

RENDERED: OCTOBER 20, 2017; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2016-CA-001786-ME

A.S.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE TARA HAGERTY, JUDGE  
ACTION NO. 16-AD-500235

CABINET FOR HEALTH AND FAMILY  
SERVICES, COMMONWEALTH OF  
KENTUCKY; AND E.L.S., A MINOR CHILD

APPELLEES

AND

NO. 2016-CA-001787-ME

A.S.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE TARA HAGERTY, JUDGE  
ACTION NO. 16-AD-500236

CABINET FOR HEALTH AND FAMILY  
SERVICES, COMMONWEALTH OF  
KENTUCKY; AND R.N.S., A MINOR CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, MAZE, AND NICKELL, JUDGES.

MAZE, JUDGE: Appellant, A.S., appeals a Jefferson Circuit Court order terminating his parental rights. He appeals on the basis that there was no clear and convincing evidence that the termination of his parental rights was in the best interest of his children pursuant to KRS<sup>1</sup> 625.090(3). As the record shows the order was supported by substantial evidence, we affirm.

Background

A.S. and M.S. are the biological father and mother, respectively, of E.S. and R.S. Beginning on July 16, 2007, and spanning until March 2015, A.S. and M.S. were the subject of eight Cabinet for Health and Family Services (“the Cabinet”) petitions due primarily to drug use and domestic violence. After the second petition, both parents stipulated to abuse and neglect, but the children remained in their custody. Throughout the next several years, M.S. lost custody at different points in time, but A.S. retained custody and the children lived with him. Then, in February 2015 the children were removed from A.S.’s care and placed in the temporary custody of paternal relatives. The relatives determined that they were not able to meet the children’s needs. The children were therefore found to

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<sup>1</sup> Kentucky Revised Statutes.

be dependent children and on March 23, 2015, were placed in the care of the Cabinet.

During the pendency of these actions, the court ordered both parents to attend various therapies and drug screenings in an effort to reunify the parents with their biological children. Specifically, the Cabinet directed A.S. to submit to random drug screens and substance abuse treatment. He was offered sixty-six drug screens since November 2014 and of those he failed to attend forty-seven of them. Of the screens he attended, he had positive hair screens for amphetamines, opiates, cocaine, and/or cannabinoids. A.S. also failed to consistently attend and complete parenting classes, though he has completed Anger Management and Domestic Violence Counseling twice. A.S. was afforded supervised contact with his children since their removal in 2015. In August 2015, he was ordered to attend the visits in the Family and Children's Place visitation center. At the first visit, there was an alleged altercation between A.S. and the staff at the facility and he was escorted from the facility. The Family and Children's Place visitation center therefore refused to offer him any further services. In March 2016, he was ordered to have no contact with his children but was later permitted telephone calls. The telephone calls have since ceased, due to the children not continuing them.

After both parents proved to be noncompliant with their respective case plans, the Cabinet changed the permanency goal from reunification to termination and adoption. On October 7, 2016, a hearing was held to terminate the

parental rights of both A.S. and M.S. M.S. was incarcerated and appeared by phone. A.S. was present and represented by counsel. A.S. testified to feeling bonded to his children and not wanting his rights terminated. The Cabinet presented the above evidence. On October 27, 2016, the court entered findings of fact and conclusions of law terminating the parental rights of both parents. This appeal follows.

### Standard of Review

When an individual appeals an order terminating his or her parental rights, we review the trial court's findings for clear error. *See M.E.C. v. Commonwealth, Cabinet for Health and Family Services*, 254 S.W.3d 846, 851 (Ky. App. 2008); *see also* CR<sup>2</sup> 52.01. "Hence, this Court's review is to determine whether the trial court's order was supported by substantial evidence on the record." *Id.* at 850, *citing V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky. App. 1986). "Substantial evidence" is that which is sufficient to induce conviction in the mind of a reasonable person. *Sherfey v. Sherfey*, 74 S.W.3d 777, 782 (Ky. App. 2002) (overruled on other grounds).

### Analysis

A.S. concedes that the children were previously found to be neglected or dependent as required by KRS 625.090(1). He also concedes that the trial court properly found one or more of the grounds for termination set out in KRS

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<sup>2</sup> Kentucky Rules of Civil Procedure.

625.090(2). Rather, A.S. only contends that there was not clear and convincing evidence that the termination of his parental rights was in the best interest of the children pursuant to KRS 625.090(3).

When terminating parental rights, the trial court is required to consider several factors in determining whether termination is in the best interest of the children. KRS 625.090(3). Here, the court found that KRS 625.090(3)(b), which relates to “acts of abuse or neglect...toward any child in the family” was met. The court supported this finding by citing to evidence of the children witnessing acts of domestic violence, substance abuse by their caregivers, and having been abandoned for a period of not less than ninety days, among other facts.

KRS 625.090(3)(c) refers to the Cabinet’s “reasonable efforts...to reunite the child[ren] with the parent.” The court found that the Cabinet did make “appropriate referrals to substance abuse counseling, parenting classes, therapy, random drug screens, supervised visitation sessions and various other services.” This finding is supported by the record. While A.S. contends that there was more the Cabinet could have done, he contends that he was “at best sporadically compliant with the orders of the court and with the treatment recommended by the cabinet.” Appellant Brief p. 9. He also claims that many of his “blocks to continue to see his children were the result of poor communication or disagreements with treatment providers.” Appellant Brief p. 9. The trial court,

however, found that sufficient opportunities were provided and its finding is supported by substantial evidence.

The fourth factor, KRS 625.090(3)(d), pertains to 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.” The court found that A.S. had not been fully compliant with the court’s orders,

particularly with respect to the completion of random drug screens, substance abuse treatment, mental health treatment, and parenting group. As a result of all the foregoing and more, the Petitioner children have been unable to return safely to parental custody and care and instead have remained in the Cabinet’s care and custody for not less than 1.5 years.

A.S. admits that he was not fully compliant with the orders but “at the time of the trial he had secured a three-bedroom home, was in counseling, was clean and sober, was being drug tested, and was willing to follow through with counseling for the children.” Appellant Brief p. 10. While A.S.’s improvements at the time of trial were admirable, there was sufficient evidence to support the trial court’s finding.

The fifth factor relates to “the physical, emotional, and mental health of the child and the prospects for the improvement of the child’s welfare if termination is ordered.” KRS 625.090(3)(e). A.S. does not dispute that the children are doing well in foster care but contends that “treatment can continue to

be pursued if the children are reunified with their father, with whom they have a bond.” Appellant Brief p. 11. The court, however, found that

the children are expected to make continuing improvements in these areas upon termination of parental rights. The Cabinet social worker testified that he has visited with the Petitioner children monthly in the foster home and the children are doing much better since removal from parental custody and are attached to the foster parents, who will adopt the children in the event parental rights are terminated. The children’s most recent therapist similarly testified as to their improvements in behaviors and adjustment.

The court’s finding was supported by substantial evidence.

Lastly, the final factor, relates to “the payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.” KRS 625.090(3)(f). The court found that A.S. had “not paid any substitute financial assistance since the Petitioner children have been in state care.” A.S. contends that his failure to provide financial support was not willful because he was not ordered to pay and no one asked him to. Regardless, it is not necessary that all of the factors be met, only that the court consider the totality of the evidence.

The court, after looking at the totality of the factors, determined that it was in the best interest of the children for A.S.’s parental rights to be terminated. As this finding was supported by substantial evidence and the other elements of

KRS 625.090 were clearly met, the trial court did not clearly err by terminating A.S.'s parental rights.

Conclusion

For the reasons expressed herein, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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