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# Commonwealth of Kentucky

# Court of Appeals

NOS. 2019-CA-001535-ME AND 2019-CA-001536-ME

J.D.H. AND G.E.H. APPELLANTS

v.

APPEALS FROM GRAVES CIRCUIT COURT
HONORABLE TIMOTHY C. STARK, JUDGE
ACTION NOS. 19-AD-00030 AND 19-AD-00031

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
C.L.H., A CHILD; AND B.J.H., A CHILD APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CALDWELL, AND LAMBERT, JUDGES.

CALDWELL, JUDGE: J.D.H. (Mother) and G.E.H. (Father) appeal from judgments of the Graves Circuit Court involuntarily terminating their parental rights as to two minor children, C.L.H. and B.J.H.[1] We affirm.

[1] To protect the privacy of the minor children, we do not refer to the children or their natural parents by their names.

Mother and Father raise just one issue in each appeal,[2] contending that as a matter of law, the Cabinet for Health and Family Services (the Cabinet) failed to make reasonable efforts to reunite the child with Mother and Father prior to filing its termination petition, and termination cannot be found to be in the child's best interest. Specifically, they argue that the Cabinet failed to make reasonable reunification efforts by not requesting a CATS[3] assessment at some earlier point in their admittedly long history with the Cabinet to identify and address the root cause of their environmental neglect. Thus, in their view, the trial court erred in finding that the Cabinet had made reasonable efforts at reunification and that termination of their parental rights was in the best interest of each child. They ask us to vacate the trial court's judgments and dismiss the actions below. However, reviewing the record before us[4] in consideration of applicable law, we conclude that no reversible error occurred.

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[2] The Cabinet for Health and Family Services filed separate petitions, one in the interest of C.L.H. and the other in the interest of B.J.H., to involuntarily terminate the parental rights of both Mother and Father. A joint trial-type hearing was held on both petitions, with Mother and Father each being represented by separate counsel. Mother and Father filed one joint Notice of Appeal and one joint Appellants' Brief challenging the termination of their parental rights as to C.L.H., and another joint Notice of Appeal and another joint Appellants' Brief challenging the termination of their parental rights as to B.J.H. The Cabinet filed one Appellee's Brief in response to both appeals (No. 2019-CA-001535-ME concerning C.L.H. and No. 2019-CA-001536-ME concerning B.J.H.).

[3] In this context, CATS refers to the "Comprehensive Assessment and Training Services" program at the University of Kentucky Center on Trauma and Children.

[4] We note that the record provided to us does not contain the trial exhibits referenced in the briefs—notably the CATS assessment reports described in the briefs as "CHFS Exhibit 1" nor

## FACTS AND BACKGROUND

C.L.H. (born October 12, 2009) and B.J.H. (born November 13, 2006) are apparently the youngest two children of Mother and Father. Mother and Father state in their briefs that the Cabinet first became involved with their family in 1996 and that there were at least twenty-nine (29) referrals to the Cabinet concerning their family over the years—usually about environmental neglect. C.L.H. and B.J.H. had been removed from the family home on two prior occasions—once in November 2009 (for a few months) and once in September 2012 (for about a year) apparently due to similar issues of environmental neglect as those posed here.

In February 2018, a Cabinet social worker went to the family home to investigate allegations of environmental neglect regarding C.L.H. and B.J.H. The social worker observed animal feces in each room, a smell of urine, and clothes piled up throughout the house. Up to eleven (11) dogs were living with the family at that time. After giving instructions about cleaning, the social worker advised Mother and Father that she would come back in a few weeks to see if the house

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any other exhibits such as orders entered by the Graves District Court, including the adjudication order and disposition order described as "CHFS Exhibit 8" and "CHFS Exhibit 9," respectively, in Appellants' Brief, page 2. The certification of the record on appeal for each child's case refers to a certain number of pages in the written record, one CD/DVD and "1 Oversized exhibit retained in the Circuit Clerk's office" with some underlining of words regarding retention of the oversized exhibits. There is no check mark or other notation regarding "Envelope(s) of Exhibits[.]" As Appellants have a responsibility to make sure that the record provided to the appellate court is sufficient to afford an adequate review, we must assume that those items omitted from the record support the judgments of the trial court. *Kimbrough v. Commonwealth, Child Support Division ex rel Belmar*, 215 S.W.3d 69, 74-75 (Ky. App. 2006).

had been cleaned up enough for the children to continue to stay there. When she returned to the home about five weeks later, in March 2018, she found no improvement in the condition of the home. The Cabinet filed a petition for removal and was granted emergency custody of C.L.H. and B.J.H. Mother and Father stipulated to the grounds for removal.

