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NOT TO BE PUBLISHED

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

NO. 2019-CA-1868-ME

E.C., Mother

APPELLANT

v. APPEAL FROM SIMPSON CIRCUIT COURT  
HONORABLE G. SIDNOR BRODERSON, JUDGE  
ACTION NO. 19-AD-00001

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND FAMILY  
SERVICES; M.S.C., Father; and N.D.R.C., a  
minor child

APPELLEES

AND NO. 2019-CA-1872-ME

E.C., Mother

APPELLANT

v. APPEAL FROM SIMPSON CIRCUIT COURT  
HONORABLE G. SIDNOR BRODERSON, JUDGE  
ACTION NO. 19-AD-00002

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND FAMILY  
SERVICES; M.S.C., Father;  
and H.M.C., a minor child

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; KRAMER AND MCNEILL, JUDGES.

KRAMER, JUDGE: N.D.R.C. and H.M.C. are sisters. Presently, N.D.R.C. is eleven years old, and H.M.C. is six. The children were removed from E.C.'s (Mother's) custody by the Cabinet in December 2015 due to what Mother stipulated was severe environmental neglect; overwhelming evidence supported this. N.D.R.C. and H.M.C. were consequently deemed abused and neglected children as defined in KRS<sup>1</sup> 600.020(1). On November 14, 2019, following April 5, 2019 petitions from the Cabinet and an October 25, 2019 evidentiary hearing, the Simpson Family Court ultimately terminated Mother's parental rights after finding that doing so was in the children's best interests and because the grounds of KRS 625.090(2)(e) and (g) had been met. In this consolidated matter, Mother now appeals. Upon review, we affirm.

Relevant to this appeal, KRS 625.090 provides:

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<sup>1</sup> Kentucky Revised Statute.

(2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:

...

(e) That the parent, 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 and protection for the child and that *there is no reasonable expectation of improvement in parental care and protection*, considering the age of the child;

...

(g) That the parent, 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 child's well-being and that *there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future*, considering the age of the child[.]

(Emphasis added.)

As emphasized, the crux of Mother's appeal involves her contentions that the family court erred in determining "there is no reasonable expectation of improvement in parental care and protection," per subsection (e), or that "there is no reasonable expectation of significant improvement in the parent's conduct in the

immediately foreseeable future,” per subsection (g). Contesting these findings, Mother points out that during the October 25, 2019 termination hearing, evidence was adduced suggesting that beginning in April 2019 she had made progress with her case plan. But, as this Opinion will explain, this was too little too late.

With that in mind, we will now summarize the evidence, most of which was adduced during the October 25, 2019 termination hearing. The children’s therapist, Nicole Clement, testified. She is employed at Life Skills and began seeing N.D.R.C. because N.D.R.C. suffered from anxiety and enuresis (*i.e.*, often wet her pants); frequently lied; was aggressive with other children; and has been diagnosed with post-traumatic stress disorder. Clement testified Mother had informed her that N.D.R.C. had also been sexually abused by an unnamed individual sometime prior to leaving her custody in December 2015. Between three and six months after she began seeing N.D.R.C., Clement also began treating H.M.C., who was verbally and physically aggressive at home and daycare. H.M.C. suffers from anxiety, frequently bites her nails, and suffers from reactive attachment disorder (a condition that impedes her ability to bond with other individuals).

Clement testified that after Mother lost custody of the children, they were placed in four or five other homes, including with their biological father (M.S.C., who eventually relinquished custody of the children and voluntarily

terminated his parental rights) and their maternal great aunt (who subsequently lost custody of the children due to allegations of abuse and neglect). However, twenty-six months prior to the October 25, 2019 hearing, the children were placed and bonded with their current foster parents, and their behaviors and anxieties improved. In December 2018, the children were also discharged from therapy.

