

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2017-CA-000612-ME

L.M.C.

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE TRACI H. BRISLIN, JUDGE  
ACTION NO. 16-AD-00177

CABINET FOR HEALTH AND FAMILY SERVICES,  
COMMONWEALTH OF KENTUCKY;  
AND Q.C., A CHILD

APPELLEES

AND

NO. 2017-CA-000613-ME

L.M.C.

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE TRACI H. BRISLIN, JUDGE  
ACTION NO. 16-AD-00179

CABINET FOR HEALTH AND FAMILY SERVICES,  
COMMONWEALTH OF KENTUCKY;  
AND D.T., A CHILD

APPELLEES

AND

NO. 2017-CA-000614-ME

L.M.C.

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT  
HONORABLE TRACI H. BRISLIN, JUDGE  
ACTION NO. 16-AD-00180

CABINET FOR HEALTH AND FAMILY SERVICES,  
COMMONWEALTH OF KENTUCKY;  
AND K.C., A CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, CLAYTON, AND J. LAMBERT, JUDGES.

CLAYTON, JUDGE: L.M.C., the mother of D.T., K.C. and Q.C., appeals the Fayette Family Court's judgment terminating the parental rights to the three children in three separate cases, which have been consolidated for the purposes of this appeal.

After careful consideration of the record and the arguments, we affirm.

## BACKGROUND

L.M.C. is the mother of three sons: D.T. (date of birth - 6/20/2000); K.C. (date of birth – 4/23/2001), and Q.C. (date of birth – 4/18/2009). On June 13, 2016, the Commonwealth of Kentucky, Cabinet for Health and Family Services (hereinafter “the Cabinet”), filed a petition against L.M.C. and the fathers of the boys for the termination of their parental rights.

A trial was held on February 16, 2017. At the trial, the following people testified for the Cabinet: Cynthia Ready, social worker for the case from September 2015 until November 2016; Rhonda Armijo, the ongoing social worker; and, Greg Simoneschi of New Hope Foster Homes, who is the case manager for this case. The mother testified on her own behalf.

Based on the evidence and the testimony at trial, the facts of this case are as follows. The family first became involved with the Cabinet in October 2009. A report was made to the Cabinet because D.T. did not have proper medication for his asthma and allergies at school. At that time, the Cabinet requested that the mother and the maternal grandmother, who lived in the home, to have drug screens, which they refused. The Cabinet then filed “non-removal” petitions, services were offered, and the mother participated in the services. The case was closed in February 2010.

Next, in February 2015, the Cabinet received another referral regarding the family. D.T. and the mother had been in an argument about a cell phone, and the mother punched him in the face. Additionally, it was alleged that D.T. was selling marijuana for his mother. The mother was asked to take a drug screen but failed to go and also missed a scheduled home visit. Again, the Cabinet filed “non-removal” petitions. Ultimately, the family court found the children to be neglected on April 8, 2015.

A case plan was developed for the family that required the children to attend school without any unexcused absences or tardies, that the mother complete a substance abuse treatment plan with the Target Assessment Program (hereinafter “TAP”), cooperate with in-home services, and participate in drug screens. The Cabinet paid for the drug screens, provided referrals to community partners, offered case plans, and made home visits to help the mother.

Nonetheless, the boys continued to miss school. Further, the mother missed so many appointments with TAP that those services were discontinued. She also tested positive for cocaine. When the mother refused to get a drug screen again, an emergency protective order was issued on August 6, 2015. On August 19, 2015, the family court made another neglect finding, and the children were committed to the Cabinet on October 29, 2015.

The boys entered the New Hope Foster Homes' program, and have had the same caseworker, Greg Simoneschi, since they became a part of this program. Mr. Simoneschi said that the boys have greatly improved during their time in foster care although they still have additional work to do. All three children are in counseling at New Hope.

While participating in the New Hope program, the boys have had the same foster parents, who are willing to adopt them. Mr. Simoneschi believed that the boys were bonded to the foster family. And the foster mother appears willing to allow the children continued contact with their mother if the foster family adopts them.

The boys have experienced some behavioral issues since entering foster care. D.T. experimented with marijuana and was caught sneaking a teen-age girl into the foster home. Initially, the foster mother gave the Cabinet a two-week notice to remove D.T. but later rescinded the request. Q.C. was caught shoplifting, but Q.C.'s grades have improved, and he has no negative behavior at school. K.C.'s school was working with the foster program to have him tested for attention deficit disorder, but his behavior at school was improving and his grades were getting better. K.C. had some problems sharing at school but is working with the foster mother on these issues.

