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Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000534-ME

N.M.P.

APPELLANT

APPEAL FROM TRIMBLE CIRCUIT COURT, FAMILY DIVISION
v. HONORABLE DOREEN S. GOODWIN, JUDGE
ACTION NO. 18-AD-00003

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

APPELLEES

AND NO. 2019-CA-000535-ME

N.M.P.

APPELLANT

APPEAL FROM TRIMBLE CIRCUIT COURT, FAMILY DIVISION
v. HONORABLE DOREEN S. GOODWIN, JUDGE
ACTION NO. 18-AD-00004

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

APPELLEES

AND NO. 2019-CA-000536-ME

N.M.P.

APPELLANT

v. APPEAL FROM TRIMBLE CIRCUIT COURT, FAMILY DIVISION
HONORABLE DOREEN S. GOODWIN, JUDGE
ACTION NO. 18-AD-00005

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
AND J.M.P., A MINOR CHILD

APPELLEES

AND NO. 2019-CA-000537-ME

N.M.P.

APPELLANT

v. APPEAL FROM TRIMBLE CIRCUIT COURT, FAMILY DIVISION
HONORABLE DOREEN S. GOODWIN, JUDGE
ACTION NO. 18-AD-00006

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
AND M.M.P., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** **

BEFORE: JONES, KRAMER, AND TAYLOR, JUDGES.

KRAMER, JUDGE: N.M.P. (“Mother”) appeals four March 8, 2019 orders of the Trimble Circuit Court, Family Division, involuntarily terminating her parental rights regarding four of her children,¹ appellees J.M.P., L.A.P., M.M.P., and A.T.P.² The appeals have been consolidated for purposes of appellate review.

Mother does not contest the evidence underlying the circuit court’s predicate findings that her children were neglected within the meaning of Kentucky Revised Statute (KRS) 600.020(1). Rather, she argues that her parental rights should not have been terminated because, in her view, she adduced a preponderance of evidence demonstrating she will not continue to neglect her children. Specifically, she blames much of her inability to properly care for the children on A.Q.P. (“Father”), the children’s father and her late husband; and, as

¹ Mother has a fifth child, A.C.P., but voluntarily relinquished her rights regarding her fifth child on February 14, 2017. A.C.P. is not a party to these proceedings.

² Because minor children are involved, we refer to parties by their initials.

stated in her brief, she asserts that the “barrier between [herself] and her children disappeared with his death,” which occurred on or about August 19, 2018. Upon review, we affirm.

Mother and Father were married in 2005; their minor children J.M.P., M.M.P., A.T.P., and L.A.P. were respectively born in 2006, 2008, 2009, and 2011. This family has had a longstanding and well-documented history with the Cabinet for Health and Family Services due to several reports of neglect, domestic violence, and substance abuse from 2009 through 2017. In its brief before this Court, the Cabinet accurately summarizes that history as follows:

The Cabinet filed its first petition with the court on April 14, 2011, due to concerns of domestic violence between the parents, as well as [Mother] having an outstanding warrant for her arrest. This petition only involved the three (3) older children because L.A.P. was not yet born. However, there were also concerns that [Mother] was abusing substances while pregnant. The trial court placed the children in foster care based on the allegations in the petition. On May 24, 2011, J.M.P., M.M.P., and A.T.P. were found to be neglected based on [Mother] testing positive for illegal substances while in a caretaking role of the children and pregnant.

Soon thereafter, L.A.P. was born and placed with a relative on September 26, 2011, due to the parents’ lack of housing and [Mother’s] failure to follow through with prenatal care for the child. The trial court found L.A.P. to be a neglected child on November 8, 2011, because L.A.P. tested positive for marijuana at birth and [Mother] failed to cooperate in services. [Mother] was ordered to complete drug screens, a parenting assessment, domestic violence assessment, and find stable housing.

Eventually, [Mother] completed all case planning services and the children were returned to her custody on June 4, 2013.