However, Clement testified, shortly after Mother resumed visitation with the children, the children's behaviors and anxieties intensified, and the children resumed therapy in July 2019. Clement testified the children's behaviors and anxieties may not have been wholly attributable to Mother's reappearance in their lives; in that vein, she acknowledged the children have always had those difficulties. In her opinion, though, a causal connection existed between Mother's resumption of visitation in June 2019 – during which Mother had apparently indicated to the children they would no longer be staying with their current foster family – and the children's worsened behaviors and anxieties.

According to Clement, N.D.R.C. is interested in reuniting with Mother, but H.M.C. “shuts down” when the subject is discussed. Clement recommends Mother engage in family therapy with the children, but Mother has yet to do so. The first occasion Clement met with Mother was during the week of the October 25, 2019 termination hearing, and the first occasion Mother reached out to Clement for any purpose was two weeks before that. Clement testified

H.M.C. could possibly develop attachment with Mother in time, but also expressed concerns because, in her opinion, Mother does not understand how the children have been traumatized by their successive prior placements.

Chelsea Adamson is a social worker employed at Life Skills. She testified the Department for Community Based Services (DCBS) had referred Mother to Life Skills for a substance abuse and mental health assessment. Between December 2016 and July 2017, Mother had been scheduled on five occasions to undergo assessment, but Mother had never appeared for any of her appointments.

Adamson testified that Mother's husband, W.T.C., had also been referred to Life Skills by DCBS for a substance abuse and mental health assessment in connection with this matter in August 2017. Consistent with her August 29, 2017 progress report in that regard, she noted W.T.C. had met criteria at that time to substantiate several diagnoses, namely, "Opiate use disorder, severe;" "amphetamine use disorder, severe;" "cannabis use disorder, severe;" and "alcohol use disorder in early remission, moderate." W.T.C. had also represented during his initial August 2017 intake appointment that he had not used any substances in the prior three months. Nevertheless, after he was provided a drug screen at his appointment, he tested positive for methamphetamines and cannabis. Due to his positive screen, inpatient drug treatment services had been

recommended for W.T.C., and a follow-up appointment had been scheduled for him on August 24, 2017. But, W.T.C. had never appeared for any follow-up appointment or, to Adamson's knowledge, sought treatment. W.T.C. had, however, recently scheduled another intake appointment with Life Skills for October 31, 2019, in connection with this matter.

A.M., the children's current foster mother, is employed as a special education teacher. The children have been placed with her since August 2017. Like Clement, A.M. testified N.D.R.C.'s behavior issues have included excessive lying, stealing, refusal to do homework, and that she tends to "shut down" when in trouble. N.D.R.C. also has "potty troubles" (*i.e.*, she wets her pants and does not wipe herself). According to N.D.R.C.'s doctor, her troubles have no medical cause but often cause her to suffer from urinary tract infections. H.M.C. also has difficulty with potty training and difficulty sleeping; and her behavioral issues, which have led to her being expelled from a day care program shortly after being placed with A.M., include spitting, hitting, kicking, and defiance. With respect to both children, A.M. referred to their behaviors as "severe." A.M. testified that since their placement with her – particularly after the children completed therapy in December 2018; were accepted into their schools' special education programs (H.M.C. was in preschool, and N.D.R.C. was in fifth grade at the time of the hearing); and after N.D.R.C. received an ADHD diagnosis in February 2019 and

began receiving appropriate medication to treat it – “ninety percent” of the children’s issues have improved. She explained the children’s school work and social skills have likewise improved.

With respect to Mother’s visitation of the children, A.M. testified it had been mostly sporadic. In August 2017, Mother visited with the children for one hour at the DCBS office every Monday after school. The visits ended in November 2017, when Mother moved to Arkansas. Mother resided in Arkansas until July 2018. During that period, her interaction with the children was limited to texts and telephone calls. A.M. testified she would try to contact Mother on a weekly basis to allow the children to maintain contact with Mother, but that Mother would often not answer and go “a few weeks” between contacts. Mother later returned to Kentucky from July 2018 through October 2018, during which time she resumed visiting the children at the DCBS office every Monday for an hour. The visits stopped when Mother returned to Arkansas in October 2018, where she stayed until April 2019. During that time, Mother would again “go three or four weeks” between calling or texting the children.

