

RENDERED: OCTOBER 22, 2021; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2019-CA-0740-ME

C.R.C.

APPELLANT

v.

APPEAL FROM MARION CIRCUIT COURT  
HONORABLE ALLAN RAY BERTRAM, JUDGE  
ACTION NO. 18-AD-00003

M.M.C. AND J.G.C.

APPELLEES

AND

NO. 2019-CA-0741-ME

C.R.C.

APPELLANT

v.

APPEAL FROM MARION CIRCUIT COURT  
HONORABLE ALLAN RAY BERTRAM, JUDGE  
ACTION NO. 18-AD-00004

M.M.C. AND J.G.C.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CALDWELL, McNEILL, AND TAYLOR, JUDGES.

McNEILL, JUDGE: Appellant, C.R.C. (hereafter “Mother”), is the biological mother of three minor children, two of whom, J.R.O. and T.D.O., are the subject of the present cases.<sup>1</sup> On June 14, 2017, the Marion District Court entered two separate orders finding each of the children to have been neglected or abused. As a result, the court subsequently awarded permanent custody of the children to their biological relative J.G.C. and his wife, M.M.C. (hereafter “Appellees”).

In May of 2018, Appellees filed two petitions seeking an involuntary termination of parental rights and for adoption of both children.<sup>2</sup> An evidentiary hearing was held on December 3, 2018 during which several witnesses testified, including Mother, Appellees, the children’s biological father, J.D.O. (hereafter “Father”), and the children’s guardian *ad litem* (hereafter “GAL”), and the Cabinet filed reports recommending adoption. According to the adoption petitions, at the

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<sup>1</sup> Pursuant to Court policy, the children and the parties will be referenced by initials only. J.R.O. and T.D.O. will collectively be referred to as “the children.”

<sup>2</sup> We will review these only as petitions for adoption because “proceedings to involuntarily terminate parental rights can *only* be initiated by the Cabinet[for Health and Family Services], any child-placing agency licensed by the Cabinet, any County or Commonwealth’s Attorney, or a parent. [Kentucky Revised Statute] KRS 625.050(3).” *R.M. v. R.B.*, 281 S.W.3d 293, 296 (Ky. App. 2009) (emphasis added).

time of the hearing, the children had been in the custody of Appellees for more than one year.

At the adoption hearing, Mother testified that she was employed at a local dairy farm, that she had a stable residence, and could provide for the children if returned to her custody. She also admitted to using methamphetamine and to having an opiate addiction, but then described in detail how she was actively seeking recovery. Mother also admitted that her children were removed from her custody due to one of the children having bruises without explanation, that she was behind on her child support, and that she had not visited her children since April of 2018. In addition to Mother's testimony, Father and Appellees also testified concerning their potential fitness to either remain or become the children's lawful parents.

After considering the totality of the evidence, the trial court issued an order ultimately concluding that the best interests of the children would be served by granting Appellees' adoption petitions. Accordingly, the court entered two judgments of adoption, one for each child.<sup>3</sup> Mother now appeals to this Court as a

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<sup>3</sup> To clarify, two judgments of adoption and two separate findings of fact and conclusions of law were issued. One judgment and its findings was issued in the case involving the child T.D.O. and another judgment and its findings in the case of J.R.O. The judgments and findings are based on the same facts and therefore are identical with the exception of the children's names.

matter of right.<sup>4</sup> Mother’s sole argument on appeal is that the trial court failed to observe the relevant statutory requirements for a termination of parental rights (hereafter “TPR”) by failing to make the necessary findings required by statute. For the following reasons, we disagree.

## I. ANALYSIS

The relevant statutes governing TPR are provided in KRS<sup>5</sup> Chapter 625. As stated, Mother argues on appeal that the trial court failed to follow the dictates of those provisions. However, Mother has appealed from the trial court’s judgments of adoption and their accompanying findings of fact and conclusions of law. Therefore, the relevant statutory provisions are contained in the adoption statutes enumerated under KRS Chapter 199. *See A.K.H. v. J.D.C.*, 619 S.W.3d 425, 430 (Ky. App. 2021) (providing summary of adoption statutes and contrasting with the TPR provisions); and *Wright v. Howard*, 711 S.W.2d 492, 495 (Ky. App. 1986) (“[T]he adoption judgment itself terminates parental rights by virtue of the provisions of KRS 199.520(2)[.]”). Although the TPR statutory provisions are distinct from the adoptions provisions, we apply the same standard of review on

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<sup>4</sup> Father was incarcerated during the trial court proceedings. He was appointed a GAL during those proceedings. Although the GAL filed a notice of appeal on his behalf, it appears that his motion to proceed *in forma pauperis* was never granted by the trial court. Father’s GAL subsequently filed a motion for leave to file his brief which a panel of the Court styled as a motion to intervene, and then denied. Therefore, Father is not a party to this appeal.

