

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2016-CA-001948-ME

B.G.R.

APPELLANT

v. APPEAL FROM JOHNSON FAMILY COURT  
HONORABLE JANIE MCKENZIE-WELLS, JUDGE  
ACTION NO. 16-AD-00017

CABINET FOR HEALTH AND  
FAMILY SERVICES, COMMONWEALTH  
OF KENTUCKY; B.J.C., FATHER;  
AND J.C.R., A CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, JOHNSON, AND J. LAMBERT, JUDGES.

LAMBERT, J., JUDGE: B.G.R. (the Mother) has appealed from the November 15, 2016, order of the Johnson Family Court involuntarily terminating her parental rights to her child, J.C.R. (the Child). Finding no error or abuse of discretion, we affirm.

The Mother and B.J.C. (the Father) are the biological parents of the Child, born in December 2013, in Johnson County, Kentucky. The Cabinet for Health and Family Services (the Cabinet), Department for Community Based Services, filed a Dependency, Neglect or Abuse petition in 2014 (case No. 14-J-00179). In a dispositional report filed in April 2015, the Cabinet provided the following case history:

On 12/1/2014 the Cabinet received a referral in regards to the child alleging the mother . . . is not taking the child to the doctor when needed, not meeting the child's needs and leaves the child crying in its room for several hours. On 12/1/2014 mother agreed to take the child to the doctor. Child was diagnosed with impetigo and upper respiratory infection. On 12/18/2014 social services received physical abuse allegations alleging, [the Mother] is throwing toys at the child and [the Mother] and her brother were arguing loudly over the baby. On 12/18/2014 SSW Thoms observed a knot and bruise on the child's forehead and a bruise on the child's left side of his face. According to the family, child was seen at his doctor on 12/15/14 and was diagnosed with Hand, Foot, and Mouth. On 12/18/2014 [the Mother] agreed to take the child back to his pediatrician. On 12/19/2014 SSW was contacted by Dr. Hanna's office stating concerns with the child due to multiple bruises on various parts of the child's body and the bruising was not consistent with normal childhood injuries. On 12/19/2014 the child . . . was placed with his maternal aunt . . . via prevention plan. Then placed with . . . [another] maternal aunt.

The Cabinet recommended that the Mother participate in mental health counseling, complete anger management services, complete TAPP services, complete

parenting classes, and have supervised visitation with the Child. The Cabinet recommended that the Father complete parenting classes, submit to random drug screens, seek housing and employment, and complete substance abuse and mental health assessment.

The Child was committed to the Cabinet in July 2015 after having been found to be abused or neglected by the family court in February of that year. The Child had been placed with relatives, but he was removed from their care after being found to be dependent. The Child was then placed in a foster home. A permanency hearing was scheduled for April 2016, and prior to the hearing the Cabinet filed a report detailing the care and progress of the Child. The Cabinet noted that the Child came into care in June 2015; that services had been offered to the parents but neither had been cooperative; that the Father stated he was not the Child's father; and that the Mother had not had any contact with the Child since October 2015. The Cabinet recommended that the Child remain in its custody and that social services be released from reasonable efforts with the parents. The family court entered a permanency order in the juvenile action on April 22, 2016, setting the permanency plan as adoption and noting that reasonable efforts had been made to prevent the Child's removal from the home and that parents had been offered services but had not been cooperative.

The Cabinet filed a verified petition to involuntarily terminate parental rights to the Child on June 22, 2016. In the petition, the Cabinet alleged that both parents had failed to protect and preserve the Child's fundamental right to a safe and nurturing home, that he was a neglected child as defined by Kentucky Revised Statutes (KRS) 600.020, and that it was in the Child's best interest that parental rights be terminated. The Cabinet went on to allege that the parents had abandoned the Child for more than 90 days, that for not less than six months they had failed to provide the Child with essential care and protection, and failed to provide the Child with essential food, clothing, shelter, medical care, or education for his well-being. The Cabinet stated that the parents had neglected or abused the Child by abandoning him and through their transience, a pattern of substance abuse, and medical neglect. The Cabinet had rendered or offered services to the parents to both rehabilitate and reunite the family, but neither made sufficient efforts or adjustments to permit a return of the Child to their care within a reasonably foreseeable time. The family court appointed separate counsel for each parent as well as a guardian ad litem (GAL) for the Child.