As an aside, on October 10, 2018, the Cabinet changed its goals for the children from reunification with Mother to adoption.

A.M. testified Mother returned to Kentucky in April 2019. Mother then resumed her weekly, one-hour visitations with the children at the DCBS office

later that month and has since done so regularly. A.M. added that on the Friday before the October 25, 2019 hearing, the children had also visited Mother's new Kentucky residence for the first time and had stayed with her, unsupervised, for three hours without incident.

A.M. testified that since visitations have resumed, however, the children's behavioral issues and anxieties have worsened. In particular, A.M. recalled that on June 17, 2019, the children had visited Mother for an hour at the DCBS office and that the following morning, as they were getting ready for school, H.M.C. had grabbed her, "held on to [her] for dear life crying uncontrollably," and wanted to know where A.M. was going to be, and where she herself was going to be, and when. A.M. testified that shortly thereafter, H.M.C. began having more difficulties sleeping and with potty training, and that her behavior changed "drastically to the point that day care requested we do something." After A.M. discussed H.M.C.'s change in behavior with the Cabinet, H.M.C. returned to therapy in July 2019. N.D.R.C., for her part, also returned to therapy in July 2019 after requesting to go back. A.M. testified that while N.D.R.C.'s difficulties have been more gradual, her potty training has likewise regressed; her grades have started to "slip back a bit;" and that since visitations have resumed, N.D.R.C. has constantly worried about "what her schedule is, and what's going to happen next."

Another witness who provided testimony was Paula Washington, a social worker who investigates allegations of child abuse and neglect on behalf of the Cabinet and has been involved with this case since February 2018.

Washington reviewed the history of this case, explaining the children were removed from Mother's custody in December 2015 for what Mother had stipulated was "severe environmental neglect." Specifically, the children had been discovered living with Mother, Father, and twelve other people in a small home that was, based upon reports of investigators, in a "complete state of disarray." Animal feces littered the floor; toilets would not flush; the children slept on box springs, rather than mattresses; and there was no heat in the house. After findings of abuse and neglect were substantiated against Mother and Father, the children were removed from their custody and placed with the Cabinet. Father and Mother later separated, and Father briefly regained custody of the children in 2016. Several months afterward, though, Father contacted the Cabinet and reported that his health no longer allowed him to properly care for the children, and the children were consequently removed from his custody due to dependency. As indicated, the children were then placed with their maternal great aunt; they were removed from her custody due to substantiated findings of abuse and neglect, and they were ultimately placed with A.M.

Washington testified that when the children were removed from Mother's custody, Mother was provided with a case plan toward reunification. Mother's case plan required her to maintain employment; maintain her sobriety and mental health; and maintain her attachment to and involvement with her children. Washington also testified that since April 2019, Mother has made substantial progress on her case plan. For example, Mother has begun taking online classes to obtain a degree. In June 2019, she entered a month-to-month lease and obtained appropriate housing. She has completed parenting classes. She has apparently maintained her sobriety since returning to Kentucky in April 2019 and has provided the Cabinet with the results of several supervised drug screens in which she tested negative for substances, the most recent of which was two or three weeks prior to the hearing. Mother has also regularly visited with the children once per week at the DCBS office, and Washington testified she had observed Mother making "appropriate parenting decisions" at those times. Washington also verified that Mother has completed a mental health assessment and has begun seeking appropriate substance abuse and mental health services.

And, when asked if a "slow transition" back to Mother's custody could resolve whether Mother could effectively function as the children's full-time parent, Washington testified it was "possible."

