

RENDERED: JULY 24, 2020; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2019-CA-000936-ME

R.C.K.

APPELLANT

v. APPEAL FROM WARREN FAMILY COURT  
HONORABLE DAVID A. LANPHEAR, JUDGE  
ACTION NO. 18-AD-00011

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND FAMILY  
SERVICES; C.L.W., MOTHER; AND R.C.K.,  
A MINOR CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; K. THOMPSON AND L. THOMPSON,  
JUDGES.

THOMPSON, K., JUDGE: R.C.K. (father) appeals from the termination of his  
parental rights to R.C.K. (child).

Child was born in June 2015 to C.L.W. (mother) and father, when father was forty-eight years old. Mother had an older child, D.W. (sister), who was born in February 2008, and had a different father. Initially, mother, father, sister, and child all lived together, but later mother filed for and received a domestic violence order protecting her from father.

In May 2016, the Cabinet for Health and Family Services filed a dependency, neglect, and abuse (DNA) petition and for emergency custody after mother was arrested and sister and child were left with inappropriate caregivers. On May 9, 2016, child was committed to Cabinet. The Cabinet case planned with mother, but she did not make progress on her case plan regarding either sister or child.

Later, a paternity action was filed and on November 16, 2016, the family court determined father was child's father, through an agreed summary judgment. Soon thereafter, the Cabinet met with father regarding a case plan. Father visited child a couple of times but never submitted proof that he completed any items on his case plan.

On January 23, 2018, the Cabinet filed for termination of parental rights to both child and sister.<sup>1</sup> As to child, the Cabinet argued child was abused

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<sup>1</sup> As father is not sister's father, we omit any evidence in the trial which is not applicable to father.

and neglected; was abandoned by father; was not provided with essential parenting care by father or mother for more than six months; was not provided with essential food, clothing, shelter, medical care, or education by father and mother; was in foster care for fifteen of the most recent twenty-two months; and it would be in child's best interest for mother's and father's parental rights to be terminated.

The termination trial regarding child and sister was held on April 18, 2019. Father participated telephonically because he was incarcerated in the Clark County Detention Center in Indiana. Mother consented to termination of her parental rights as to both children and the trial proceeded against father. Jennifer Fugate (sister's therapist), Megan Ashby (a Cabinet worker), Jessica Ingram (the children's ongoing worker), and father testified. The agreed summary judgment of father's paternity, child's DNA case, and the domestic violence case in which mother gained protection from father were admitted into evidence.

Fugate testified she was sister's therapist for three years and as to child's father, sister repeatedly told Fugate that father was a scary person and she was afraid of him. According to Fugate, sister told her about incidents of abuse, including repeatedly telling her about an incident where father placed child outside in the cold when child was only wearing his diaper.<sup>2</sup>

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<sup>2</sup> Father objected to this hearsay testimony and was overruled. Father did not challenge the admission of this testimony on appeal.

Ashby testified she assisted in responding to a police call regarding sister being unable to rouse mother in March or May 2016 which resulted in the Cabinet opening a case for supervision neglect. While there were home visits, the children were not removed at that time.

Ingram testified she was the ongoing worker from July 13, 2016, through February 1, 2019. She explained the children came into custody when mother was incarcerated and left children with a family friend. Sister complained about inappropriate discipline at school and the Cabinet investigated, confirming her report and discovering the caregivers had criminal records. The children were placed in foster care on May 9, 2016.

Ingram testified she met with father regarding a case plan on December 8, 2016, at his home, after he was adjudged to be child's father, and also completed a home evaluation at that time. She testified about what father was required to complete pursuant to the case plan and why the Cabinet believed these items were necessary. Father was to complete a substance abuse assessment because he had a history of drug trafficking and possession. Father was to complete an anger management assessment because he had a violent criminal background. Father was to complete a domestic violence assessment because he had a history of committing domestic violence. Father was to complete a mental health assessment because the Cabinet was concerned about his mental health.