Another social worker then took over the ongoing case. She talked with Mother and Father about how to clean the house and keep it in a safe and sanitary condition. She met with them about once a month and offered them an option of having in-home service providers come on a more frequent basis to work with them on keeping the house in proper condition, but they declined this option. Although she was aware of them seeing a counselor and they were cooperative in attending scheduled meetings with her and visits with the children, she did not believe they were making progress on environmental neglect issues. She continued to observe unsanitary conditions (including the presence of animal waste and roaches) where they lived[5] and Mother and Father appeared to not see such conditions as a problem. She suggested that a CATS assessment be conducted to get recommendations on what other steps or services might be effective.

[5] Mother and Father moved at least a few times between the latest removal of the children from their home and the termination hearing.

The district court entered an adjudication order concerning C.L.H. and B.J.H. in June 2018, which noted that Mother and Father had entered "*Alford*" admissions[6] to environmental neglect. In July 2018, the district court entered a disposition order committing C.L.H. and B.J.H. to the Cabinet and ordering that a CATS assessment be completed at the University of Kentucky. According to Mother and Father's brief, the disposition order made a specific finding that the "[h]ome of parents is environmentally unsafe and parents need to complete CATS assessment based on numerous events of similar nature in past and parents [sic] inability to comprehend nature of problem or ability to maintain a safe home."

After the family met with CATS personnel in Lexington in December 2018, a CATS assessment report was issued in February 2019 which did not recommend reunification. A permanency review hearing was held in March 2019 and the goal was then changed from family reunification to adoption based on the CATS recommendation. In June 2019, the Cabinet filed petitions for the involuntary termination of Mother's and Father's parental rights as to C.L.H. and B.J.H. in the Graves Circuit Court. A few weeks later, the ongoing social worker

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[6] *See Toppass v. Commonwealth*, 80 S.W.3d 795, 796 n.1 (Ky. App. 2002) (citing *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)) ("A defendant entering an *Alford* plea declines to acknowledge guilt, but admits that the Commonwealth can present strong evidence of guilt."). As termination of parental rights cases such as these are civil rather than criminal cases, one does not technically enter a plea of any sort in these cases. However, counsel explained at the hearing that Mother and Father meant that although they did not agree with the allegations of environmental neglect, they admitted that there was sufficient evidence to support a finding of environmental neglect.

visited Mother and Father in their latest home and observed some improvement in their living conditions as there were no dog feces on the floor there and she observed no roaches, although there was still clutter and a smell of urine. By this point, Mother and Father only had one dog due, in part, to some dogs having been taken away and Father having been charged with animal cruelty.

In August 2019, the Graves Circuit Court conducted a trial on the petitions to involuntarily terminate parental rights. Father and Mother were both present and represented by separate counsel. The Cabinet presented the testimony of the social worker who initially investigated the neglect allegations, the ongoing social worker, and the licensed professional clinical counselor who served as the Team Leader for the CATS assessment. A counselor who had been working with Mother and Father testified on their behalf, and Mother also testified. Both the counselor and Mother testified to some improvements in their functioning, but both also acknowledged that C.L.H. and B.J.H. would not be able to return to the family home at present due to lack of adequate space as well as other unspecified issues.

During the trial, Mother and Father did not dispute that environmental neglect had occurred, but seemingly tried to show that they were making improvements and that it was not in the children's best interest for parental rights to be terminated. Counsel for Mother argued in closing that many of the parents' choices leading to unsafe and unsanitary conditions (such as keeping several large

dogs) stemmed from Mother's and Father's history of being mistreated as children, but this was not understood until the CATS assessment report came out just weeks before the goal change hearing and then it was too late to effectively help the family. Thus, he contended that the Cabinet's efforts to help the family would have been more successful if a CATS assessment had been conducted earlier to identify and address the root causes of the environmental neglect. Counsel for Father argued in closing that termination was not in the children's best interest due to their bonds with their parents, and that there was a reasonable expectation of improvement in the immediate future.

Following closing arguments and the guardian *ad litem* making her recommendation, the court concluded the hearing by orally finding that the statutory requirements for terminating parental rights had been met. Written findings of fact were entered a few weeks later. Its oral findings included a brief statement that the Cabinet had provided services explaining how to clean the home, and its written findings briefly noted that the ongoing social worker testified about the services she had provided to the family without further description of the services she provided.