Less than a year later, the Cabinet filed another petition on May 2, 2014, regarding a lack of supervision and alleged drug use around the children. The children remained with the parents, and the court dismissed this petition on July 1, 2014. However, on July 21, 2014, [Mother] was charged with three (3) counts of possession of a controlled substance. She was sentenced to a twelve (12) month diversion program, where she completed substance abuse treatment and the criminal case was dismissed.

Prior to the Cabinet's next involvement with the family, [Mother] ended her relationship with [Father] and began dating T.L. [Mother] had also moved to Alabama with T.L., and reported to the Cabinet that she fled Kentucky to get away from [Father] and the domestic violence. In July 2015, [Mother] returned to Kentucky and a domestic violence incident occurred between her and [Father]. The children were present and M.M.P. was hurt during the altercation. Both parents were arrested and [Mother] was charged and convicted of Assault 4th degree. On July 22, 2015, [Mother] was released from jail on the condition that she have no contact with the victim, [Father]. Ms. Kolb³ testified that [Mother] returned to Kentucky in October 2015 and reconciled her relationship with [Father] for a week, in direct violation of her release conditions. On October 13, 2015, she was sentenced to serve ninety (90) days conditionally discharged for two (2) years on the condition that she complete domestic violence offender treatment, have no unlawful contact with the victim, and follow all family court orders. [Mother] failed to appear or provide proof

³ Jessie Kolb, who offered extensive testimony regarding this matter during the termination proceedings, was at all relevant times a social service worker with the Trimble County Office of the Department for Community Based Services.

to the court of her domestic violence offender treatment, and a bench warrant was issued on January 5, 2016. [Mother] waited until October 8, 2018 to resolve this warrant.

The Cabinet also filed its third dependency petition on July 22, 2015, as a result of the domestic violence incident. The children were originally placed with an aunt, but she was unable to keep the children long term. During the temporary removal hearing on July 24, 2015, the court placed the children in foster care and ordered an expedited ICPC home evaluation for [Mother's] home in Alabama. On August 12, 2015, the trial court adjudicated the children as dependent and placed J.M.P. and M.M.P. in the joint custody of [Mother] and a family friend. The two (2) younger children remained in foster care.

On September 22, 2015, the Cabinet was contacted by Alabama DHR to come retrieve J.M.P. and M.M.P. because the ICPC home evaluation was denied. The reasons for the denial included [Mother's] paramour, T.L., testing positive for heroin, as well as the family all sharing one (1) bedroom. The Cabinet obtained emergency custody of J.M.P. and M.M.P. and placed the girls in the same foster home as their siblings. [Mother] reported to the Cabinet that she intended to stay in Alabama and her desire for the three (3) girls to be placed with her.

The Cabinet developed a case plan with [Mother], similar to her prior case plans, which included submitting to random drug screens, completing a substance abuse and domestic violence assessment, maintaining stable housing and employment, providing paycheck stubs and a budget, and complying with the ICPC process. [Mother] did not complete her case plan, and had also been arrested again in December 2015 for stealing. On January 13, 2016, the court placed the children in [Father's] custody due to his compliance with the case

plan. All prior orders related to [Mother] remained in effect and she remained in Alabama.

On May 24, 2017, the Cabinet filed another petition related to concerns of [Father's] substance abuse and the children were placed into foster care. The Cabinet contacted [Mother] about the children's removal and she admitted she had not had regular contact with the children while [Father] had custody. The Cabinet worker developed a case plan with [Mother] via telephone in June 2017. Ms. Kolb testified this plan was virtually the same case plan [Mother] had previously in 2015. Again, this plan included the following tasks:

- 1) [Mother] will provide stable housing and document through a signed lease, phone numbers and addresses;
- 2) [Mother] will provide stable employment and document through pay stubs;
- 3) [Mother] will document stability for the children by providing a detailed budget and a list of schools, medical providers, therapists, and potential caregivers;
- 4) [Mother] will comply with the ICPC process;
- 5) [Mother] will address her substance abuse by completing a substance abuse assessment, submit to random drug screens, continue to comply with her Suboxone treatment and sign a release of information;
- 6) [Mother] will complete a domestic violence assessment;
- 7) [Mother] will comply with all court orders.