Father was also to follow any recommendations given after such assessments, submit to random drug screens because of his drug convictions, provide a list of relatives for placement, and engage in monthly contact with the Cabinet.

Ingram testified that although the physical environment where father was living with his mother, sister, and nephew was appropriate, the home was not approved because both he and his mother had criminal backgrounds. Father had pending charges, an incredibly lengthy and violent criminal history in Kentucky and other states including several domestic violence charges, two charges for not following court orders, drug trafficking, ownership of a gun by a felon, new charges, and had not received treatment. Father's mother had drug offenses.

Ingram testified that although she tried to contact father every month, she only succeeded in reaching him twelve times over the two-and-one-half-year period she was the ongoing worker. She explained that father's phone number changed frequently, and he would not inform her of his new number, so she was dependent on him calling her at which time she would get his new number.

While Ingram explained she attempted home visits several times, she was only able to complete two, one of which was the initial visit. Every three months she sent a letter asking that father get in contact with her.

Ingram described a pattern in which after a period of no contact father would call her, ask how the children were doing, admit he had done nothing on his

case plan but express enthusiasm for starting again, but no progress would ever be made. She denied ever hearing from father that he completed any of the assessments or classes, or ever receiving records from Dr. Steven Kelsey indicating father completed classes. She stated that father did nothing on his case plan as far as she knew.

Ingram testified the last time she tried to contact father was on January 24, 2018. She had four different numbers for him but two were not working and two were not accepting calls. Father did not call her, either.

Ingram testified that father only visited with child twice over a three-year period, once in January 2017, and once in February 2017. Father was set up with supervised visitation through the Family Enrichment Center. Ingram testified father was late to the January 19 visit which was cancelled, he visited with child on January 26, the February 2 visit was canceled because child was sick, father visited on February 9, father did not call or show up on February 23 or February 26, and later that month was suspended from visitation by the Family Enrichment Center based on no contact and unpaid fees.

Ingram testified that on April 5, 2017, the Cabinet moved all of its visitation to its offices and she called father around that time to inform him of this, but he never set up new visits. She admitted that in September 2017, father did discuss starting up visitation again and she told him she would have to check with

her supervisor. Ingram admitted not recalling the conversation with her supervisor, or what she told father about it, but was certain her supervisor had approved resuming visitation, but father never asked for more visitation afterward.

Ingram testified that father never provided anything for child, was not a stable parent, showed no desire to parent, had a violent lifestyle, and was frequently incarcerated (sometimes out of state). She estimated that father was incarcerated 75% of the time she was the ongoing worker. She expressed her belief that it was in child's best interest to have father's parental rights terminated because child was doing well in foster care, having all of his needs met, and child was advanced for his age with an extraordinary vocabulary.

Father testified that in 2018 he completed a substance abuse assessment with Dr. Steven Kelsey, and then six weeks of twice-a-week substance abuse classes, had clean drug screens for him, and had not relapsed since then. He testified that in 2018, he completed a domestic violence assessment and then completed twenty-eight domestic violence classes with Dr. Kelsey. Father stated he was not supposed to complete anger management classes because they were the same as domestic violence classes. Father testified he told Ingram when he got the assessments and when he completed the classes. Father testified that Dr. Kelsey was supposed to fax the Cabinet the proof.

Father admitted he had not completed a mental health assessment, claiming he had trouble getting it done because he had the wrong insurance and needed to switch over to Passport, and admitted he had not completed parenting classes. He claimed he was not told to submit to drug screens by the Cabinet.

Father testified he could not remember how many times he had visited with child, but knew his last visit was Spring 2017. He stated he had no idea why the visits stopped and was only told that he could not visit. He denied ever just not showing up to visits, stating if he was late or could not make it he would always call. He testified he asked Ingram about resuming visitation in the Spring of 2018, but Ingram told him he had to complete everything on his case plan before he could see child again.