However, Washington added, while Mother is “on a positive track,” it would be difficult to predict whether she could care for the children long term. Thus, she answered in the negative when asked for purposes of KRS 625.090(2)(e) and (g) whether there existed a reasonable expectation that Mother’s parental care and protection of the children would improve, considering the children’s ages, or whether there existed a reasonable expectation of significant improvement in Mother’s conduct in the immediately foreseeable future, considering the children’s ages.

In that vein, Washington explained that between December 2015 and April 2019, Mother had been mostly inconsistent following her case plan. For example, Mother had never maintained employment for more than three months at a time; the little income she earned as of the date of the hearing derived from part-time babysitting; and she was primarily dependent upon W.T.C.’s income, which mostly derived from Social Security disability payments. Washington believed that if Mother and W.T.C. ever separated, Mother would be unable to meet her regular living expenses.

According to Washington, Mother also has never maintained any residence for more than “a couple of months.” She had been evicted from where she was residing in Arkansas before the Cabinet or any cooperating agency had been able to assess the appropriateness of her living conditions in that location.

Regarding Mother's mental health, Washington testified Mother is herself a victim of childhood abuse and neglect; suffers from depression; and suffers from the continued trauma of having her children removed. Further, Washington testified, Mother has been inconsistent with seeking treatment for those issues. As of the October 25, 2019 hearing, Mother was scheduled to resume therapy the following month but had earlier been discharged from therapy at Family Care Counseling in June or July of 2019 because she had missed three or four of her appointments between April and July; had reengaged in therapy in mid-August; but had once again ceased therapy in September, claiming she had felt uncomfortable with her therapist.

Consistently with Mother's prior substance abuse assessments in 2015 and 2017, Washington also recounted Mother's history of abusing marijuana, "pills," and cocaine. Washington remained hopeful Mother would continue her current sobriety, which had apparently lasted since at least April 2019. Washington also testified, however, that Mother had a history of maintaining sobriety for several months and then "backsliding."

Because Mother has not functioned as a full-time parent for the children since December 2015, Washington also doubted Mother fully grasped the dynamics of full-time parenting or was otherwise prepared to provide regular care for two children diagnosed with mental health issues that would progress into

adulthood. Moreover, during Mother's absence from their lives, N.D.R.C. and H.M.C. bonded with their current foster family. Washington agreed with the children's therapist's opinion that Mother's reemergence in the children's lives has strained those bonds; that the children's current behaviors reflect their feelings of inconsistency and helplessness; and that once the children are provided a definitive answer regarding where they would be permanently placed, the children's difficulties would improve greatly.

In short, Washington testified she could only speculate regarding whether Mother's conduct concerning her parental care and protection of the children could improve in the long term. Because there was no reasonably foreseeable expectation in that regard; because the children had a present need for stability; and because she was confident the children would gain that stability through adoption, she opined the children's best interests would be served if Mother's parental rights were terminated

W.T.C. testified. He and Mother married on January 12, 2016, and the Cabinet also provided him a case plan in relation to this matter. In compliance with his plan, and since April 2019, he has completed parenting classes; he has undergone a mental health assessment; he has regularly attended alcoholics anonymous and narcotics anonymous meetings and graduated from a drug

rehabilitation program in 2018; and he attends counseling. He also works part-time in construction, making ten dollars per hour, four to five hours per day.

W.T.C. also testified he has an extensive history of drug use and several criminal convictions, the most recent of which were 2018 convictions for possession of cocaine, possession of drug paraphernalia, and bail jumping. He is currently serving probation for those offenses, and he returned to Kentucky from Arkansas during July 2018 through October 2018 due to court orders and proceedings associated with his probation. He is subjected to random drug screening as a condition of his probation and was recently jailed for a period of ten days as a sanction for failing an August 2019 drug screen due to marijuana use.

