

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

NO. 2020-CA-0452-ME

D.R.H.

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT  
HONORABLE JASON S. FLEMING, JUDGE  
ACTION NO. 19-AD-00068

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES; AND  
H.R.H., A CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; COMBS AND JONES, JUDGES.

COMBS, JUDGE: D.R.H. (Mother) appeals from the Christian Family Court's order terminating her parental rights. After our review, we affirm.

Mother and K.R.H. (Father) are the biological parents of H.R.H., a male, born on October 25, 2018, in Christian County, Kentucky. The child was removed the next day after the Cabinet received a referral from Jennie Stuart

Medical Center concerning Mother's testing positive for amphetamines while pregnant and due to a letter from Florida CHS that other children had been removed from Mother's care by a court in Florida. On January 24, 2019, the Christian Family Court found that the child was a neglected child in the underlying dependency, neglect, and abuse (DNA) case, No. 18-J-00467-001. At the February 28, 2019, disposition hearing, the child was committed to the Cabinet's custody.

On July 23, 2019, the Cabinet filed a petition for involuntary termination of parental rights (TPR) of both parents. The Cabinet alleged that the child is an abused or neglected child as defined in KRS<sup>1</sup> 600.020 and that termination would be in his best interests. The Cabinet also alleged that Mother had abandoned the child for not less than 90 days; that Mother had refused or been incapable of providing essential parental care and protection for the child for a period of not less than six months and that there is no reasonable expectation of improvement; and that for reasons other than poverty alone, she had failed to provide -- or was incapable of providing -- essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being for a period of not less than six months and that there is no reasonable expectation of improvement.

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

The matter was heard on February 12, 2020. April Sargent, the Cabinet worker, testified. The Cabinet became involved on October 26, 2018, after receiving a referral from Jennie Stuart Medical Center where Mother delivered the child. Jennie Stuart had received a letter from Florida CHS about its previous dealings with Mother. Ms. Sargent signed the petition in the “J” case (juvenile case). She testified that the court made a finding of neglect on January 24, 2019. Neither parent has regained physical possession of the child since October 26, 2018. The child has remained committed to the Cabinet since the disposition on February 28, 2019. A copy of the “J” case record was made an exhibit to Ms. Sargent’s testimony.

Ms. Sargent testified that Mother was provided with a case plan which required her to undergo a mental health drug/assessment, attend parenting classes, maintain sobriety, attend AA/NA meetings, and show proof of that attendance to the Department for Community Based Services (DCBS). Although Mother made an appointment for the mental health evaluation, she did not show up. When asked if she knew of any substantial change in either parent’s circumstances, Ms. Sargent testified that Mother was incarcerated in Florida. Both parents had moved there without providing the Cabinet an address or any way to reach them. Mother did not complete a mental health evaluation or other tasks in her case plan. Mother did not continue drug treatment, nor did she maintain stable housing or employment.

Ms. Sargent's last contact with Mother was in November or December 2018. Mother has had no contact with the Cabinet since that time. Mother did not request help on her case plan. Ms. Sargent was not aware that she had provided any financial support for the child. Mother has two other children, who were removed by Florida CHS, and her parental rights to those children have been terminated.

Before she went to Florida, Mother had between four to eight visits with the child. Ms. Sargent observed these visits and testified that Mother would hold the child and attempt to try to feed and console him, but they did not appear bonded. Mother's last visit with the child was in November 2018. For the entire year of 2019, neither parent had any contact with Ms. Sargent.

Ms. Sargent testified that termination of parental rights would be in the child's best interests. Ms. Sargent does not think there is any reasonable expectation of improvement in Mother's conduct. Ms. Sargent testified that it is in the child's best interests for parental rights to be terminated and that the child be placed for adoption. The child is currently in an adoptive home.

On February 24, 2020, the trial court entered findings of fact and conclusions of law as follows in relevant part:

13. The Court finds by clear and convincing evidence that [H.R.H.] is a neglected child as defined in KRS 600.020 and termination of parental rights would be in the best interest of the child.

14. The Court finds by clear and convincing evidence that [Mother] and [Father] have abandoned the child for a period of not less than ninety (90) days.

15. The Court finds by clear and convincing evidence that [Mother] and [Father] for a period of not less than six (6) months, have continuously or repeatedly failed or refused to provide or has [sic] been substantially incapable of providing essential parental care and protection of the child and there is no reasonable expectation of improvement in parental care and protection, considering the age of the child.

Specifically, the Court finds by clear and convincing evidence that the child is at risk of harm [due] to the mother's failure to complete the treatment plan when she was out of jail. The mother has only been incarcerated for a year and did not work the plan before incarceration. Mother has two other prior born children whose rights have been involuntarily terminated through Florida. Mother and Father have abandoned the child by moving to Florida. There is a history of drug abuse. The child is at significant risk of harm if left in her [sic] mother's care. The child was placed in the Cabinet['s] care at the time he was released from the hospital. The Court found the child to be neglected by the mother and father. The Cabinet attempted to set a case plan and the parents could not or did not do a case plan. The parents visited with the child less than eight (8) times before moving without notice to Florida, two (2) months after the child was born. The father's whereabouts are unknown and the mother is incarcerated. Incarceration alone is not the reason for this termination; however, her criminal lifestyle knowing she had children is a factor. The mother and father are not stable. The parents have [had] no contact with the child or the Cabinet since November 2018. The mother was not in jail and she chose to move to Florida. The parents have never had the child in their care. The child has always been in the

care of foster parents. The Cabinet explored relative placements and none was appropriate. Neither parent has provided any parental care or parental support for the child since birth. Neither parent has provided essential needs for the child. Neither parent has completed the treatment plan recommended by the Cabinet.