Ms. Kolb testified that [Mother] has not complied with the substance abuse or domestic violence assessment, the ICPC process, or all court orders. She has also failed to submit adequate proof of employment, even though Ms. Kolb testified [Mother] could send her a picture of her

paychecks. Furthermore, [Mother] has not physically seen her children since June 15, 2017. She was participating in phone calls with the children until the phone calls became inconsistent in November 2017. At the recommendation of the children's therapist, phone contact ended in March 2018.

The other outstanding concern was T.L.'s substance abuse. The ICPC was denied on September 22, 2015, after T.L. tested positive for heroin. [Mother] had reported T.L. was attending a medically assisted treatment clinic, the Fritz Clinic, with her. On November 16, 2015, the Cabinet contacted the Fritz Clinic to request records for T.L., but the clinic had no records for T.L. Ms. Kolb testified that she also attempted to obtain T.L.'s records from the Fritz Clinic by mailing a release of information to [Mother] twice and emailing her the release once. Ms. Kolb did not receive a signed release until the day of trial. Moreover, [Mother] never reported to Ms. Kolb that T.L. had a release of information on file at the clinic. Therefore, Ms. Kolb testified that the Cabinet was unable to resubmit an ICPC home study because the original issues of the denied ICPC were not adequately addressed. Due to the lack of progress, the Cabinet filed a petition for involuntary termination of parental rights on July 13, 2018.

(Internal record citations omitted.)

During the January 24, 2019 trial regarding the Cabinet's petition, Mother's arguments against the termination of her parental rights focused upon some of the improvements she had made to her life since leaving Father and taking up residence in Alabama. She emphasized that in October 2018, she had finally submitted to the Cabinet a land contract for a house and provided social workers with a video tour of her new residence, as proof of stable housing; letters from

employers, as proof of stable employment; and a list of schools and medical providers, as proof supporting stability for the children. She had also provided the Cabinet with a signed release regarding her substance abuse treatment records.

Likewise, Mother blamed much of her inconsistent contact with the children for the past three years upon Father. She testified that when she left him to live in Alabama, she had done so with nothing but a bag of clothes in her possession; and that after she had left, Father had prevented her from communicating with the children and had manipulated the children to coerce her to return to Kentucky. She argued that because Father had passed away on August 19, 2018, there was no longer any barrier between herself and her children, nor any further risk to the children of being exposed to domestic violence.

However, after considering the evidence and history of this matter outlined above, the circuit court entered findings of fact, conclusions of law, and an order ultimately granting the Cabinet's petition on March 8, 2019. The circuit court held in relevant part:

23. The Court has carefully weighed all the testimony and exhibits presented at trial. It commends [Mother] for the progress she has made in Alabama. But the fact remains that when [Mother] relocated to Alabama in 2015 she left her children behind. They continue to advance in age, and need essential parental care and protection. They do not have years to wait for a parent's progress. The overwhelming evidence is that Ms. Kolb and other Cabinet workers told [Mother] in 2015 what documentation she needed to provide to resubmit the

ICPC to approve her home for placement: that is, a release of information for [T.L.'s] suboxone records, proof of housing, proof of employment, proof of providers for the children, and to resolve her bench warrant. Specifically, Ms. Kolb testified she personally told [Mother] this in November 2015 and again on January 29, 2016. The Court finds Ms. Kolb's testimony credible. After the children re-entered the Cabinet's custody in 2017, other workers reminded [Mother] of what she needed to submit on August 2, 2017, September 1, 2017, and October 20, 2017. In April 2018, Ms. Kolb notified [Mother] via email that the Cabinet had not received the documentation she allegedly provided and asked [Mother] to re-send the documentation; [Mother] failed or refused to do so. Despite the Cabinet's efforts, [Mother] did not provide the requested documentation until October 2018, three years after the ICPC was initially denied, and even then it was incomplete as it did not include a release of information for [T.L.'s] suboxone treatment. [Mother] testified on at least two occasions in 2018 she mailed a release of information for [T.L.] to [Mother] and included a return envelope so he could easily sign and return the release. Ms. Kolb testified, and the Court finds her testimony persuasive, that she did not receive a release of information for [T.L.] until the date of trial in January 2019. [Mother's] failure to follow through with the simple requirements of providing the requested documentation to the Cabinet, as required by her case plan, contributed to the children being in foster care for an extensive period of time.