Father admitted he had a lengthy criminal history, beginning with an arrest in 1987 for disorderly conduct. Father explained he was currently incarcerated in Indiana for a failure to appear on a 2010 case for possession of cocaine on which he was serving four years of probation but stated he had not appeared because he had been incarcerated in Kentucky at the time. He testified he believed he would soon be released.

Father admitted he was charged on February 6, 2019, with wanton endangerment and criminal mischief and pled guilty to those charges, but explained he was not at fault but no one would believe him based upon his criminal



history. He admitted having a charge in March 2019 for possession of a controlled substance for medicine in the wrong container, but stated it was run together with the other charges and served out the Friday prior to the termination trial.

Father admitted having five assault-fourth charges, explaining these involved a woman he did not want to be in a relationship with repeatedly calling the police. He stated one charge was dismissed and he received 365 days probated for two years on another charge.

Father admitted that in 2016, he was convicted for violating an emergency protective order in favor of mother and received sixty days, probated, explaining he called mother through someone else's phone and also pled guilty to having given a false name or address. He admitted that same year he was also charged for possession of a controlled substance, possession of marijuana, and being a felon in possession of a gun but stated the items were not his and the case was still ongoing.

Father denied being mostly incarcerated while child was in the care of the Cabinet and stated that he had spent relatively little time incarcerated, only about sixty days very recently. He stated he requested his adult daughter be considered for placement of child, but never heard anything. Father asked that the family court not terminate his parental rights because although he had made

mistakes he was trying to do better and had almost completed building a new home and could support child from his disability benefits and odd jobs.

Father requested he be given an opportunity to prove that he had completed the substance abuse and domestic violence classes. The other parties objected, but the family court allowed father two weeks to file such documents. Father did not file any proof of completion.

On May 8, 2019, the findings of fact, conclusions of law, and the order terminating parental rights and order of judgment were entered. The family court found child to be an abused or neglected child, that termination of parental rights was in child's best interest, and that the four alleged grounds for termination were satisfied. The family court found father: abandoned child for a period not less than ninety days; for a period of not less than six months has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for child and there is no reasonable expectation of improvement in parental care and protection, considering the age of the child; father 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 child's well-being, and there is no reasonable expectation of significant improvement in father's conduct in the immediately foreseeable future, considering the age of the

child; and the child has been in foster care under the responsibility of the Cabinet for fifteen of the most recent twenty-two months preceding the filing of the petition to terminate parental rights.

The family court noted that the Cabinet attempted to render services to father, but he did not utilize these services and child made substantial improvements while in foster care. The family court found that there was no proof provided to the Cabinet that father completed any of the goals or objectives on his case plan. The family court found that father visited child a few times in early 2017 but missed as many visits as he kept. The family court found that father's telephone number changed often, and father did not apprise Cabinet staff when his telephone number changed. The family court also noted that father has a lengthy criminal history.

Father argues there was a genuine dispute as to whether he voluntarily allowed his visits with child to cease or whether he was denied from having visitation due to a perceived lack of progress and a dispute as to what he had completed on his case plan. Based on these disputes, father argues that there was not clear and convincing evidence to support the family court's findings of fact. Father argues that the family court erred in finding that father abandoned child for a period of not less than ninety days under Kentucky Revised Statutes (KRS) 625.090(2)(a) where there was no settled purpose on his part to forego visits, and

that the proof at trial did not support a finding that there was no reasonable expectation of improvement as required under KRS 625.090(2)(e) and (g) because father would have housing and income from disability and odd jobs to support child upon his release.

Whether termination is appropriate depends upon whether the statutory requirements contained in KRS 625.090 are met.

Termination of a party's parental rights is proper upon satisfaction, by clear and convincing evidence, of a three-part test. First, the child must have been found to be an "abused or neglected" child, as defined by KRS 600.020. KRS 625.090(1)(a). Second, termination must be in the child's best interest. KRS 625.090(1)[(c)]. Third, the family court must find at least one ground of parental unfitness. KRS 625.090(2).