The GAL filed a report on August 6, 2016, detailing her meeting with the Child's foster parents, with whom the Child had lived since he was 17 months old. The foster parents intended to adopt the Child if parental rights were terminated. The Child weighed 14 pounds when the Child was placed with the

foster parents, and they reported that he had made “great physical progress” while in their care. Medical providers suspected that the Child might be displaying symptoms of fetal alcohol syndrome due to his failure to meet developmental milestones. The foster parents had never met or spoken with the Father, and he had never visited with the Child, called to check on him, or provided any financial support. The Mother had supervised visits with the Child at the Cabinet until September when she stopped showing up, and the foster parents had not received any telephone calls from her since then. They had never received any financial support from the Mother. The GAL stated that the Child was well settled and stable with his foster parents and that it would be in his best interest not to be returned to his biological parents and for their parental rights being terminated.

The family court held a termination hearing on November 1, 2016. The Father did not appear at the hearing. Cabinet social worker Phillip Tacker testified first. He had never had any contact with the Father, and he was not aware that the Father had visited with the Child. Related to the Child’s removal from the Mother, Mr. Tacker stated that he had been removed due to substance abuse issues and allegations that the Mother would leave the Child lying flat in a closet where he would cry himself to sleep. The back of his head became flat as a result. The Child was removed due to neglect, and Tacker stated that the Mother had been under the influence of various substances while in a caretaking role with the Child.

A petition was filed based upon neglect. Substance abuse treatment, parenting classes, and counseling services with TAPP were offered to the Mother, but she did not complete the services offered, although she had obtained housing. The Mother last visited with the Child in October 2015, and she had not provided any essentials for the Child. Like the Mother, the Father had not completed any services. The Child had improved in foster care and had begun speaking, but he had been recently diagnosed with reactive attachment disorder and fetal alcohol syndrome.

On cross-examination, Mr. Tacker admitted that substance abuse or the need for substance abuse counseling was not mentioned in the Cabinet's recommendation or in the petition. He also admitted that in the amended juvenile action, the Mother had made a limited admission that she failed to properly supervise the Child or take the Child to the doctor as needed. Mr. Tacker was assigned the case in July 2016. He attempted, unsuccessfully, to contact the Mother once he got the case. By that time, the Cabinet had been released with respect to the Mother. Substance abuse counseling was part of the Mother's case plan, but Mr. Tacker was not aware that the Mother had signed off on that part of the plan.

The Mother testified next. At the time of the hearing, the Mother was twenty-three years old and lived with her brother in a trailer she rented. She worked full-time at Zip Zone Express where she was a cashier earning minimum

wage. She was able to pay her bills, and she had a vehicle to drive. She said she could pass a drug screen and had taken and passed one recently. She denied that she had ever had an issue with alcohol or drugs and was surprised the Cabinet wanted her to complete substance abuse counseling. The Mother said she had changed since July 2015; she had gone from not caring to caring. She admitted that she had made a lot of mistakes in her life, but she had changed. She said she had not made attempts to visit with the Child because she had gotten caught up in her life and her work. She tried to contact her prior social worker at the Cabinet to visit with the Child between October and November of 2015, and then she gave up. The Mother said she never drank and could not explain the Child's diagnosis of fetal alcohol syndrome. She said the Father never tried to help her with the Child at all; she left him while she was still pregnant.

The Mother's brother was the final witness to testify. He was eighteen years old, and he lived with his sister. He worked as a laborer for a construction company. He had lived with his sister on and off for some time. He stated that he had seen a change in her over the past year. He agreed that she had gotten her act together and was in a good place.

On November 16, 2016, the family court entered its findings of fact and conclusions of law as well as a separate order terminating the parental rights of both the Mother and the Father. The court found by clear and convincing evidence

that the Child had been adjudged to be neglected and committed to the Cabinet with a permanency plan of adoption; that the parents had abandoned the Child for not less than 90 days; that the parents had failed to protect the Child's fundamental right to a safe and nurturing home and was therefore a neglected child pursuant to KRS 600.020; that the parents for not less than six months had failed or refused to provide essential parental care and protection for the Child with no expectation of improvement; that the parents failed to provide essential food, clothing, shelter, medical care, or education necessary for the Child's well-being, for reasons other than poverty; that the parents had been offered services by the Cabinet to reunite the family but they had not made efforts or adjustments to permit the Child to return to their care; and that the Child's condition had improved in foster care. The Court concluded that it would be in the Child's best interest to terminate their parental rights. This appeal by the Mother now follows.

Appointed counsel filed a brief on the Mother's behalf pursuant to *Anders v. California*, 386 U.S. 738, 744, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967), indicating that he could not identify any meritorious errors in the family court's findings and conclusions and urging this Court to conduct an independent review of the appellate record to ensure the Mother's rights were protected. While the Mother was served with the *Anders* brief and this Court afforded her sufficient time to file a supplemental *pro se* brief in support of her position that her parental



rights should not be termination, she did not choose to do so. The Cabinet, in its brief that was also adopted by the GAL, argued that the family court's findings were not clearly erroneous and that it did not abuse its discretion in its decision to terminate parental rights. Because only the Mother has appealed from the judgment, we shall confine our review to issues concerning her.