The Court finds [Mother's] efforts to comply with her case plan "too little too late" for these children. Her delay in addressing the issues that necessitated removal of the children caused significant problems for her children. Per the children's therapist, they all have been scarred emotionally due to the trauma and neglect they experienced not only in their parents' care, but due to [Mother's] inconsistent contact with them while in foster care. [Mother's] extensive delay in working towards

reunification has continued to negatively impact the children and kept them from forming stable, secure relationships within their biological family. The Court finds the children have finally obtained those stable, secured relationships, but with their foster parents.

The evidence also revealed to this Court that [Mother's] visits with her children did not merit a priority status. [Mother] cited a number of excuses to justify her failure to visit her children in Kentucky: a lack of funds; the bench warrant she was unable to resolve; the time it took to travel to Kentucky; and her relationship with [Father]. The Court finds these excuses unmeritorious.

The Court particularly finds suspect [Mother's] claim that a lack of funds was the barrier to her resolving her bench warrant. The Court notes it took [Mother] three years to resolve her bench warrant. As a result, except for a few days in 2017, [Mother] has not physically seen her children in over three (3) years. A review of [Mother's] criminal records reveals it cost \$500 for her to resolve that warrant, which she finally did in October 2018. Despite her claims that she lacked the funds to do so, a review of [Mother's] exhibits reveals [Mother] and [T.L.] had sufficient funds to put a \$1,000 down payment on the residence in July 2017; \$500.00 down payment on the purchase of a vehicle in June 2017; and \$800 down payment on the purchase of a second vehicle in May 2018. This indicates to the Court that [Mother] failed to make resolving the bench warrant a priority, despite that being a primary barrier preventing her from visiting her children. The Court is concerned about [Mother's] financial ability to care for her children should they be returned to her care, particularly in light of her admission that she has struggled to financially provide for her own needs.

24. The Court finds [Mother] failed to work her case plan such that reunification with her children would be feasible in the foreseeable future. [Mother's] case plan

primarily required her to submit certain documentation to the Cabinet. Despite this simple task, she failed to do so until October 2018, over a year after the children's removal from parental care for the third time and three (3) years after Alabama initially denied [Mother's] ICPC. As a result, the children's relationship with [Mother] has waned. The Court finds from all the testimony presented that reunification would not be possible in the foreseeable future, but would take considerable time, if possible at all.

25. The Court finds that the Petitioner Cabinet has made all reasonable efforts toward reunification of the Petitioner child and the Respondent mother, and further efforts by the Cabinet will not result in reunification.

26. The Court further finds the Petitioner children's physical, mental, and emotional needs have been met while in the Cabinet's care and custody, and the children are expected to make further improvements in these areas upon termination of parental rights. The Court finds persuasive the testimony from Ms. Merritt and Ms. Combs^[4] as to the progress the children have made in therapy since being in foster care. The children's behaviors and academics have improved. The Court is convinced that [Mother's] actions and decisions alone kept her from physically seeing her children, and from maintaining consistent phone contact with the children. As a result, the children's bond with their mother has diminished; this is evident from the overwhelming evidence that the children do not want to return to their mother's care. All of the Cabinet's witnesses consistently testified that the children expressed their desires not to return to their mother's care, but to be adopted by their foster parents. The Court finds this testimony persuasive. The Court is also persuaded by [J.M.P.'s] testimony in particular. The Court finds

⁴ At all relevant times, Sara Merritt was a therapeutic support specialist with Benchmark Family Services. Valarie Combs was the children's prior therapist with Benchmark Family Services.