*B.E.K. v. Cabinet for Health & Family Servs.*, 487 S.W.3d 457, 464 (Ky.App. 2016).

Because the family court has wide discretion in deciding to terminate parental rights, "our review is limited to a clearly erroneous standard which focuses on whether the family court's order of termination was based on clear and convincing evidence." *Cabinet for Health & Family Servs. v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014). "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.” *Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010).

The family court found that grounds for termination were satisfied on multiple bases pursuant to KRS 625.090(2)(a), (e), (g), and (j). While father contests grounds (a), (e), and (g), he ignores ground (j). Termination would be appropriate simply upon the elapse of time as only one ground for termination needs to be satisfied. However, we believe the family court appropriately acted within its discretion in finding that all four of these grounds for termination were satisfied.

The family court was entitled to make credibility determinations and believe the testimony of the Cabinet workers over father’s testimony. Pursuant to their testimony, father made very little effort to be involved in child’s life, only visiting child twice and missing more scheduled visits than he kept and failing to make any but the most cursory attempts to reestablish visitation or to meet any elements of his case plan. Father made excuses for all his failures, but it is undisputed that he has not visited child since Spring of 2017, pled guilty to several crimes including some only months before the termination trial and some of his crimes have a violent component, and did nothing to support child or stay involved in child’s life. Father failed to provide any proof other than his own testimony that he completed any requirements of his case plan even when given the opportunity to

do so following the trial. His involvement in child's life has been woefully inadequate even when visitation was scheduled.

Father's actions and lack of action constituted abandonment because they showed a "settled purpose to forego all parental duties and relinquish all parental claims to the child." *O.S. v. C.F.*, 655 S.W.2d 32, 34 (Ky.App. 1983). Abandonment can be shown through a failure to provide child support and the lack of any meaningful interactions with child. *See, e.g., K.M.E. v. Commonwealth*, 565 S.W.3d 648, 656 (Ky.App. 2018). We have no difficulty in determining there were ample grounds for the family court's finding of abandonment.

The evidence was consistent that father never provided child with any essential parental care or protection, KRS 625.090(2)(e), or with any essential food, clothing, shelter, medical care, or education, KRS 625.090(2)(g). While KRS 625.090(2)(e) and (g) require the lack of reasonable expectations of improvement, this refers to improvement in providing essential parental care and essential necessities for child rather than simply improvement in father's condition. Although ongoing incarceration might make it difficult to provide care and necessities for child, there was no evidence that it was father's incarceration alone which prevented him from providing these things.

According to father's testimony, he was only incarcerated a small amount of the time that child was in the care of the Cabinet. Therefore, father's

release from the temporary incarceration he was under while the termination trial was occurring would not change the overall pattern that he continued to commit crimes and did not provide anything to child despite having income from disability and odd jobs. While father's home with grandmother was not approved, father having a new house would not alter father's longstanding lack of involvement in child's life. If instead father's incarceration prevented him from providing essential care and necessities for child, this was properly attributable to father's actions in continuing to commit new crimes.<sup>3</sup> Based on the evidence, the family court was certainly entitled to determine that KRS 625.090(2)(e) and (g) were satisfied because in addition to father's failures, there was no reasonable basis to believe father would be a fit parent in the future.

Finally, the elapse of time pursuant to KRS 625.090(2)(j) was an appropriate reason for termination of father's parental rights. This elapse of time was properly attributable to father's lack of action rather than attributable to a lack of services from the Cabinet.

Accordingly, we affirm the Warren Family Court's orders terminating father's parental rights to child.

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<sup>3</sup> While "incarceration is just one factor to be considered when determining whether to terminate parental rights[.]" *M.L.C. v. Cabinet for Health and Family Services*, 411 S.W.3d 761, 766 (Ky.App. 2013), "dedication to a criminal lifestyle" is "incompatible with parenting." *J.H. v. Cabinet for Human Resources*, 704 S.W.2d 661, 664 (Ky.App. 1985).

ALL CONCUR.

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