W.T.C. has also been prescribed medication for schizophrenia, psychosis, and bipolar disorder and draws \$693 per month in Social Security disability due to those conditions. He testified he has been “in and out” of mental health treatment since he was twelve years old. He testified he was recently in therapy to address trauma he suffered from being sexually abused as a child, but that he ended therapy in June 2019 because his therapist wanted him to discuss matters that made him feel uncomfortable. He testified he had scheduled an appointment with another therapist in November 2019.

Lastly, Mother testified. She stated that after the children were removed from her custody in 2015, she “believed [she] was working [her] case

plan, but [she] wasn't working it like [she] should." She testified that while the children were briefly living with Father in 2016, she occasionally assisted with bathing the girls, helping them with their homework, and with cooking, but she was not permitted to be in the house without Father or spend the night. During that period, she also completed parenting classes and a drug assessment, but she did not have a home or employment.

Mother testified that when she went to live in Arkansas in November 2017, she did so because she knew she had a substance abuse problem and wanted to move away from her enablers. She represented that while she was there, she received substance abuse treatment from an outpatient facility, but stopped treatment after approximately one month because the facility was shut down due to insurance fraud; and, she had been unable to find any other substance abuse programs. Mother also testified she relapsed "for a couple of months" while residing in Arkansas.

Mother testified she had only returned to Kentucky between July 2018 through October 2018 to accompany W.T.C., who had been required to return due to court orders and proceedings associated with his probation. As to her permanent return to Kentucky in April 2019, Mother testified she and W.T.C. had been living in an apartment in Arkansas; they had trusted a certain individual to pay their rent

for them, but the individual in question had never paid the rent for them, had instead stolen their money, and they had been consequently evicted in March 2019.

Mother testified that since returning to Kentucky, she has been sober for a period of eight months; now lives in a duplex apartment; and has resumed regular visitation with the children. She makes \$100 per week babysitting, and she testified that between that, W.T.C.'s income, and food stamps, she is able to afford everyday living expenses.

Mother also attends alcoholics anonymous and narcotics anonymous meetings and has a sponsor. She has sought mental health treatment. But, like W.T.C., she represents that she terminated her therapy sessions because her therapist insisted upon discussing issues that made her feel uncomfortable and that she has scheduled an appointment with another therapist in November 2019.

Mother's therapist also recommended medication for her issues with depression, but Mother has not followed up with his recommendation.

Upon the conclusion of the October 25, 2019 hearing, the family court further elaborated upon its reasoning from the bench, explaining in relevant part:

The children have been in the same foster home, the same placement, with the same foster parents, since this most recent removal twenty-six months ago. These children are now five and ten years of age. [H.M.C.] is five now but will be six in December. [N.D.R.C.] is ten now but will be eleven in February. And the children both have some mental or emotional problems that they're dealing with, which appear to be related at least

in part to the instability that they've had in their lives, you know, bouncing around from one home to another for the last four or five years, which is most of [H.M.C.]'s life and a big part of [N.D.R.C.]'s life at this time.

Since the initial removal, at the time of the initial removal, the Cabinet negotiated case plans with the mother and father, which included a number of different things depending on what they were doing and what they were working on, from stable housing, stable income, maintaining sobriety, substance abuse assessments, and following the recommendations of the Cabinet, the schools, and therapists and so forth. The mother has worked on her case plan to some extent all along, but never been fully compliant with it and never really beginning to earnestly work on it in completing things until June of this year. And that's when she has begun to work earnestly on it. There have been times prior to this when she'd work on it, and then stop for one reason or another, and that has been the history. Kind of start and then stop, due to various circumstances in her life and changes in her life, moves and so forth, schooling and whatnot. But, that's been the history. Since June, she's done pretty well. She's doing pretty well. But the Cabinet is concerned, based on her history and track record, there's no assurance at this point that she will maintain this and follow through on it, and ultimately do everything she needs to do on a sustained basis.

.....