[J.M.P.] to be direct, open, and honest. The Court believes [J.M.P.] loves her mother, but [J.M.P.] testified specifically that she did not want to return to her mother's care but, instead, wanted to be adopted. Considering all the evidence presented, the Court is persuaded that the children have found the stability, structure, and loving home environment to which they are entitled and deserve. The Cabinet foresees no barriers to adoption at this time. Termination of parental rights is in the best interest of the Petitioner children, and the Cabinet for Health and Family services has facilities available to accept the care, custody, and control of the children and is the agency best qualified to receive custody of them.

Applying its findings to the applicable law, the circuit court noted the appellee children had previously been adjudged neglected as defined by KRS 600.020(1); concluded they continued to be neglected by Mother; and held that termination was in the children's best interests and justified for several reasons.

The circuit court explained:

KRS 625.090(3)(c) requires the family court to consider "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[.]" Reasonable efforts are defined by KRS 620.020(11)⁵ "as the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community . . . which are necessary to enable the child to safely live at home[.]" The Court finds the Cabinet has rendered all reasonable reunification services to the Respondent mother. It offered her a case plan in 2015, February 2016, June 2017, and October 2018. [Mother's] case plan consisted primarily of her providing

⁵ Subsequent to the entry of this order, KRS 620.020(11) was renumbered as KRS 620.020(13).

requested documentation to the Cabinet. It took [Mother] years to comply with this simple task. It was her burden to ensure the Cabinet received the needed documentation to move forward. Ms. Kolb testified she knew of no other services or treatment programs the Cabinet could offer that had not already been offered which would result in reunification of this family. The family court ultimately waived reasonable efforts in August 2017 because of the Respondent mother's lack of progress.

KRS 625.090(3)(d) looks at “[t]he 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 has discussed this factor at length in its findings. [Mother] has made noticeable adjustments in her circumstances, conduct, and conditions. She has obtained housing, transportation, and employment. The Court is concerned, however, about [Mother’s] ability to financially provide for four (4) children, particularly in light of [Mother’s] testimony at trial concerning her financial struggles over the years. The Court is also concerned about [T.L.’s] possible substance use and the lack of a relationship between [Mother], [T.L.], and the children. [J.M.P.] particularly testified that she did not want to live with [T.L.]. The Court has found from the evidence that there is a noticeable lack of a bond between [Mother] and her children. The Court is not convinced [Mother] made sufficient progress that her children could be returned to her care within a *reasonable* period of time.

KRS 625.090(3)(e) “takes into account the child’s physical, emotional, and mental health coupled with whether improvement will continue if termination is ordered.” [*Cabinet for Health & Family Servs. v. K.H.*, 423 S.W.3d 204, 213 (Ky. 2014).] The Court previously identified and finds persuasive the testimony of the Cabinet’s witnesses concerning the children’s behaviors,

academic struggles, and mental-health concerns upon entering the Cabinet’s custody. Since being in foster care, the children have made significant improvements. They are doing well academically. Their oppositional and defiant behaviors have decreased. They are happy, healthy, and their needs are being met. The structure and stability provided by the foster parents have given these children the opportunity to thrive. The Court is convinced the children’s improvements will continue if termination is ordered.

Lastly, KRS 625.090(3)(f) examines “[t]he payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.” *Id.* [Mother] is able bodied and capable of financially providing for her children, but has chosen not to do so. By her own testimony, [Mother] has been employed for years. The Court finds [Mother’s] claim that she lacked knowledge of its child-support order disingenuous. Regardless, the Kentucky Public Assistance statutes, KRS Chapter 205, et seq. contemplate that a parent must assume the burden of supporting his or her children if physically capable of so doing through any kind of legitimate endeavor, and that the parent may not pass the burden to the state merely because there are some limitations upon his or her ability to compete freely in the labor market. *Barnes v. Turner*, 280 S.W.2d 185, 187 (Ky. 1955). Thus, Kentucky law imposes a duty upon a parent—and not the state—to support his or her child regardless of whether a child support order has been entered against the parent. *Id.*; *see also, e.g.*, KRS 205.710(5) and KRS 205.715. Furthermore, [Mother] testified she learned of the Court’s child-support order in October 2018, yet she had made no effort between October 2018 and January 2019 to make even a single child support payment.