The mother has not made any effort to see the children since August 2016; however, she does not have reliable transportation and has stayed in phone contact with the children. Further, it was noted that the boys were bonded to their mother.

After the children were removed from the home, the mother was given another case plan. She was to complete a substance abuse assessment, follow the recommendations after the assessment, complete a psychosocial evaluation, complete parenting classes, and participate in drug screens as required. Visits with the children were scheduled for every other week, but, as noted, this requirement was not strictly kept as the children were a couple of hours away.

During the time when Ms. Ready was the caseworker, the mother did not make any progress on her case plan. She was discharged from TAP for non-compliance and did not complete any other assessments. Further, the mother did not complete any drug screens from August 2015 through January 2016. When the mother completed drug screens in February 2016, April 2016, and twice in August 2016, she was positive for marijuana and cocaine in April 2016. Eventually, the permanency goal for the children was changed to adoption.

When the new caseworker, Ms. Armijo, met with the mother, the mother expressed a desire to work the case plan. She had completed a 12-hour online substance abuse class and was working at Toyota. Still, the mother was not

regularly getting drug screens. The last drug screen had been in August 2016. She received a new order in December 2016 to have a drug screen twice a week. The mother tested clean twice in December 2016 but had not tested since then. Furthermore, the mother did not provide proof that she completed the psychosocial assessment or attended parenting classes.

At the trial, Ms. Armijo testified that the parents have failed or refused to provide essential care for the children for a period of six months; that for reasons other than poverty alone, the parents had been substantially incapable of providing essential care including food, shelter, medical care, or education; that there is no reasonable expectation of improvement in the parent given the ages of the children; that more services would not likely yield a change in result; that the boys would continue to be neglected if returned home; and, that the Cabinet had adequate resources to care for each child.

Ms. Armijo believed that it would be in the best interests of the children for termination to occur since the boys had been improving while in foster care, and the foster parents were providing security and stability. She also pointed out that the mother's substance abuse was still a concern and that the mother had been unable to follow through on her case plans.

The mother testified at the trial that besides her three sons, she has another son who lives with his father in Ohio. Currently, she lives in Lexington

with her boyfriend and his daughter. The mother admitted that she had not followed her case plan. However, she believed that the completion of the on-line 12-hour substance abuse treatment classes was sufficient for dealing with the substance abuse. Nonetheless, the mother admitted that she had tested positive for cocaine multiple times. The mother also explained that the reason she missed some drug screens was for medical reasons and lack of transportation. Finally, she denied that the children missed school while in her care and that she failed to keep medicine for D.T.'s allergies and asthma.

After the trial, the family court entered findings of fact, conclusions of law, and judgments terminating the parents' rights to the children. The mother now appeals from these judgments.

#### STANDARD OF REVIEW

A trial court is granted broad discretion in determining whether a child fits within the abused or neglected category and whether such abuse or neglect warrants termination. *W.A. v. Cabinet for Health and Family Services*, 275 S.W.3d 214, 219 (Ky. App. 2008). An appellate court will set aside a family court's decision to terminate a person's parental rights, only if a clear error is found to have occurred. And our review is confined to the clearly erroneous standard in Kentucky Rule of Civil Procedure (CR) 52.01. *Id.* (citations omitted).



Findings of fact are clearly erroneous only if there exists no substantial evidence in the record to support them. *Yates v. Wilson*, 339 S.W.2d 458 (Ky. 1960). Further, the decision of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings. *W.A.*, 275 S.W.3d at 219. “Substantial evidence has been conclusively defined by Kentucky courts as that which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person.” *Bowling v. Natural Resources & Environmental Protection Cabinet*, 891 S.W.2d 406, 409 (Ky. App. 1994).

The standard of proof necessary to support the termination of parental rights is clear and convincing. *V.S. v. Commonwealth of Kentucky, Cabinet for Human Resources*, 706 S.W.2d 420, 423 (Ky. App. 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, 70 S.W.2d 5, 9 (1934).

With these standards in mind, we turn to the case at bar.

