

# Commonwealth of Kentucky

## Court of Appeals

NO. 2013-CA-000694-ME  
AND  
NO. 2013-CA-000695-ME

CABINET FOR HEALTH AND FAMILY  
SERVICES, COMMONWEALTH OF KENTUCKY

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE JO ANN WISE, JUDGE  
ACTION NO. 12-AD-00065 AND 12-AD-00066

S.M.G, MOTHER;  
AND G.A.G., FATHER

APPELLEES

### OPINION REVERSING AND REMANDING

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BEFORE: CLAYTON, DIXON, AND MAZE, JUDGES.

CLAYTON, JUDGE: This is an appeal from the dismissal of a Petition for Involuntary Termination of Parental Rights against S.M.G. and G.A.G., parents of a minor child by the Fayette Circuit Court. Based upon the following, we reverse this action and remand for further findings.

## BACKGROUND SUMMARY

This action began when a referral was made to the Cabinet for Health and Family Services (the Cabinet) due to the impending impoundment of a vehicle by the Lexington-Fayette Urban County Police. The vehicle contained the two children who are the subject of the termination petition. The vehicle had been stopped by the police and, after narcotics were found in the vehicle and within reach of the children, the police called the Cabinet.

Pamela Handshoe was the intake worker assigned the case. Sheila Baker was the ongoing social worker. Both Baker and Handshoe testified. The mother also testified. The Cabinet was awarded custody of both children through a temporary custody order.

## STANDARD OF REVIEW

We first note that the appellees' have not filed a brief. Pursuant to Kentucky Rules of Civil Procedure (CR) 76.12(8)(c) the court may:

- (i) accept the appellant's statement of the facts and issues as correct; (ii) reverse the judgment if appellant's brief reasonably appears to sustain such action; or (iii) regard the appellee's failure as a confession of error and reverse the judgment without considering the merits of the case.

We choose to accept the appellant's statement of the facts and issues as correct.

In reviewing the findings and conclusions of the trial court, we must give deference to the trial court. *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420 (Ky. App. 1986). We may not disturb the trial court's

findings unless there is no substantial evidence to support them. *R.C.R. v.*

*Commonwealth, Cabinet for Human Resources*, 988 S.W.2d 36 (Ky. App. 1998).

With this standard in mind, we review the findings of the trial court.

#### DISCUSSION

In dismissing the petition filed by the Cabinet, the trial court found that it had “met its burden of proof regarding the statutory provision of Kentucky Revised Statutes (KRS) 625.090(1)(a) and KRS 625.090(2)(j)....” Order of Dismissal at p. 1. It continued in its findings, however, to hold that “[t]he Cabinet did not meet its burden of proof regarding the specific allegations of the Petition as represented by KRS 625.090(2)(e), KRS 625.090(2)(g), and KRS 625.090(1)(b).” *Id.* In other words, the trial court found that “[t]he child[ren had] been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;” KRS 625.090(1)(a) and “[t]hat the child[ren had] 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)(j).

The trial court went on to conclude that dismissal was necessary, however, because it found that the Cabinet had not proved 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....” KRS 625.090(2)(e). The trial court also found 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...” and that the Cabinet had failed to show that termination of parental rights would be in the best interest of the children. KRS 625.090(2)(g) and KRS 625.090(3).

The Cabinet contends that the trial court erred in making findings in favor of dismissing the petition. Specifically, the Cabinet argues that the trial court’s finding that S.M.G., the mother of the children, had not failed or refused to provide care for them was in error given the following undisputed proof at trial:

1. S.M.G. was not even aware her children were placed with a paternal aunt or how long they had been there when the children were removed by the Cabinet;
2. S.M.G. was incarcerated for 11 months while the children were in the Cabinet’s care;
3. S.M.G. by her own admissions on the witness stand, had not completed any of her case plan goals, other than staying out of jail after being released;
4. Sheila Baker testified that none of S.M.G.’s other children were in her care, and that the Cabinet could not safely reunify the children with S.M.G. due to her unresolved substance abuse issues, despite working with S.M.G. on this problem for well over two years;
5. The respondent father, GAG, had done absolutely nothing on his case plan, and was also incarcerated for an extended period of time while the children were in the Cabinet’s care, and even failed to appear at the trial;

6. There was absolutely no proof introduced at trial that refuted any of the Cabinet's foregoing evidence, other than SMG claiming that the Cabinet was somehow responsible for all of her parental failures.

The Cabinet also asserts that the trial court erred in finding that SMG and GAG had failed to provide care for the children or would be incapable of providing it in the future, for reasons other than poverty alone. The Cabinet set forth at trial that SMG had a child support arrearage of over \$7,000.00 and that she and GAG had been incarcerated for crimes during this period.

As to the best interest of the children, the Cabinet argues that it met the statutory requirements of KRS 625.090(3). The Cabinet bases this argument on the fact that it proved acts of abuse and neglect towards another child in the family, that it had made reasonable efforts to reunite the children with the parent, and that neither parent had put forth any significant effort to improve their situations despite the children being in foster care for over two years. We agree with the Cabinet.

The findings and conclusions set forth by the trial court were merely recitations of statutes. The court did not set forth any findings regarding these specific statutes other than to state that the Cabinet had proved or had not proved it in regards to the children. The trial court's findings and conclusions are clearly erroneous and, therefore, we reverse the decision of the trial court and remand it for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jerry M. Lovitt  
Lexington, Kentucky

BRIEF FOR APPELLEE:

No Brief Filed for Appellees