The Court has carefully weighed and balanced the evidence presented in this case and the statutory factors identified in KRS 625.090(3). The Court is ultimately

convinced that termination of the Respondent mother's parental rights is in the children's best interest.

4. The Petitioner children, [J.M.P., M.M.P., A.T.P.] and [L.A.P.], have been in foster care under the responsibility of the Cabinet for Health and Family Services from June 15, 2017 through the date of trial. [A.T.P.] and [L.A.P.] were previously in foster care from July 22, 2015 through January 13, 2016, and [M.M.P.] and [J.M.P.] were in foster care from September 24, 2015 through January 13, 2016. Accordingly, the Court finds the children have been in foster care for fifteen (15) cumulative months out of forty-eight (48) months preceding the filing of the petition to terminate on July 13, 2018. KRS 625.090(3)(d). KRS 625.090(2)(j). The children have lingered in foster care, in large part, due to the Respondent mother's failure to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for their safe return to her care. KRS 600.020(1)(a)9.

5. The Court is cognizant that the language in KRS 600.020 requires the Cabinet to prove just *one* of the elements contained in its subsections. Nonetheless, the Court also finds the Cabinet proved three (3) additional grounds.

6. [Mother] has abandoned the Petitioner children for a period or periods of not less than ninety (90) days. KRS 625.090(2)(a); KRS 600.020(1)(a)7. Evidence of her abandonment includes: her failure to take any responsibility for her children since 2015; the significant delay in resolving her bench warrant so that she could physically see her children; her significant delay in providing the needed paperwork to resubmit the ICPC to consider [Mother's] home for placement; and her repeated failures to visit with her children and maintain contact with them. [Mother] has not physically seen her children, except for a brief period in summer 2017, since the fall of 2015, a period of over three years. She has not

spoken to the children since February 2018. [Mother's] actions alone prevented her from having contact with her children. [Mother] failed to resolve her bench warrant so she could travel to Kentucky. [Mother] failed to provide the documentation requested by the Cabinet such that it could consider her home for placement. [Mother] failed to maintain consistent phone contact with the children, causing them distress, which ultimately resulted in the children's therapist recommending no further contact. [Mother] has abdicated her parental responsibilities for more than three (3) years.

7. [Mother], 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 or protection for the Petitioner children, [J.M.P, M.M.P., A.T.P., and L.A.P.], and there is no reasonable expectation of improvement in parental care and protection, considering the age of the child. KRS 625.090(2)(e); 600.020(1)(a)4. [Mother] has shown that she is incapable of providing parental care and protection to her children throughout the entirety of this action, as previously discussed and found. Again, she has not parented these children since 2015. She has not provided the children with financial or emotional support in years. She has simply not been part of their lives in any meaningful way. For all the reasons previously explained, the Court is not convinced [Mother's] parental care and protection is reasonably expected to improve, particularly considering the children's ages and the length of time they have been in care.

8. [Mother], 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 Petitioner children's well-being and there is no reasonable expectation of significant improvement in her conduct in the immediately foreseeable future, considering the ages of the children.

KRS 625.090(2)(g); 600.020(1)(a)8. [Mother] has not provided her children any material necessities of life since 2015. She has not paid any support on behalf of her children or shown an ability to provide care for the children. She never offered to pay child support. She has provided nothing for her children's daily care. This finding is not based on poverty alone. KRS 625.090(3)(f). By [Mother's] own admission, she has been employed for years and currently holds two jobs. She further admitted she has known of the Court's child support order since at least October 2018 and yet she has still not financially provided for her children. This convinces the Court there is no reasonable expectation of significant improvement in her conduct in the immediately foreseeable future.