In the meantime, these children have a lot of challenges, a lot of problems that they're dealing with, mental and emotional problems that have been described. And, while I don't think it can be said that these problems that they're having were caused by the parents, it appears these problems have certainly been aggravated or made worse by the failure or inability of the parents to work their case plan and be in a position to provide a safe and

stable home for their children themselves. They just haven't been able to do that yet. The father's not in a position today to do it for the reasons I've stated. The mother's not in a position today to do it for the reasons I've stated. And the concern here is that we don't know if or when the mother will be. Based on her track record, we don't know.

But in the meantime, these children are kinda just hanging in limbo, and it's clear that this uncertainty in hanging, their not knowing what their future is, who they're going to be with, where their home will be, where they're going to live and so forth, is making it awful tough on them. They were able to complete their, successfully make a lot of improvement in their therapy. I think it was described as a "ninety percent improvement" when they were discharged. And then, but since they've started visiting back with their mother again, they have had quite a setback and have had to resume therapy. And they're, the way it was described, almost back to where they started at the beginning and have lost the progress that they made. And again, that's not, I don't believe that's due to anything that the mother or the father have done intentionally, but it is something that has occurred. That's the effect that all of this has had on the children. Bottom line is, they need some stability, they need permanency, and they need some certainty so that they know where they're going to be, who's going to be taking care of them, where they're going to live, and what will happen to them. And if they have that, I believe that will be a great benefit to them and be in their best interests.

Having made those specific findings of fact by clear and convincing evidence, the court also finds by clear and convincing evidence that both children have been previously adjudicated as abused and neglected as evidenced by the court records in the juvenile cases that have been admitted.

. . . .

As to the mother, the court makes the same findings as to the father, but also, in addition to subparagraph two of the statute, in addition to (e) and (j),<sup>[2]</sup> the court makes the finding as to (g), that the mother, for reasons other than poverty alone, has continuously and repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care or education reasonably necessary and available for the children's wellbeing, that there is no reasonable expectation of significant improvement in the parent's conduct or in the immediately foreseeable future considering the age of the child.

And when I come to (e) and (g) there, as far as the mother's concerned, you know, she has made strides. She's been doing better here just for the last few months. But, the history is not good. Her track record is not good. As a matter of fact, it was so bad, it causes a great deal of concern and uncertainty as to whether or not she can sustain this on a permanent basis. She hasn't been able to in the past.

Finally, well, the court finds that the Cabinet has made reasonable efforts to reunify the family, that the Cabinet has provided all reasonable services that would be

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<sup>2</sup> As indicated, from the bench at the conclusion of the October 25, 2019 evidentiary hearing, the family court also predicated the termination of Mother's parental rights upon KRS 625.090(2)(j), which permits termination on the ground that "the child has been in foster care under the responsibility of the cabinet for fifteen (15) cumulative months out of forty-eight (48) months preceding the filing of the petition to terminate parental rights[.]" Nevertheless, while the record reflects this ground was satisfied, the family court's written order – which the family court directed the Cabinet to draft on its behalf, and which the Cabinet tendered – inexplicably omitted any reference to KRS 625.090(2)(j). Accordingly, we cannot consider that ground in our analysis. To the extent that the omission of this ground was unintended, we remind the family court "that it speaks only through written orders entered upon the official record." *Kindred Nursing Centers Ltd. Partnership v. Sloan*, 329 S.W.3d 347, 349 (Ky. App. 2010) (citation omitted). And, when outsourcing its responsibility to draft a written order, the family court must take care not to inadvertently "abdicate its fact-finding and decision-making responsibility[.]" *Bingham v. Bingham*, 628 S.W.2d 628, 629 (Ky. 1982).

available and necessary to reunify the family, and that there are no additional services that the Cabinet could have provided. The court finds that by clear and convincing evidence, that the best interests of the children will be served by termination of parental rights of the mother and the father. They're in a stable and loving placement now with their foster parents, there is a reasonable possibility they may be adopted, and history has shown that when they've been able to have some stability and certainty and consistent placement in that home, they have benefitted greatly not only in their behavior, but in school and school work and a lot of different ways. So, for the reasons that I've stated, the petition will be granted.