<sup>5</sup> Kentucky Revised Statutes.

appeal in adoption cases that we apply in TPR cases. That standard has been summarized by a panel of this Court as follows:

The proceedings in the adoption case were primarily pursuant to KRS 199.500 and KRS 199.502, adoption without the consent of the biological parents. An adoption without the consent of a living biological parent is, in effect, a proceeding to terminate that parent's parental rights. *Moore v. Asente*, 110 S.W.3d 336 (Ky. 2003). The standard of review in a termination of parental rights action is confined to the clearly erroneous standard in CR 52.01 based upon clear and convincing evidence. The findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings.

*B.L. v. J.S.*, 434 S.W.3d 61, 65 (Ky. App. 2014).

As previously stated, Mother's sole argument on appeal is that the trial court failed to observe the relevant statutory requirements for a TPR. It is undisputed that Mother failed to request additional findings before the trial court.

CR 52.04 requires a motion for additional findings of fact when the trial court has failed to make findings on essential issues. Failure to bring such an omission to the attention of the trial court by means of a written request will be fatal to an appeal. *Cherry v. Cherry*, Ky., 634 S.W.2d 423 (1982). The thread which runs through CR 52 is that a trial court must render findings of fact based on the evidence, but no claim will be heard on appeal unless the trial court has made or been requested to make unambiguous findings on all essential issues.

*Eiland v. Ferrell*, 937 S.W.2d 713, 716 (Ky. 1997).

Based on this precedent, Appellees argue that it would be inappropriate to remand for additional findings. Mother failed to file a reply brief addressing Appellees' argument. Furthermore, Mother's appellant brief fails to cite to a single portion of the record. Therefore, Mother has failed to satisfy CR<sup>6</sup> 76.12(4)(c). *See Clark v. Workman*, 604 S.W.3d 616, 619 (Ky. App. 2020) (child support case holding that in the face of such violations of CR 76.12, the Court need only review for manifest injustice). Yet, we cannot overlook the gravity of the issue before this Court in such cases where a parent's parental rights are terminated by any means. *See Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014) (internal quotation marks and citation omitted) ("The U.S. Supreme Court has unequivocally held that a parent has a fundamental liberty interest in the care and custody of his or her child."); and *Keifer v. Keifer*, 354 S.W.3d 123, 124-126 (Ky. 2011). ("Consideration of matters affecting the welfare and future of children are among the most important duties undertaken by the courts of this Commonwealth."). Accordingly, "two basic rules govern all adoptions: 1) the right of adoption exists only by statute; and, 2) there must be strict compliance with the adoption statutes. Failure to do so results in an invalid judgment." *S.B.P. v. R.L.*, 567 S.W.3d 142, 147 (Ky. App. 2018) (internal quotation marks and citations omitted). Therefore, despite Mother's failure to

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<sup>6</sup> Kentucky Rules of Civil Procedure.

comply with CR 52.04 and CR 76.12, we will review the present case for clear error.<sup>7</sup> We reiterate that “[t]he findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings.” *B.L.*, 434 S.W.3d at 65.

As previously stated, the statutes governing adoptions in this Commonwealth are codified in KRS Chapter 199. KRS 199.520(1) provides that the trial court shall enter a judgment of adoption if, after a hearing, the court is satisfied that:

the facts stated in the petition were established; that all legal requirements, including jurisdiction, relating to the adoption have been complied with; that the petitioners are of good moral character, of reputable standing in the community and of ability to properly maintain and educate the child; and that the best interest of the child will be promoted by the adoption and that the child is suitable for adoption.