9. KRS 625.090(2)(e) and (g) require that the expectation of significant improvement in the parent's conduct is to be viewed *considering the age of the child*. These children have faced instability for many years. Their lives have been unstable since 2011; they have been placed in foster care three (3) times, have lived with their father, have lived with relatives, and have been taken twice to Alabama only to be retrieved by the Cabinet and returned to Kentucky. The children's therapist testified to the trauma suffered by the children as a result of witnessing domestic violence between their parents. The children's case manager and therapist both described the children's behaviors and mental-health concerns upon entering foster care. They also described the detrimental effect they observed when [Mother] failed to maintain consistent contact with the children. Even after the Cabinet placed the children in a foster home, [J.M.P.] required hospitalizations and residential treatment to address her mental-health issues and [L.A.P.] still continues to display negative behaviors. The children's therapist is still not recommending visitation by or with [Mother]. The therapist testified that the children's trauma would have to be overcome. As previously expressed, the Court is concerned about

[Mother's] ability to financially provide for four children, and address the emotional and mental-health needs of the children. Accordingly, the Court is not convinced that [Mother] is likely to improve in the immediately foreseeable future considering the ages of the children.

10. From the totality of the circumstances and as explained in detail in its findings, the Court is not persuaded that the Petitioner children would not continue to be abused or neglected as described in KRS 600.020(1) if returned to parental custody. Even if this Court had been persuaded that the Petitioner children would not continue to be abused or neglected if returned to parental custody, under the circumstances of this case, this Court would not be inclined to exercise the discretion granted to it by KRS 625.090(5) to do so. Instead, this Court has concluded that termination of parental rights is in the best interest of the Petitioner children.

11. The Petitioner Cabinet has rendered or attempted to render all reasonable services to the Respondent mother that might be expected to bring about a reunion of the family. KRS 625.090(3)(c). The Cabinet has met its burden of providing services pursuant to KRS 625.090(4). Given the efforts made by the Cabinet and the Trimble Family Court to reunify this family, no additional services are likely to bring about parental adjustments enabling a return of the child[ren] to [Mother] within a reasonable time, considering the ages of the children.

As indicated previously, Mother's arguments on appeal revolve around the evidence she adduced below regarding the improvements she has made since leaving Father and moving to Alabama. She argues the circuit court should have given more weight to that evidence in assessing her children's best interests, or the likelihood of her children suffering further neglect from her, and that it

should have prompted the circuit court to exercise its discretion, pursuant to KRS 625.090(5), to dismiss the Cabinet's petition.

In other words, Mother is essentially asking this Court to re-weigh the evidence in her favor. But, we are not at liberty to do so. The trial court has wide discretion in terminating parental rights. *Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010) (citing *K.R.L. v. P.A.C.*, 210 S.W.3d 183, 187 (Ky. App. 2006)). Thus, our review is limited to a clearly erroneous standard which focuses on whether the trial court's order of termination was based on clear and convincing evidence. *Cabinet for Health and Family Servs. v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014); *see also* Kentucky Rule of Civil Procedure (CR) 52.01. "Pursuant to this standard, an appellate court is obligated to give a great deal of deference to the family court's findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them." *T.N.H.*, 302 S.W.3d at 663.

"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 & Env'tl. Protection Cabinet*, 891 S.W.2d 406, 409 (Ky. App. 1994). "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).

Here, the circuit court committed no error in its application of the relevant statutes. It acknowledged the evidence Mother adduced. But, as set forth above, it also cited overwhelming evidence in support of its ultimate decision to nevertheless terminate Mother’s parental rights – evidence Mother largely ignores in her brief before this Court. Under our standard of clear error, this Court cannot disturb the circuit court’s decision. We therefore AFFIRM.

ALL CONCUR.

BRIEF FOR APPELLANT:

Valarie L. Shannon
LaGrange, Kentucky

BRIEF FOR APPELLEE CABINET
FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY:

Leslie M. Laupp
Covington, Kentucky