

RENDERED: AUGUST 17, 2018; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2017-CA-000586-ME

J.A.

APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT  
FAMILY COURT DIVISION  
v. HONORABLE TIMOTHY NEIL PHILPOT, JUDGE  
ACTION NO. 16-AD-00115

CABINET FOR HEALTH AND  
FAMILY SERVICES; AND  
J.D.F.A., A MINOR CHILD

APPELLEES

AND

NO. 2017-CA-000587-ME

J.A.

APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT  
FAMILY COURT DIVISION  
v. HONORABLE TIMOTHY NEIL PHILPOT, JUDGE  
ACTION NO. 16-AD-00116

CABINET FOR HEALTH AND  
FAMILY SERVICES; AND  
J.A., A MINOR CHILD

APPELLEES

AND

NO. 2017-CA-000588-ME

J.A.

APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT  
FAMILY COURT DIVISION  
v. HONORABLE TIMOTHY NEIL PHILPOT, JUDGE  
ACTION NO. 16-AD-00117

CABINET FOR HEALTH AND  
FAMILY SERVICES; AND  
R.A., A MINOR CHILD

APPELLEES

AND

NO. 2017-CA-000589-ME

J.A.

APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT  
FAMILY COURT DIVISION  
v. HONORABLE TIMOTHY NEIL PHILPOT, JUDGE  
ACTION NO. 16-AD-00119

CABINET FOR HEALTH AND  
FAMILY SERVICES; AND  
A.A., A MINOR CHILD

APPELLEES

AND

NO. 2017-CA-000590-ME

J.A.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT  
FAMILY COURT DIVISION  
HONORABLE TIMOTHY NEIL PHILPOT, JUDGE  
ACTION NO. 16-AD-00120

CABINET FOR HEALTH AND  
FAMILY SERVICES; AND  
G.A., A MINOR CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: MAZE, TAYLOR, AND THOMPSON, JUDGES.

TAYLOR, JUDGE: J.A. appeals five separate orders entered on March 7, 2017, by the Fayette Circuit Court, Family Division, terminating his parental rights to five minor children. Although each child is the subject of a separate appeal, the appeals involve identical issues, so for judicial economy we have considered the

appeals together and will address all five appeals in this opinion. For the reasons stated, we affirm all five appeals.

In these appeals, J.A. does not raise any factual disputes regarding the termination proceedings below. Rather, on appeal, he raises two nonevidentiary issues: first, he argues that the family court's failure to issue written findings of fact and conclusions of law within thirty days after the evidentiary hearing, as required by Kentucky Revised Statutes (KRS) 625.090(6), invalidates the family court's termination order; and second, that the family court erred by conducting the final termination hearing in his absence.

Normally, our standard of review in termination of parental rights proceedings is based upon the clearly erroneous standard set out in Kentucky Rules of Civil Procedure (CR) 52.01. Therein, the findings of a trial court must be based on clear and convincing evidence and normally those findings will not be disturbed unless there is lacking substantial evidence in the record to support those findings. *V.S. v. Commonwealth, Cabinet for Human Res.*, 706 S.W.2d 420 (Ky. App. 1986); *see also Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658 (Ky. 2010).

However, the issues raised in these appeals look solely to issues of law, including the family court's application of the law to the undisputed facts

below. Accordingly, our review is *de novo*. *S.B.B. v. J.W.B.*, 304 S.W.3d 712 (Ky. App. 2010); *Glodo v. Evans*, 474 S.W.3d 550 (Ky. App. 2015).

We will now address the two legal issues raised by J.A. in these appeals as set out in J.A.'s briefs. The family court conducted a final termination hearing as to all five children on January 6, 2017.<sup>1</sup> At the conclusion of the evidentiary hearing, the family court announced verbally that the court found the allegations in the petition to be true and the Cabinet had met its burden under KRS Chapter 625, sufficient to warrant a judgment to terminate J.A.'s parental rights. The court indicated orders would be forthcoming. However, the family court did not issue its written findings and termination orders until March 7, 2017, sixty days after the hearing. The family court made extensive findings of fact in support of its termination order in each case. The crux of J.A.'s argument on appeal does not address the court's findings, but rather that the family court violated KRS 625.090(6) causing him "undue delay and prejudice" as concerns his right to appeal. We disagree.

