is "sufficient to induce conviction in the mind of a reasonable person." *Rearden v. Rearden*, 296 S.W.3d 438, 441 (Ky. App. 2009).

On review of the family court's denial of Father's motion for a continuance, we ask whether the family court abused its discretion. *Guffey v. Guffey*, 323 S.W.3d 369, 371 (Ky. App. 2010). "An abuse of discretion occurs when a 'trial judge's decision [is] arbitrary, unreasonable, unfair, or unsupported by sound legal principles.'" *Baptist Healthcare Systems, Inc. v. Miller*, 177 S.W.3d 676, 684 (Ky. 2005) (citation omitted).

### **III. Analysis**

We first consider whether the family court terminated Father's parental rights based on sufficient evidence; we conclude that it did. KRS 625.090 permits a family court to involuntarily terminate a person's parental rights if it finds by clear and convincing evidence: (1) that the child is abused or neglected; (2) that termination is in the child's best interest; and (3) the existence of one or more of ten specific grounds for termination. *M.B. v. D.W.*, 236 S.W.3d 31, 34 (Ky. App. 2007); KRS 625.090(1)(a)-(b).

First, the family court heard sufficient evidence that the children were abused or neglected within the meaning of KRS 600.020(1). Specifically, the court considered its 2009 determination that the children had been abused, as well as

Speight's testimony that Father had not provided any financial support to his children since his incarceration in 2007. A parent's protracted absence, even one imposed by the court, is a relevant factor in determining whether a child has been neglected. *Cabinet for Human Resources v. Rogeski*, 909 S.W.2d 660, 661 (Ky. 1995).

Child neglect may result from a guardian's failure to "provide essential parental care and protection for the child, considering the age of the child," KRS 600.020(a)(4), or when a guardian does not provide "adequate care, supervision, food, clothing, shelter, and education...necessary for the child's well being." KRS 600.020(a)(8). The evidence supporting the family court's determination of abuse and neglect was more than substantial; it was overwhelming.

Second, sufficient evidence exists that termination was in the children's best interest. Father's last act as a free man was to beat another man to death while the children watched, then threaten to beat the children if they told on him; we believe this evidence is more than sufficient to induce the family court's reasonable conviction that termination was appropriate. That aside, Speight's testimony that the children were now in a safe, stable foster home also supported the court's finding.

Finally, the family court properly determined the existence of specific grounds for termination set forth in KRS 625.090(2)(e). Father admitted he was substantially incapable of providing essential care and protection of the children since his 2007 arrest. He is unable to provide meaningful financial support and is

prevented by court order from contacting the children. Given that Father will not be eligible for parole, if at all, until his children are middle-aged adults, it is highly unlikely Father's ability to care for the children will improve. Because the family court did not clearly err on this determination, further discussion of other grounds for termination is unnecessary.

We conclude the family court did not abuse its discretion by denying Father's motion for a continuance. A trial court has broad discretion to control proceedings before them. *Transit Authority of River City (TARC) v. Montgomery*, 836 S.W.2d 413 (1992). Father had the assistance of counsel, and an opportunity to testify, subject to cross-examination. Even a brief continuance allowing Father to retrieve his notes – notes he knew well before the hearing he might need – would have caused unnecessary delay and burdened the other parties, particularly the children.

Given that Father testified from prison via telephone conference, such delay would have also required the prison to transport Father to and from his dormitory, posing a number of administrative and security concerns. Considering the totality of the circumstances, we cannot say the trial court abused its discretion by denying Father's motion for a continuance.

#### **IV. Conclusion**

The Jefferson Family Court's termination of Father's parental rights to R.D.W., Jr. and T.M.W. on February 7, 2013, is affirmed.

ALL CONCUR.



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