This Court's standard of review in termination of parental rights cases is set forth in *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116-17 (Ky. App. 1998):

The trial court has a great deal of discretion in determining whether the child fits within the abused or neglected category and whether the abuse or neglect warrants termination. *Department for Human Resources v. Moore*, Ky. App., 552 S.W.2d 672, 675 (1977). This Court's standard of review in a termination of parental rights action is confined to the clearly erroneous standard in CR 52.01 based upon clear and convincing evidence, and the findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings. *V.S. v. Commonwealth, Cabinet for Human Resources*, Ky.App., 706 S.W.2d 420, 424 (1986).

“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.” *Rowland v. Holt*, 253 Ky. 718, 726, 70 S.W.2d 5, 9 (1934).

Furthermore, “[t]he findings of the trial judge may not be set aside unless clearly erroneous with due regard being given to the opportunity of the trial judge to

consider the credibility of the witnesses.” *Lawson v. Loid*, 896 S.W.2d 1, 3 (Ky. 1995) (citing Kentucky Rules of Civil Procedure (CR) 52.01; *Cherry v. Cherry*, 634 S.W.2d 423 (Ky. 1982); *Reichle v. Reichle*, 719 S.W.2d 442 (Ky. 1986)).

At the outset, we recognize, and the United States Supreme Court has emphasized, the fundamental nature of the liberty interest natural parents have for the raising of their child. *See Santosky v. Kramer*, 455 U.S. 745, 753-54, 102 S.Ct. 1388, 1394-95, 71 L.Ed.2d 599 (1982). *See also M.E.C. v. Com., Cabinet for Health and Family Services*, 254 S.W.3d 846, 850 (Ky. App. 2008) (“While the state has a compelling interest to protect its youngest citizens, state intervention into the family with the result of permanently severing the relationship between parent and child must be done with utmost caution.”).

Pursuant to CR 52.01, findings of fact “shall not be set aside unless clearly erroneous,” and a reviewing court must afford “due regard . . . to the opportunity of the trial court to judge the credibility of the witnesses.” It has long been held that “when the testimony is conflicting we may not substitute our decision for the judgment of the trial court.” *R.C.R. v. Com. Cabinet for Human Resources*, 988 S.W.2d 36, 39 (Ky. App. 1998) (citing *Wells v. Wells*, 412 S.W.2d 568, 571 (Ky. 1967)).

In KRS 625.090, the General Assembly set forth the elements the Cabinet must establish in order to involuntarily terminate parental rights. The

Cabinet is required to establish by clear and convincing evidence that 1) the child is abused or neglected; 2) termination would be in the child's best interest; and 3) one or more of several listed grounds exists. These grounds are listed in KRS 625.090(2) and include:

- (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 making these findings and in order to determine the best interest of the child, the family court must also consider the factors listed in KRS 625.090(3), which include:

(a) Mental illness as defined by KRS 202A.011(9), or mental retardation as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;

(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.

Finally, KRS 625.090(4) provides that “[i]f 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.”

Our review of the record has uncovered no error or abuse of discretion by the family court in its decision to terminate the Mother’s parental rights. In its findings of fact, the family court found that the Cabinet had proven by clear and

convincing evidence that several grounds existed, including that the Mother had neglected the Child and had abandoned him for more than six months. The evidence established that she had not had a visit with him for one year at the time of the hearing and that the Child had been in foster care for twenty-three months. The evidence also established that the Mother had failed to provide parental care and protection for the Child as well as any essential food, clothing, shelter, or medical care. For these reasons and because the Mother failed to comply with her case plan, other than finding housing, the family court was well within its discretion in concluding that there was no reasonable expectation that she would significantly improve her parental conduct in the foreseeable future and that it was in the Child's best interest that her parental rights be terminated. As the Cabinet pointed out in its brief, while the Mother expressed remorse for her decisions and said that she cared for the Child at the hearing, the fact remains that she essentially abandoned her child, left him in foster care, and failed to provide essential parental care or the necessities of life for him. Having considered the record, we must agree with the Cabinet that the evidence supports the family court's findings, and we cannot identify any abuse of discretion in the decision to terminate the Mother's parental rights.

For the foregoing reasons, the order terminating the Mother's parental rights to the Child is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

A. David Blankenship  
Paintsville, Kentucky

BRIEF FOR APPELLEE, CABINET  
FOR HEALTH AND FAMILY  
SERVICES:

David T. Adams  
Paintsville, Kentucky