

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2014-CA-000563-ME

K. A. M.

APPELLANT

v. APPEAL FROM HENDERSON FAMILY COURT  
HONORABLE SHEILA N. FARRIS, JUDGE  
ACTION NO. 13-AD-00033

CABINET FOR HEALTH AND  
FAMILY SERVICES,  
COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \* \*\* \*

BEFORE: CAPERTON, KRAMER,<sup>1</sup> AND STUMBO, JUDGES.

KRAMER, JUDGE: K. A. M., a father, appeals the Henderson Family Court's order terminating his parental rights. Following a thorough review of the record,

---

<sup>1</sup> Judge Joy A. Kramer, formerly Judge Joy A. Moore.

we affirm because clear and convincing evidence supports the family court's conclusion to terminate the father's parental rights.

## **I. FACTUAL AND PROCEDURAL BACKGROUND**

The child at issue in this case, a female, was born in May 2004. In 2011, a dependency, neglect and abuse petition was filed by a social worker concerning the child. In that petition, the affiant stated that the child was neglected. The affiant alleged that the child's half-sister had

been sexually abused by [the father] while he was in the caretaking role. [The father] had sexual intercourse with [the child's sister] on several occasions. [The father] also fondled her chest with his hands. [The child's sister] informed her mother . . . but she took no action to protect her child. This places [the child in this case] at risk of harm.

Following the adjudication hearing, the family court found the child to be neglected and ordered that she be placed, or continue to remain, in the Cabinet for Health and Family Service's temporary custody. In support thereof, the court found that the "child was in the home with [the father] when her half-sibling was sexually abused by him. This child is now the same age as her sibling when she was sexually abused."

Following the disposition hearing, the family court ordered the father to: "Enroll in SOTP [Sex Offender Treatment Program] and comply with all recommendations. Contact with child is [at] discretion of SOTP provider. Dad may [move the] court when SOTP advises contact is appropriate."

In April 2012, the child was found to be a neglected child by order of the Henderson Family Court and the child was committed to the Cabinet at that time. In February 2013, a permanency hearing was held and the family court entered an order stating the permanency plan would be adoption. In the meantime, the court ordered the child to remain committed to the Cabinet.

In August 2013, the father entered an *Alford*<sup>2</sup> plea to two charges of Second-Degree Unlawful Transaction with a Minor. He was sentenced to an indeterminate term of five years of imprisonment, which was probated for five years.

The Cabinet filed its petition for involuntary termination of parental rights in November 2013. At that time, the child was residing in a state-approved foster home. In its petition, the Cabinet alleged that the child's parents<sup>3</sup>

for a period of not less than six (6) months, have continuously or repeatedly failed or refused to provide or have been substantially incapable of providing essential parental care and protection for the child and there is no reasonable expectation of improvement in parental care and protection, considering the age of the child.

The Cabinet also contended that her parents

---

<sup>2</sup> *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). An *Alford* plea "permits a conviction without requiring an admission of guilt and while permitting a protestation of innocence." *Wilfong v. Commonwealth*, 175 S.W.3d 84, 103 (Ky. App. 2004). "The entry of a guilty plea under the *Alford* doctrine carries the same consequences as a standard plea of guilty. By entering such a plea, a defendant may be able to avoid formally admitting guilt at the time of sentencing, but he nonetheless consents to being treated as if he were guilty with no assurances to the contrary." *Wilfong*, 175 S.W.3d at 102 (internal quotation marks omitted).

<sup>3</sup> Although the petition to terminate parental rights was filed against both parents, only the father appeals the court's decision.

For reasons other than poverty alone, have continuously or repeatedly failed to provide or are incapable of providing essential food, clothing, shelter, medical care or education reasonably necessary and available for the child's well-being and there is no reasonable expectation of significant improvement in the parents' conduct in the immediately foreseeable future, considering the age of the child.

The Cabinet asserted that the child had been in foster care under the Cabinet's responsibility for fifteen (15) months prior to the Cabinet filing its petition for termination of parental rights. It also alleged that neither parent had "made sufficient progress on their court approved case plan to allow for the safe return of the child to their care since August 25, 2011[,] when the child entered foster care." The Cabinet contended that prior to filing the petition, it had "made reasonable efforts to reunite the child with the parents."