#### ANALYSIS

In Kentucky, the involuntary termination of parental rights is governed by Kentucky Revised Statutes (KRS) 625.090. Under the statute,

termination of parental rights is proper upon satisfaction of a three-pronged test. Further, to terminate a party's parental rights, the three-part test of KRS 625.090 must be satisfied by clear and convincing evidence. First, the child must have been "abused or neglected" within the meaning of KRS 600.020. KRS 625.090(1)(a). Second, the family court must find at least one ground of parental unfitness in KRS 625.090(2). Finally, the family court must find that it is in the best interest of the child that parental rights be terminated. KRS 625.090(3).

Regarding the first prong, that it has been determined that the children were "abused or neglected" under KRS 600.020, the family court had previously adjudged the children to be neglected multiple times including on April 8, 2015, and August 19, 2015, in the underlying juvenile cases.

Next, in the matter at hand, the family court determined that grounds for termination of the mother's parental rights existed under KRS 625.090(2)(e), KRS 625.090(2)(g), and KRS 625.090(2)(j). First, the mother has failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the children, and there is no reasonable expectation of improvement in parental care and protection, considering the ages of the children. KRS 625.090(2)(e).

And the mother, for reasons other than poverty alone, has also failed to provide or has been incapable of providing essential food, clothing, shelter,

medical care, or education reasonably necessary and available for the children's well-being and that there is no reasonable expectation of significant improvement in the immediately foreseeable future, considering the ages of the children. KRS 625.090(2)(j).

Lastly, the family court in its judgments noted that based on the mother's failure to change her circumstances, conduct, or conditions and the children's thriving in the foster home, it is in the children's best interest for the mother's parental rights to be terminated. KRS 625.090(3).

Here, the mother claims that the family court failed to adequately consider the emotional and mental health of the children, and therefore, substantial evidence did not support that the children's best interest were met by terminating the mother's parental rights. KRS 625.090(3)(e). The mother points out that the findings of fact and judgments do not address that the children had exhibited behavior problems since going into the care of the Cabinet. She lists the children's separation anxiety, K.C.'s bullying behavior and possible attention deficit disorder, Q.C.'s shoplifting, and D.T.'s shoplifting, marijuana use, and being run off from a neighbor's home. Further, the mother stated that the boys were in counseling. The mother alleges that the family court did not make individualized findings of fact and conclusions of law to support its conclusions. But we disagree.

To begin, the mother's argument that the boys' negative behaviors were the result of going into foster care is not persuasive. Prior to the children going into foster care, evidence was provided, among other things, that the mother neglected D.T.'s medical needs; failed to get the children to school; used drugs; and, had a physical altercation with her oldest son, who allegedly was selling marijuana. After the boys' removal, she did not follow her case plan with the Cabinet. She did not show up for some drug screens and did not pass some other drug screens. Moreover, the mother only participated in a 12-hour online substance abuse course and never finished drug treatment. Nor did she complete a psychosocial assessment or parenting classes. Indeed, the family court mentions throughout the judgments and findings that the mother has failed to meet the Cabinet's requirements to retain the parental rights to the children.

Given the children's background, it is impossible to ascertain the source of their behavioral difficulties. At risk children, with tenuous and neglected backgrounds, often act out and experience emotional and behavioral difficulties throughout their childhood and adolescence. Further, foster care is stressful even if successful. In addition, the mother neglects to mention the improvement that the boys made in school and otherwise while in foster care. It is telling, too, that while the children have been in foster care for some time, notwithstanding the mother's phone contact, she has not seen them in over a year. Therefore, no definitive

evidence was provided demonstrating that foster care solely caused the children's negative behavior.

Lastly, the foster parents' willingness to work with the children's disciplinary problems supports that the children's best interest is met by having the mother's parental rights terminated. They gave D.T. a second chance, helped K.T. be evaluated for attention deficit disorder, addressed Q.T.'s negative behaviors, and desire to adopt the boys. These actions are a powerful indication that the boys remaining with them is in the children's best interests.

Consequently, the mother has not established that the family court failed to adequately consider the emotional and mental needs of these children or erred in its assessment that the children's best interests are served by the termination of parental rights. The Cabinet provided substantial evidence to support that the children's best interests are served by the termination.

#### CONCLUSION

Accordingly, the family court did not err in terminating the mother's parental rights to the three children, and we affirm the February 28, 2017, judgments of the Fayette Family Court terminating L.M.C.'s parental rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

G. Scott Hayworth  
Lexington, Kentucky

BRIEFS FOR APPELLEES:

Tiffany L. Yahr  
Assistant Counsel  
Cabinet for Health & Family Services  
Lexington, Kentucky