The parents have gone more than six months without contact with the child. The parents have made no real effort to complete the Cabinet's treatment plan.

16. The Court finds by clear and convincing evidence that [Mother and Father] for reasons other than poverty alone, have continuously or repeatedly failed to provide or is [sic] incapable of providing essential food, clothing, shelter, medical care or education reasonably necessary and available for the child's well-being and there is no reasonable expectation of improvement in the parents' conduct in the immediately foreseeable future, considering the age of the child.

17. Specifically, the Cabinet sought emergency custody on October 26, 2018, after being contacted by the hospital concerning repeated positive prenatal drug tests of [Mother].

18. The Court finds that the Cabinet . . . has shown, at all stages by clear and convincing evidence that it has provided all reasonable efforts to reunite the child with his parents, as well as followed protocol to evaluate whether any member of the parent's family is appropriate for placement and were [sic] unable to find anyone.

19. That the Christian County Family Court had adjudicated the child as a neglected child in the underlying DNA case (18-J-00467-001) and the underlying file and findings are orders are hereby incorporated herein, by references as if set for [sic] in their entirety at today's hearing. If this matter is

appealed, those cases shall be designated as part of the record.

Furthermore, in its conclusions of law the trial court determined that:

13. The child is flourishing in foster care and has bonded with the foster parents. The child is suitable for adoption and the foster parents are interested in adopting the child if the child becomes available for adoption. The Court finds by clear and convincing evidence that it is in the child's best interests that the right of the parents be terminated.

On February 24, 2020, the trial court entered an order terminating parental rights and order of judgment terminating the parental rights of both parents. On March 25, 2020, Mother filed a notice of appeal to this Court. Father has not appealed.

KRS 625.090 provides for a tripartite test which allows for parental rights to be involuntarily terminated only upon a finding, based on clear and convincing evidence, that the following three prongs are satisfied: (1) the child is found or has been adjudged to be an abused or neglected child as defined in KRS 600.020(1); (2) termination of the parent's rights is in the child's best interests; and (3) at least one of the termination grounds enumerated in KRS 625.090(2)(a)-(j) exists.

*Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014).

The standard governing our review is whether the trial court's findings are clearly erroneous. CR<sup>2</sup> 52.01.

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<sup>2</sup> Kentucky Rules of Civil Procedure.

The trial court has a great deal of discretion in an involuntary termination of parental rights action. . . . [F]indings of fact of the trial court will not be disturbed unless no substantial evidence exists in the record to support its findings. 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.

*C.A.W. v. Cabinet For Health & Family Services, Commonwealth*, 391 S.W.3d 400, 403 (Ky. App. 2013) (citations and internal quotation marks omitted).

The sole issue Mother raises on appeal is captioned as follows:

Trial Court's Findings That Grounds For Termination Have Been Met And That It Is In The Child's Best Interest For [Mother's] Parental Rights To Be Terminated Were Clearly Erroneous And Constituted Abuse Of Trial Court's Discretion.

(Emphasis original). However, the only issue that Mother actually addresses in her brief concerns the trial court's findings that grounds for termination exist -- the third prong of the tri-partite test.

KRS 625.090(2) provides that no termination of parental rights shall be ordered unless the circuit court finds by clear and convincing evidence the existence of one (1) or more of eleven enumerated grounds. In the case before us, the trial court found that the Cabinet had proved by clear and convincing evidence the existence of not just one -- but three grounds:

(a) That the parent has abandoned the child for a period of not less than ninety (90) days;



...

(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; [and]

...

(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[.]

With respect to KRS 625.090(2)(a), Mother argues that she did not abandon the child because she intended to return to Kentucky and to continue working her plan once released from incarceration in March 2020. As to KRS 625.090(2)(e) and (g), Mother contends that in light of her anticipated release, there would be a reasonable expectation of improvement in parental care and protection and a reasonable expectation of significant improvement in her conduct as a parent.

However, Mother's alleged good intentions are not determinative. Numerous matters of fact indicate the contrary of her assertions. Mother did not work her plan. The child was removed at birth and Mother has not seen the child

since November 2018. She left for Florida shortly after the child's birth without notifying the Cabinet. Mother did not provide parental care and protection for the child -- nor any essentials reasonably necessary for the child's well-being. In addition, Mother had lost her parental rights to two other children who were removed from her care by the state of Florida before this child was born. We agree with the Cabinet that it was reasonable for the trial court to conclude that improvement was not likely.

The trial court's findings of fact are supported by substantial evidence of record, and the trial court properly applied the tri-partite test in KRS 625.090. Accordingly, we AFFIRM.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE CABINET  
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SERVICES:

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