The mother then filed a petition to voluntarily terminate her parental rights to the child. The family court found that termination of the mother's parental rights was in the child's best interest. Consequently, the court terminated the mother's parental rights.

The family court found that the child had been in foster care under the Cabinet's responsibility for fifteen months prior to the filing of the petition to terminate parental rights. The court found that the child was previously adjudicated as a neglected child by the family court, and that she remained a neglected child pursuant to KRS<sup>4</sup> 600.020. The family court stated:

---

<sup>4</sup> Kentucky Revised Statutes.

In addition to this Court's verbal findings at the trial of this matter, it finds that [the father] has been aware of his case plan tasks, services to assist him with them and the importance of completing said tasks for nearly two years. However, he did not take steps to begin working his plan or to re-establish contact with his child until October 2013. In the meantime, the child has flourished and gained stability in an adoptive home with her sibling. [The father] has failed to pay any amount of financial support to assist in the care of the child for over two years while she has been in foster care. [The father] has failed to provide the child with essential parental care or protection, food, clothing, shelter, medical care or education, or even a single birthday or Christmas gift for over two years.

It is in the best interest of [the child] that the parental rights of [the mother] and [the father] be terminated. In addition to the findings . . . above, this Court finds that it is not in the child's best interest to wait any longer for [the father] to work his case plan, including the Sex Offender Treatment Program which will not be concluded for approximately two more years. This Court finds that the child would continue to be at risk of abuse or neglect should she be returned to [her father's] care. It is in the best interest of the child that she be allowed to experience stability and permanency with no further delay.

It is in the best interest of [the child] that there be no further contact between [the child] and respondents, [the mother] and [the father].

Therefore, the family court concluded that it was in the child's best interest to terminate the parental rights of both parents because the child was an abused or neglected child. The court further concluded that both parents,

for a period of not less than six (6) months, have continuously or repeatedly failed or refused to provide or have been substantially incapable of providing essential parental care and protection for [the child] and there is no reasonable expectation of improvement in parental care

and protection, considering the age of the child. KRS 625.090(2)(e).

The family court stated that the parents

for reasons other than poverty alone, have continuously or repeatedly failed to provide or are incapable of providing essential food, clothing, shelter, medical care or education reasonably necessary and available for the child's well-being and there is no reasonable expectation of significant improvement in the parents' conduct in the immediately foreseeable future, considering the age of the child. KRS 625.090(2)(g).

[The parents] have failed to make reasonable efforts or adjustments in their circumstances, conduct, or conditions to make it in the child's best interest to return home within a reasonable period of time, considering the age of the child. KRS 625.090(3)(d).

The Cabinet for Health and Family Services has made reasonable efforts to reunite this family as defined in KRS 620.020. KRS 625.090(3)(c).

The reunification services offered by the Cabinet for Health and Family Services to this family have been reasonable and additional services would not be likely to bring about lasting parental adjustment enabling a return of the child to the [parents]. KRS 625.090(4).

There shall be no further contact between [the child] and any of [her parents].

The . . . Cabinet . . . is entitled to a judgment terminating the parental rights of [the parents] to the child, and it is in the best interest of said child that the parental rights of [the parents] be terminated and that the custody be transferred to the Cabinet . . . with authority to place the child for adoption.

Consequently, the family court terminated the parental rights of both parents.

The father now appeals, contending that the family court erred in terminating his parental rights because he had not been fully afforded “reasonable services to reunite” and less drastic measures were not adequately explored.

## II. ANALYSIS

“In reviewing a decision to terminate parental rights, the appellate court must determine if the family court’s conclusion was based upon clear and convincing evidence and, in so doing, must apply the clearly erroneous standard of appellate review.” *Commonwealth, Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010).

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. Pursuant to this standard, an appellate court is obligated to give a great deal of deference to the family court’s findings and should not interfere with

those findings unless the record is devoid of substantial evidence to support them.

*T.N.H.*, 302 S.W.3d at 663 (internal quotation marks and citations omitted).

The grounds for the involuntary termination of parental rights are set forth in KRS 625.090. That statute

provides that parental rights may be involuntarily terminated 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).