In its November 14, 2019 written orders relating to this consolidated matter, the family court summarized the evidence consistently with what is set forth above. Considering that evidence, and after considering the applicable statutes and their requisite factors – particularly KRS 625.090(2)(e) and (g) – the family court determined the children's best interests would indeed be served by declaring the children wards of the Commonwealth to be placed for adoption, and accordingly terminated Mother's parental rights.

As indicated, the crux of Mother's appeal involves her contentions that the family court erred in determining "there is no reasonable expectation of improvement in parental care and protection," per subsection (e), or that "there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future," per subsection (g). Contesting these findings, Mother points out that during the October 25, 2019 termination hearing, evidence

was adduced suggesting that beginning in April 2019 she has made substantial progress with her case plan.

Simply put, Mother is asking this Court to re-weigh the evidence in her favor. But, we are not at liberty to do so. The family 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). “Thus, 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 and Family Serv. v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014) (citing CR<sup>3</sup> 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 (citing *K.R.L. v. P.A.C.*, 210 S.W.3d 183, 187 (Ky. App. 2006)).

“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) (citation omitted). “Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is proof of a probative and substantial

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<sup>3</sup> Kentucky Rule of Civil Procedure.

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, as reflected by the family court’s findings and the evidence of record, Mother’s argument disregards her years of inconsistencies *prior* to her progress in April 2019 – inconsistencies which, for purposes of assessing the children’s best interests, the family court determined had *outweighed* Mother’s recent progress and cast serious doubt upon Mother’s ability to maintain it. We will not restate that evidence, as it has been exhaustively detailed above; suffice it to say, however, that we agree with the family court’s determination that it was clear and convincing, and that it supported the grounds of KRS 625.090(2)(e) and (g).

In a related argument, Mother also points out that shortly before the October 25, 2019 hearing, she moved to continue this matter, and that the family court denied her motion. As she notes in her appellate brief, her motion was based on the following:

E.C. had made significant progress since June 2019. For five months E.C. had been compliant with her case plan, had a stable home, and had shown her ability to parent her children. Days before the trial E.C.’s case took a positive turn when her children came to her home for visitation. The children were able to see their mother’s home, they were able to see the room she had set up for them, for the first time in this case, the children were able to see for themselves that their mother had a place for them. In light of the progress E.C. had made and the fact

that the Cabinet had seen fit to allow E.C. to begin unsupervised visitation in her home, the denial of the continuance led to undeniable prejudice to E.C. Not to mention the harm to her children, the children would have assumed that by getting to go to their mother's home that they would be getting to move home.

Therefore, the trial court should have granted E.C.'s Motion to Continue Trial to *allow her additional time to continue on the positive path she was on and to allow the family therapy a chance to be successful.*

(Emphasis added.)

As to Mother's point that the Cabinet "had seen fit to allow [her] to begin unsupervised visitation in her home," Washington testified during the continuance hearing that even when a goal change is sought from reunification to adoption – as it was for these children as of October 10, 2018 – the Cabinet still has a policy and standard to continue offering reunification services.

Apart from that, however, it is evident Mother's purpose in asking for a continuance was not connected to any procedural issue concerning her ability to prepare for the October 25, 2019 hearing. Rather, her motion related to the merits of her case: She asked for an additional, indefinite amount of time to prove she could *continue* being consistent for purposes of KRS 625.090(2)(e) and (g). In denying her motion, the family court explained that considering the children's immediate need for stability and consistency in their lives, the approximately four years between the date Mother had lost custody and the date of the termination

hearing had provided Mother ample time to gather that type of proof; no more time was warranted. We discern no abuse of the family court's discretion in that respect and, thus, find no error.

We have considered the breadth of Mother's arguments on appeal.

Finding no error, we AFFIRM.

ALL CONCUR.

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