KRS 625.090(6) reads as follows:

(6) Upon the conclusion of proof and argument of counsel, the Circuit Court shall enter findings of fact, conclusions of law, and a decision as to each parent-respondent within thirty (30) days either:

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<sup>1</sup> The evidentiary hearing was originally set for November 2016.

- (a) Terminating the right of the parent; or
- (b) Dismissing the petition and stating whether the child shall be returned to the parent or shall remain in the custody of the state.

Upon entry of the family court's order terminating J.A.'s parental rights in each case, J.A. timely appealed each order on April 5, 2017. However, J.A. did not raise the tardiness issue before the family court before filing his appeals, and thus it is unpreserved below for our review. Where an appellant fails to raise an issue before the circuit court, he may not present it for the first time on appeal. *Jones v. Commonwealth*, 239 S.W.3d 575 (Ky. App. 2007). Nonetheless, pursuant to CR 61.02, this Court has thoroughly reviewed the record in each of these appeals. In each case, as noted, the family court made extensive and detailed findings of fact and conclusions of law which stand unrefuted in the record on appeal, all of which we conclude are in compliance with the requirements of KRS Chapter 625.

The main authority relied upon by J.A. in these appeals is *K.M.J. v. Cabinet for Health and Family Services*, 503 S.W.3d 193 (Ky. App. 2016). However, *K.M.J.* is readily distinguishable from these cases now before this Court. In *K.M.J.*, the court deferred ruling on a petition for termination of parental rights for nearly fourteen months, during which time the court even conducted additional hearings based on the original petition. *Id.* at 195-96. The Court of Appeals held in *K.M.J.* that the trial court erred by indefinitely keeping the case in limbo, after

the termination hearing, which it concluded was a violation of KRS 625.090(6). *Id.* at 197. That did not occur in these appeals. Other than the bare allegation of prejudice asserted, J.A. has failed to demonstrate or establish on appeal how he has been prejudiced by the thirty-day delay in entry of the termination orders. More importantly, he failed to raise this issue by post-trial motion with the family court. J.A.'s counsel knew on January 6, 2017, at the conclusion of the evidentiary hearings in each case, that the Cabinet had met its burden of proof to terminate J.A.'s parental rights. The family court announced judgment on the record, stating that orders would be forthcoming. Upon entry of the termination orders, rather than file a post-trial motion, J.A. timely appealed each case. As noted, this Court has, pursuant to CR 61.02, made an extensive review of the record below for each appeal. We conclude that any error arising from the timeliness of entry of the orders terminating J.A.'s parental rights was harmless and otherwise did not violate or affect J.A.'s substantial rights in these appeals. *See* CR 61.01. If anything, J.A.'s substantial rights have been protected by this Court's review.

The second issue raised in this appeal looks to J.A.'s failure to appear in person at the evidentiary hearing on January 6, 2017. Again, this issue was not preserved below, but we have reviewed the same under the palpable error standard set out in CR 61.02. J.A. was represented by counsel and had notice of when the evidentiary hearings were scheduled. In fact, the hearing had been rescheduled

from November of 2016. J.A. had adequate time to prepare with counsel and has given no excuse or explanation why he failed to appear. Without such a justification, the family court could presume his failure to appear was nothing more than an attempt to delay the hearings. As noted, J.A.'s counsel was present at the hearings and failed to object to the proceeding going forward or otherwise request a continuance. In fact, counsel for J.A. indicated the case should go forward given that all of the witnesses were present.

Again, J.A. has failed to establish how he was prejudiced by not appearing at the hearing. His counsel cross-examined all of the Cabinet's witnesses and was given the opportunity to present evidence. There is nothing in the record to establish how J.A.'s presence would have affected the outcome of the proceeding given the evidence presented. And more importantly, J.A. failed to file any post-hearing motions or even attempt to submit an affidavit to support this argument. In other words, there is nothing in the record on appeal before this Court that explains why J.A. failed to appear or how he was prejudiced.

Accordingly, we conclude that no manifest injustice has arisen from J.A.'s failure to appear at the termination hearing as scheduled when his counsel was present and actually participated in the hearing. And, J.A. otherwise has not explained why he failed to appear or how he was prejudiced thereby.



For the foregoing reasons, the termination orders entered by the Fayette Circuit Court, Family Court Division, are affirmed.

MAZE, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

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