We must first determine if the child was properly classified as an abused or neglected child. Pursuant to KRS 600.020(1), an

“[a]bused or neglected child” means a child whose health or welfare is harmed or threatened with harm when:

(a) His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child:

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. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;

9. Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months; or

(b) A person twenty-one (21) years of age or older commits or allows to be committed an act of sexual abuse, sexual exploitation, or prostitution upon a child less than sixteen (16) years of age[.]

The family court found the child in this case was an abused or neglected child. Evidence was presented showing that the father, by failing to provide financial support for the child while she was in the Cabinet's care (and for reasons other than poverty), failed to provide the child with adequate care, food, clothing, and shelter necessary for the child's well-being during that time. Additionally, evidence was presented to establish that the father failed to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to him, which resulted in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of

the most recent twenty-two (22) months. Therefore, the family court properly determined the child was an abused or neglected child.

The family court concluded that termination of the father's parental rights was in the child's best interests. We agree. Pursuant to KRS 625.090,

(3) In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:

(a) Mental illness as defined by KRS 202A.011(9), or an intellectual disability as defined by KRS 202B.010(9) of the parent . . .;

(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 620.020 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;

(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.

(4) If the child has been placed with the cabinet, the parent may present testimony concerning the reunification services offered by the cabinet and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent.

The father contends that he was not fully afforded “reasonable services to reunite” and, therefore, that the family court erred in terminating his parental rights. We first note that during trial, the father failed to present testimony concerning the reunification services offered by the cabinet and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent, as provided in KRS 625.090(4).

However, even if we were to assume, for the sake of argument, that the cabinet did not fully afford the father reasonable services to reunite, we also need to look at the other applicable provisions enumerated in KRS 625.090(3) to determine how they apply to this case. In this case, evidence was presented to show that the father committed the offense of second-degree unlawful transaction with a minor, and the victim of that offense was the child’s half-sister. *See* KRS 625.090(3)(b). The father failed to pay any portion of the child’s substitute physical care and maintenance, and there was no proof that he could not have financially done so. *See* KRS 625.090(3)(f). The child and her sister were in the same foster home and, according to the testimony presented, the child was doing well and she had adjusted to that environment. The cabinet worker who testified during trial did not recall if the father had even asked her how the child was doing

while she was in foster care. *See* KRS 625.090(3)(e). Further, the father met with the cabinet worker in August 2011 and he was told at that time that he needed to begin his SOTP soon thereafter if he wanted to get the child back due to the requirements set forth in the federal law known as the Adoption and Safe Families Act. Nevertheless, the father did not begin his SOTP program until January 2014.<sup>5</sup> Thus, the father had made no adjustments in his circumstances for almost two and a half years (plus, SOTP would take an additional two years to complete) in order to make it in the child's best interest to be returned to him within a reasonable time. *See* KRS 625.090(3)(d). There was no allegation of mental illness in this case. *See* KRS 625.090(3)(a). Therefore, the factors set forth in KRS 625.090(3) that weigh against the father far outnumber those that are in his favor, if we were to assume that the cabinet failed to make reasonable efforts to reunite them. Consequently, we find there was clear and convincing evidence to support the family court's finding that termination of the father's parental rights was in the child's best interests.

Finally, the family court found the existence of one or more of the ten specific grounds set out in KRS 625.090(2). That statute provides as follows:

No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing

---

<sup>5</sup> The father entered his *Alford* plea to the charge of second-degree unlawful transaction with a minor in August 2013. However, he did not begin the SOTP until January 2014, approximately five months later, despite being told two years *before* entering his *Alford* plea that he needed to begin his SOTP at *that* time in order to avoid having his parental rights terminated. This was due to the time restrictions under both Kentucky and Federal Law, and because his SOTP would take approximately two years to complete.

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 the present case, the family court found the existence of the grounds stated in KRS 625.090(2)(e), KRS 625.090(2)(g) and KRS 625.090(2)(j).

Based upon the evidence produced at trial, there was clear and convincing evidence to support these findings of the family court. Therefore, the family court did not err in involuntarily terminating the parental rights of the father.

Accordingly, the order of the Henderson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James Robert Norris  
Henderson, Kentucky

BRIEF FOR APPELLEE:

Kristy Abel Fulkerson  
Office of Legal Services  
Cabinet for Health and Family  
Services  
Owensboro, Kentucky