

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

NO. 2019-CA-000230-ME

R.M.J.

APPELLANT

v.

APPEAL FROM CHRISTIAN CIRCUIT COURT  
HONORABLE JASON S. FLEMING, JUDGE  
ACTION NO. 18-AD-00033

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

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; ACREE AND MAZE, JUDGES.

MAZE, JUDGE: R.M.J. (“Mother”) appeals the Christian Circuit Court’s order terminating her parental rights to her child, E.J.L.J. For reasons stated below, we affirm.

Mother has a history with the Cabinet for Health and Family Services

("the Cabinet") that precedes the events of this case. Since 2014, Mother has had an open case with the Cabinet following dependency, neglect, and abuse cases involving her other children. E.J.L.J., Mother's youngest child, was born on February 22, 2017, at Vanderbilt Hospital in Nashville, Tennessee. E.J.L.J. weighed only two pounds, nine ounces and was diagnosed with intrauterine growth restriction. The child also suffered from caffeine and nicotine withdrawal. The Cabinet then sought an emergency custody order after receiving an anonymous tip that Mother fled to Tennessee to hide E.J.L.J. from the Cabinet.<sup>1</sup> A temporary removal hearing was held two days later. Mother testified positive for synthetic marijuana, and E.J.L.J. was removed from Mother's care and placed with the Cabinet.

The Cabinet created a ten-day case plan for Mother following the removal hearing. Mother did not take any action on that plan or keep in contact with the Cabinet. When Mother finally arrived at the Cabinet's local office in April 2017, she was arrested. Although incarcerated at the time, an adjudication hearing was held in July 2017, and Mother stipulated to dependency. The Cabinet's subsequent disposition report changed the custody goal for E.J.L.J. to adoption and termination of parental rights, with a concurrent goal of reunification.

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<sup>1</sup> This allegation was proven to be unfounded. Mother was referred to Vanderbilt Hospital by her physician.

In February 2018, Mother was released from jail. Soon afterwards, Mother and her attorney went to the Cabinet's office to set up a case plan. Sharon Washington, the social worker assigned to Mother's case, provided Mother a handwritten case plan setting out tasks Mother should seek to accomplish. These tasks included seeking long-term drug treatment, seeking mental health treatment, living a drug-free life, and maintaining contact with the Cabinet until its "TPR" (termination of parental rights) action was resolved. Washington also informed Mother that the Cabinet would not engage in further reunification efforts but advised Mother to complete the tasks in the case plan for her own well-being. It is undisputed that Mother took no action to complete the tasks in this plan.

In April 2018, the Cabinet petitioned to terminate Mother's parental rights to E.J.L.J. Washington was the only witness called at the subsequent hearing, and she testified to the above facts. Mother was provided notice of the hearing but did not appear. The trial court then entered written findings of fact and conclusions of law finding the Cabinet had proven by clear and convincing evidence grounds to terminate Mother's parental rights and doing so would be in E.J.L.J.'s best interests. This appeal follows.

KRS<sup>2</sup> 625.090 provides that parental rights may be involuntarily

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<sup>2</sup> Kentucky Revised Statutes.

terminated only if the court finds by clear and convincing evidence that (1) the child is abused or neglected, as defined under KRS 600.020; (2) the existence of one or more of the ten statutory grounds for termination; and (3) termination is in the child's best interests. The trial court must consider the following factors when determining the best interests of the child:

- (a) Mental illness as defined by KRS 202A.011(9), or an intellectual disability 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.

KRS 625.090(3). Mother's only challenge to the termination of her parental rights is that the Cabinet did not make reasonable efforts to reunite her with E.J.L.J. Reasonable efforts are defined as "the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community in accordance with the state plan for Public Law 96-272 which are necessary to enable the child to safely live at home[.]" KRS 620.020(11).

For the sake of argument, we will assume the Cabinet's reunification efforts after Mother's arrest were insufficient. However, the Cabinet had previously created a case plan following the temporary removal hearing. Mother took no action to accomplish any tasks on that plan. Under the circumstances, there were grounds to believe additional reunification efforts would have been futile. Regardless, whether the Cabinet made reasonable efforts to reunite E.J.L.J. with Mother is only one factor to consider when determining the best interests of the child. Mother has not disputed the trial court's finding that she abused and neglected her other children, leading to the termination of her parental rights to those children; that Mother had not corrected the behavior that caused those terminations, including behavior that allowed at least one other child to be sexually abused; Mother made no effort to accomplish any task on either of her case plans

or even shown an interest in completing a case plan; Mother has an untreated drug history; E.J.L.J. has special medical needs; Mother never provided any parental care or support for E.J.L.J.; and that Mother had seen E.J.L.J. only once and never inquired about the child's health. The trial court's finding that the Cabinet had satisfied the three-prong test for terminating Mother's parental rights was supported by sufficient evidence. Thus, there are no grounds to disturb the trial court's order.

However, we do express concern with the Cabinet's seemingly flippant attitude towards its duty to provide reunification services following Mother's release from prison. This case is extraordinary in how heavily the other factors weigh in favor of termination. Our review would likely have been very different had Mother's history evidenced any desire to follow a case plan. If the trial court's decision had been a closer call, the Cabinet's approach to reunification would have likely required reversal. Such an outcome would only cause more uncertainty and harm to the children in the Cabinet's custody. We urge the Cabinet to be more careful in the future.

The order of the Christian Circuit Court is affirmed.

CLAYTON, CHIEF JUDGE, AND ACREE, JUDGE, CONCUR IN  
RESULT ONLY.

**BRIEFS FOR APPELLANT:**

James G. Adams III  
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**BRIEF FOR APPELLEE:**

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