The trial court's written findings noted that the Cabinet had provided many services to the family over the years in response to many referrals but that the same environmental neglect issues seemed to persist. It further found that after

the last of three removals due to environmental neglect, the Cabinet made a referral for a CATS assessment to see if additional services or resources could be provided to help the family work towards reunification. It also found that the CATS team leader/clinician testified that the Cabinet had offered all reasonable services to the family, and quoted the CATS assessment report concerning the CATS team's recommendation against providing additional services:

> 14. The CATS team recommended the following, "At this time the CATS team is focused on securing permanency for these children as they cannot endure further insults to their safety and development. The CATS team cannot recommend case planning with [Mother and Father] that would achieve the permanency needs of these children within a reasonable time frame and recommends focusing on their best interest by immediately pursuing permanency on their behalf with safe and stable caregivers."

(Pp. 4-5 of Amended Findings of Fact and Conclusions of Law.) The court found by clear and convincing evidence that additional services would be unlikely to bring about lasting changes to achieve reunification and would simply delay permanency for the children, based on the Cabinet's having previously provided "considerable resources over the last 23 years[,]" Mother's and Father's failure to "bring about any lasting or permanent change," and the CATS assessment not recommending further case planning. And it also found "the Cabinet has shown at all stages by clear and convincing evidence that it has provided reasonable efforts." (Amended Findings of Fact and Conclusions of Law at p. 6.)

In addition to these findings of fact, the trial court entered conclusions of law, including a conclusion that the Cabinet made reasonable efforts to reunify the family before filing the petition for involuntary termination. Thus, it determined that termination was warranted and in the best interest of the children. The trial court entered orders terminating Mother's and Father's parental rights and allowing the Cabinet to place the children for adoption.

While Mother and Father argue that the trial court's judgments must be vacated due to lack of reasonable reunification efforts by the Cabinet in not requesting a CATS assessment earlier, their briefs do not state whether and how this issue was preserved for appeal as required by Kentucky Rules of Civil Procedure (CR) 76.12(4)(c)(v). Their briefs contain a citation to the record where Mother's counsel's closing statement perhaps implicitly criticized the reasonableness of the Cabinet's efforts by suggesting that an earlier CATS assessment might have been more effective. And from our review of the record, counsel for Father articulated that termination was not in the children's best interest on other grounds (family bonds and reasonable expectations of improvement in the near future). However, neither Mother nor Father cites to exactly where they argued to the trial court that reasonable reunification efforts had not been made by the Cabinet prior to filing the termination petitions and that the children's best interests were not served by termination on that basis. Nonetheless,

despite somewhat questionable preservation, given the paramount significance of termination of parental rights cases, we will leniently review the "best interest" and "reasonable reunification efforts" findings.

Before terminating parental rights, the trial court must find clear and convincing evidence of the requirements established by Kentucky Revised Statutes (KRS) 625.090, including KRS 625.090(1)(c)'s requirement that termination is in the child's best interest. In making its best interest finding, the trial court must consider several factors listed in KRS 625.090(3) and "[i]f the child has been placed with the cabinet," it must specifically find "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 . . . ." KRS 625.090(3)(c). KRS 620.020(13) defines reasonable efforts 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[.]"

**STANDARD OF REVIEW**

Termination of parental rights is a grave action which the courts must conduct with "utmost caution." *M.E.C. v. Commonwealth, Cab. for Health and Family Servs.*, 254 S.W.3d 846, 850 (Ky. App. 2008). The evidence supporting termination must be clear and convincing. *Santosky v. Kramer*, 455 U.S. 745, 102

S.Ct. 1388, 71 L.Ed.2d 599 (1982). Clear and convincing proof is that "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). Even so, upon appellate review, a trial court's decision to involuntarily terminate parental rights under KRS 625.090 is accorded great deference. Its factual findings are reviewed under the "clearly erroneous" standard of CR 52.01[7] and, thus, shall not be disturbed unless they are not supported by substantial evidence. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998). Generally, a trial court's determination of whether the Cabinet made reasonable reunification efforts is reviewed under the same deferential standard applied to other factual findings in this context: whether there is substantial evidence of record to support the finding. *See Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 212-13 (Ky. 2014) (upholding trial court's finding that reasonable efforts at reunification were made as supported by substantial evidence).

**ANALYSIS**

Applying this deferential standard, there is no reason to reverse the trial court as its findings that the Cabinet had made reasonable reunification efforts

[7] CR 52.01 governs "all actions tried upon the facts without a jury" and provides in pertinent part: "Findings of fact, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."

were supported by substantial evidence. The trial court made an oral finding that the Cabinet had provided services explaining to Mother and Father how to clean the home, which is supported by the testimony of both social workers. We also note that the ongoing social worker testified to offering further in-home weekly services specifically aimed at maintaining a sanitary home, which Mother and Father declined. The trial court's written findings specifically note some of the most severe findings of the environmental neglect, including roaches in food in the home and in the children's clothes and backpack, requiring them to remove their shoes and backpacks before entering their classrooms. The trial court's findings also note the numerous interventions by the Cabinet and referrals for services to multiple service providers.

