

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-002122-ME

T.T.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE DONNA DELAHANTY, JUDGE  
ACTION NO. 13-AD-500007

CABINET FOR HEALTH AND FAMILY  
SERVICES, COMMONWEALTH OF  
KENTUCKY; J.B.F. (A CHILD); and L.F.  
(MOTHER)

APPELLEES

OPINION  
AFFIRMING

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BEFORE: DIXON, MOORE, AND NICKELL, JUDGES.

DIXON, JUDGE: T.T. (“Father”) appeals from a judgment of the Jefferson Circuit Court terminating his parental rights<sup>1</sup> to J.B.F. (“Child”). Finding no error, we affirm.

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<sup>1</sup> The mother, L.F. (“Mother”) consented to the voluntary termination of her parental rights.

Child was born September 6, 2011, and tested positive for controlled substances. The Cabinet initiated neglect proceedings against Mother, and she stipulated to those allegations. Mother identified Father as Child's putative father, and Erick Earkman, caseworker for the Cabinet, sent several letters to Father's last known address in New Albany, Indiana. Earkman was unable to locate Father for approximately nine months. In November 2012, Earkman received a letter from Father, who was incarcerated at a correctional facility in Branchville, Indiana.

In January 2013, the Cabinet filed a petition to terminate the parental rights of Mother and Father. At the final hearing, the court heard testimony from Earkman, and Father testified by telephone. Father stated that he had been incarcerated since July 2012 due to a probation violation. Father asserted that he wanted to be a part of Child's life; however, he admitted that he had only seen Child a few times during January and March 2012. Father acknowledged that he did not take any steps to contact the Cabinet prior to his incarceration because he thought Mother would regain custody of Child. The court also received the report of Child's guardian ad litem recommending termination.

The court issued a lengthy judgment, concluding the statutory requirements for termination were established and that it was in Child's best interest to terminate Father's parental rights.<sup>2</sup> The court emphasized that Child had

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<sup>2</sup> The court recited several factors pursuant to KRS 625.090 to support its decision: Father abandoned Child for more than ninety days; Father continuously failed to provide essential parental care for Child; for reasons other than poverty alone, Father continuously failed to provide for Child's essential food, clothing, shelter, medical care or education, with no reasonable expectation that Father's conduct would improve in the immediate future; Father failed to make reasonable efforts to change his conduct so Child could return home within a

been in foster care since birth and deserved a permanent, stable home. The court noted that Father did not have a relationship with Child, and that Father could potentially remain in custody for another year. Father now appeals.

Parental rights “can be involuntarily terminated only if there is clear and convincing evidence that the child has been abandoned, neglected, or abused by the parent whose rights are to be terminated, and that it would be in the best interest of the child to do so.” *Cabinet for Health and Family Services v. A.G.G.*, 190 S.W.3d 338, 342 (Ky. 2006); KRS 625.090. The trial court’s findings of fact are entitled to great deference; accordingly, this Court applies the clearly erroneous standard of review. CR 52.01; *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998). Where the record contains substantial evidence to support the trial court’s findings, we will not disturb them on appeal. *Id.*

Father first contends the court erred by concluding the Cabinet made reasonable efforts for reunification prior to seeking termination.

Pursuant to KRS 625.090(3)(c), in determining the best interests of the child, the court must consider whether the Cabinet utilized reasonable efforts to reunite the family before the petition to terminate was filed. KRS 620.020(11) defines “reasonable efforts” as “the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community . . . to enable the child to safely live at home[.]”

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reasonable period of time.

The statute requires the Cabinet to exert reasonable efforts before the petition is filed. KRS 625.090(3)(c). Here, Earkman was unable to locate Father for approximately nine months. Earkman requested an absent parent search and sent several letters to Father's last known address. Father's own testimony acknowledged that he had received the earlier correspondence from Earkman but failed to contact the Cabinet until November 2012. By the time Earkman finally received a response from Father, Child had been in foster care for approximately fourteen months. Although the Cabinet filed the petition to terminate parental rights in January 2013, Earkman worked on a case plan with Father for reunification, which included a parenting assessment and drug treatment. Earkman further testified that he could not refer Father for additional services while he remained incarcerated in Indiana.

After careful review, we conclude substantial evidence supported the court's finding that the Cabinet made reasonable efforts to reunite the family. Despite Father's argument to the contrary, the record indicates Father knew Child was in foster care, yet he failed to assert any parental responsibility or cooperate with the Cabinet's requests.

Father next challenges the sufficiency of the evidence supporting the court's findings that Father abandoned Child, he failed to provide essential parental care, and that there was no reasonable expectation of improvement considering Child's age. Father disputes the court's determination that his testimony lacked credibility. To support his argument, he relies on his own testimony that he had completed

anger management in jail and that he had employment available to him upon his release from jail.

In this matter, the trial court was the fact-finder, and it was vested with broad discretion to weigh the evidence and assess witness credibility. CR 52.01. The record indicates the court applied the statutory factors set forth in KRS 625.090(2)-(3) and made specific factual findings based on the evidence in the record. At the time of the termination hearing, Child was nearly two years old and had been in foster care since birth. The court noted that, before Father was incarcerated, he knew Child was in foster care and did not pursue any parental rights to Child. The court stated, in relevant part,

[Father's] testimony regarding his ability to meet [Child's] future needs if the Court will wait until [Father] is released from custody at some future date was lacking in credibility. In addition to the fact that [Father], by his incarceration, has placed himself in a situation in which the Cabinet is unable to refer him for services to address the drug and domestic violence issues that have been identified and has not been provided with any verification of his alleged treatment, even assuming that [Father] is released in the near future, it is unreasonable to expect that [Child] could accept this stranger into his life overnight and easily transition away from the only mother he has ever known.

We have fully considered the arguments raised by Father; however, we conclude that substantial evidence supported the court's determination to terminate parental rights. The court rendered specific findings that the statutory requirements for termination were met and that it was in Child's best interest for Father's parental rights to be terminated.

Father also asserts he was denied due process because he testified by telephone at the hearing and because paternity was not established by genetic testing.

Father testified telephonically at the hearing due to his incarceration in Indiana, which was permissible pursuant to KRS 197.022(3). Although Father's presence at the hearing was by telephone, he was represented by counsel, testified on his own behalf, and fully participated in the proceedings. The court gave Father the opportunity to confer privately with counsel and to alert the court if there was something he did not hear over the speakerphone. Based upon our review, we agree with the trial court's conclusion that Father received a fair trial.

Finally, Mother identified Father as Child's father, and the Cabinet named Father as a party to the termination action as a putative father. *See* KRS 625.065. When the Cabinet finally located Father, he was incarcerated in Indiana. The record reflects that Father fully participated in the termination proceedings as a putative father, and the court determined that it was in Child's best interests to terminate Father's parental rights. We find no error in the court's decision.

For the reasons stated herein, the judgment of the Jefferson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Pamela M. Workhoven  
Louisville, Kentucky

BRIEF FOR APPELLEE:

G. Thomas Mercer  
Louisville, Kentucky