“Upon granting an adoption, all legal relationship between the adopted child and the biological parents shall be terminated except the relationship of a biological parent who is the spouse of an adoptive parent.” KRS 199.520(2). Adoptions can be granted with or without the consent of the biological parents. KRS 199.500(1)

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<sup>7</sup> See, e.g., *Anderson v. Johnson*, 350 S.W.3d 453, 458 (Ky. 2011) (child custody case holding that “CR 52.01 requires that the judge engage in at least a good faith effort at fact-finding and that the found facts be included in a written order. Failure to do so allows an appellate court to remand the case for findings, even where the complaining party failed to bring the lack of specific findings to the trial court’s attention.”).

and KRS 199.502. The present case concerns the latter. An adoption may be granted without the consent of the biological living parents of a child if it is pleaded and proved as part of the adoption proceeding that any condition provided in KRS 199.502(1)(a)-(j) exists with respect to the child. Those provisions mirror the TPR factors. However, KRS 199.500(4) provides an alternative:

Notwithstanding the provisions of subsection (1) of this section, an adoption may be granted without the consent of the biological living parents of a child if it is pleaded and proved as a part of the adoption proceedings that any of the provisions of KRS 625.090 exist with respect to the child.

KRS 625.090 contains all of the factors courts consider in TPR cases. Again, while the adoption statutes and the TPR statutes overlap, they are distinct and should be analyzed accordingly. In adoption cases, the trial court must first find that KRS 199.520(1) was satisfied. Then, in non-consensual adoption cases, the court must make at least one additional finding under either KRS 199.502(1)(a)-(j), or any of the provisions of KRS 625.090. We will confine the second part of our analysis to the factors provided under KRS 199.502(1)(a)-(j).

In the present case, jurisdiction is not being challenged. The trial court's findings specifically stated that "the facts in the [adoption] Petition were true." We conclude that this is an acceptable statement incorporating those facts by reference including, without limitation 1) that the children had been removed from their parents' home in excess of six months; 2) that the conditions that led to



the children's removal would likely still persist; 3) that the parents have failed to follow up with the case plans designed by the Cabinet; and 4) that the parents had abandoned the children for more than ninety days, have continuously failed or refused to provide essential parental care and protection for the children, and that there is no reasonable expectation of improvement in parental care and protections.

In its findings of facts and conclusions of law, the trial court specifically concluded that that Appellees are “of good moral character, of reputable standing in the community, and have the ability to properly maintain and educate [the children]”; and that “the best interest of [the children] will be promoted by the adoption and that [the children are] suitable for adoption.” Therefore, the dictates of KRS 199.520(1) have been satisfied. In addition, the court discussed Appellees' employment and that they “are of sufficient ability, financially or otherwise, to nurture, protect, and educate the children properly.” The court further provided that Appellees were the aunt and uncle of the children and that they participated in previous litigation resulting in Appellees being awarded permanent custody of the children.<sup>8</sup>

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<sup>8</sup> Father testified at the adoption hearing that although Appellee J.G.C. was actually his biological cousin, he thought of J.G.C. as his brother.

We also conclude that the court's findings satisfied statutory requirements because at least three of the conditions contained in KRS 199.502 were satisfied here:

(1) Notwithstanding the provisions of KRS 199.500(1), an adoption may be granted without the consent of the biological living parents of a child if it is pleaded and proved as part of the adoption proceeding that any of the following conditions exist with respect to the child:

...

(c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;

...

(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[.]

As previously stated, the trial court's order reiterated that Appellees had been awarded custody of both children on February 21, 2018, nearly ten months prior to the adoption hearing. According to Mother's testimony, she visited the children only once since April of 2018, thus satisfying KRS 199.502(e). And as previously stated, a prior determination was made by the Marion District Court that the children were neglected or abused. As the basis for its decision that court specifically determined that the children's Mother inflicted or allowed to be inflicted upon the children physical or emotional injury by other than accidental means, and that the parents did not provide the children with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the children's well-being, therefore satisfying KRS 199.502(c) and (g). The court further opined that remaining in Mother's home was contrary to the children's welfare. Notably, the district court's order indicated that Mother stipulated to the court's findings. Therefore, based on the foregoing analysis, we conclude that the trial court's findings and ultimate judgments of adoption were based on substantial evidence.

## **II. CONCLUSION**

For the foregoing reasons, we hereby affirm the order of the Marion Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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