In addition to these services, the trial court's findings noted that the Cabinet referred the family for a CATS assessment in July 2018 after the latest removal in March to determine if additional services would help the family achieve reunification. The trial court did not make any finding of improper delay in obtaining the CATS assessment, and we are unaware of any evidence of improper delay in obtaining a CATS assessment after the latest removal. The ongoing social worker explained at trial that a CATS assessment could not be formally requested until the children were committed to the Cabinet and that it could take considerable time to schedule a CATS assessment as CATS was the only agency in the state

conducting these assessments. After the disposition order entered in July 2018 committed the children to the Cabinet and ordered a CATS assessment, the CATS team met with the family in December 2018 and rendered its written report in February 2019.

Mother and Father suggest that the CATS assessment process initiated after the last removal was futile, noting that the written report was issued just weeks before the goal change hearing and characterizing the CATS team leader's testimony as indicating that no additional services could be recommended to achieve reunification within a reasonable time even though the parents' issues were not necessarily untreatable due to the history of other removals for the same issue. From our review of the record, however, the CATS team leader did not indicate that further services were not recommended based on prior history alone but instead due to the parents not taking responsibility for neglect. As he explained, since they simply would not acknowledge that there was a problem, they would not take steps to fix the problem. Despite the long prior history, it appears that additional services could have been recommended if Mother and Father had been willing to accept responsibility presently. Furthermore, the ongoing social worker testified that even though the goal change hearing occurred just a few weeks after the written CATS report was issued, the Cabinet and CATS team were in

communication beforehand, and the Cabinet would not have sought a goal change if advised that other services were recommended.

Therefore, we find there was substantial evidence to support the trial court's finding of reasonable reunification efforts by the Cabinet, especially regarding those services offered following the latest removal of the children.

The crux of Mother and Father's argument seems to be that the Cabinet's lack of reasonable efforts resulted from not seeking a CATS assessment in earlier years, prior to the latest removal. Mother and Father contend that the Cabinet failed to exercise ordinary care and diligence in utilizing available preventive and reunification services as required by KRS 620.020(13) in not requesting a CATS assessment earlier in the family's history with the Cabinet. In their view, CATS assessments were already "available" and "the problem is it took 22 years to provide such a service, and that is where [the Cabinet] falls short of exercising ordinary diligence and care." (Appellants' Brief at p. 6.) We note that despite some testimony about the family's prior history with the Cabinet, we do not have the district court record or any other written records about the Cabinet's prior interactions with the family for the last twenty-plus years to assess whether the Cabinet considered requesting a CATS assessment or under what circumstances one might have been available.

Mother and Father cite no authority specifically stating when a CATS assessment is required. In fact, they "readily admit that a CATS assessment is not necessary in every neglect and abuse action" and quote recent authority holding that "[t]he services that will be reasonable, and therefore required, depend on the facts and circumstances of each case." (Appellants' Brief at pp. 6-7 (quoting *K.M.E. v. Cabinet v. Health and Family Servs.*, 565 S.W.3d 648, 658 (Ky. App. 2018)). They argue that their long history and frequent referrals were facts and circumstances that required a CATS assessment prior to 2018 to determine the true cause of their issues.

Given the lack of any authority dictating when a CATS assessment is required, we find no reason to disturb the trial court's judgments based on this allegation that the Cabinet should have requested a CATS assessment at some earlier point, especially as we have no record to review concerning earlier proceedings. Indeed, the earlier removals and interactions of the Cabinet with Mother and Father, including whether prior removals should have led to a CATS assessment, are not at issue in these appeals.

Nothing in the record in this proceeding clearly establishes that an earlier CATS assessment would have resulted in a better outcome. The CATS clinician did acknowledge the parents' own childhood history and how this may have affected their parenting, but we are unaware of any proof indicating that

figuring out this “cause” of the environmental neglect was necessary for Mother and Father to take steps to provide a more safe and sanitary home environment. For instance, we are not cited to any proof that different services should have been offered due to the parents’ childhood history.

In short, despite Mother’s and Father’s argument that the Cabinet’s efforts to reunify the family fell short due to its not seeking a CATS assessment earlier, we conclude that the trial court’s finding of reasonable reunification efforts is supported by substantial evidence and is not a result of overlooking or misconstruing applicable law. Thus, we cannot disturb the terminations based upon the grounds raised by Mother and Father. For the foregoing reasons, we AFFIRM the judgments of the Graves Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

J. Todd Elmore
Mayfield, Kentucky

S. Boyd Neely, III
Mayfield, Kentucky

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

Dilissa G. Milburn
Mayfield, Kentucky