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Commonwealth of Kentucky
Court of Appeals

NO. 2020-CA-0925-ME

K.N.L.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GINA K. CALVERT, JUDGE
ACTION NO. 19-AD-500535

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; T.N.T.,
A CHILD; AND M.A.T.

APPELLEES

AND

NO. 2020-CA-0927-ME

K.N.L.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GINA K. CALVERT, JUDGE
ACTION NO. 19-AD-500536

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

APPELLEES

AND

NO. 2020-CA-0928-ME

K.N.L.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GINA K. CALVERT, JUDGE
ACTION NO. 19-AD-500537

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

APPELLEES

AND

NO. 2020-CA-0929-ME

K.N.L.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GINA K. CALVERT, JUDGE
ACTION NO. 19-AD-500627

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

APPELLEES

AND

NO. 2020-CA-0931-ME

L.J.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GINA K. CALVERT, JUDGE
ACTION NO. 19-AD-500536

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

AND NO. 2020-CA-0932-ME

L.J. APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GINA K. CALVERT, JUDGE
ACTION NO. 19-AD-500537

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

AND NO. 2020-CA-0933-ME

L.J. APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE GINA K. CALVERT, JUDGE
ACTION NO. 19-AD-500527

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; K.L.,
A CHILD; AND K.L.

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

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

CLAYTON, CHIEF JUDGE: These consolidated appeals are brought from orders of the Jefferson Circuit Court terminating the parental rights of K.N.L. (“Mother”), to her four children, and of L.J. (“Father”), the father of three of the children.

Background

Mother’s four children are T.N.T., a daughter born on January 7, 2016 (“Eldest Daughter”). Eldest Daughter’s legal father, M.A.T., was incarcerated throughout the proceedings and has not appealed from the family court’s termination order. The other children are L.L.J., a daughter born on August 2, 2017 (“Middle Daughter”); K.L.J., a daughter born on June 7, 2018 (“Youngest Daughter”); and K.A.L., a son born on October 14, 2019 (“Son”). L.J. is the biological father of the three youngest children.

The Cabinet for Health and Family Services became involved with this family after a security guard at the L&N Building in Louisville witnessed an

incident involving Mother and Middle Daughter, who was in a stroller. Middle Daughter was unsecured in the stroller which was full of items and she tumbled to the floor. The guard reported that Mother ran the infant over with the stroller and then jerked her up by the arm to chastise her for not remaining seated. According to the security guard, Mother threatened her when she intervened.

The next morning Mother observed that Youngest Daughter had a black eye and called her pediatrician. The pediatrician asked her to come in right away but Mother could not make it. The pediatrician suggested taking the child to the hospital, but Mother was reluctant to do so because she had no explanation for how the child received the black eye and she feared the child would be taken away. Mother and Father did take the child to the emergency room the next day. In addition to the black eye and facial bruising, a medical examination showed that Youngest Daughter was also suffering from multiple fractures in different stages of healing. Her left and right femurs and tibias were fractured as well as several of her ribs. An examination of the other children showed that Eldest Daughter appeared to have bruising behind her ears and Middle Daughter had a skull fracture.

A forensic medical exam was performed on the three daughters and the examiners concluded that Middle Daughter's skull fracture was diagnostic of inflicted injuries and Youngest Daughter's multiple fractures were diagnostic of

inflicted child abuse. The examiners could not independently verify the bruising behind Eldest Daughter's ears but determined that such injuries would be highly concerning for inflicted injury.

The Cabinet filed emergency petitions for all three children. Following a hearing on September 20, 2018, the family court found the children were abused and neglected by Mother and Father based on the following findings: they failed to get timely medical treatment for Youngest Daughter's black eye when they knew it was needed; Mother and Father were the two possible perpetrators of the inflicted and non-accidental injuries suffered by Middle Daughter and Youngest Daughter; Middle Daughter was at risk of abuse as evidenced by the incident when she fell from her stroller; and Eldest Daughter was at risk of harm based on all of this evidence. The family court committed the children to the temporary custody of the Cabinet on September 25, 2018. The children were placed together in a foster home. At some point prior to the children's removal, Mother and Father separated.

Shortly after the children were removed, Mother decided, based on an article she had read, that their fractures were caused by a bone density disorder, and she contacted Father to get back together. She thereafter conceived Son with Father. Son was born a little over a year after the removal of his siblings. The Cabinet received emergency custody of the infant on the day after his birth and

filed a petition alleging he was at risk of abuse or neglect based on his parents' treatment of his siblings. He was committed to the custody of the Cabinet after the court found he was at risk of abuse or neglect on that basis. He was placed in the same foster home as his sisters.

Meanwhile, following the removal of the children in September 2018, the Cabinet provided Mother and Father with treatment plans which included referrals for parenting classes, mental health treatment, substance abuse treatment, random drug screens, domestic violence counseling, and other services. Mother and Father were permitted supervised visitation with the children.

Both parents were ordered to attend Parenting After Abuse (PAA) at Centerstone/Seven Counties Services but were unable to participate in the program because neither of them would admit to causing the children's injuries. Mother acknowledged some responsibility as a caretaker who "should have known" but insisted she did not cause the injuries. She did acknowledge she was responsible for medical neglect for delaying treatment of Youngest Daughter and for not securing Middle Daughter in her stroller, but did not recall running the child over or threatening the security guard. Mother later claimed she was a victim of domestic violence. According to Mother, Father was violent and had choked her twice and yanked her off the bed when she was pregnant. She described herself as

the victim, not the perpetrator, of domestic violence. Father also denied causing the injuries to the children but told his therapist he did not want to blame Mother.

Mother and Father were admitted into a different program called Alternatives for Families Cognitive Behavioral Therapy, which focuses on education and skill-building and does not require parents to admit to any inappropriate discipline or abuse. Mother had good attendance, completed tasks and homework, and stated that she took responsibility for staying in a domestic violence relationship. The Cabinet caseworker Allison Faulconer testified that Mother was cooperative with the criminal investigation into the children's injuries. She testified that Mother tested positive on two drug screens but that the remainder were negative. Mother also completed a sixteen-week anger management program.

Mother attended most of the in-person visits with her children but her attendance decreased to three out of eleven scheduled visits when they were switched to a remote format due to the Covid-19 pandemic. During the in-person visits, she had trouble managing the children and brought them items that were not age-appropriate. She did not always interact appropriately with the children and spoke to them as if they were much older than they are. The children were often distraught after their visits with Mother and experienced upset stomachs because she brought them products containing milk, even after their foster mother informed

her that the children were probably lactose intolerant. Mother also indicated that she thought it was acceptable for the children who were aged 4 and 2 at the time to be left alone to play without supervision. According to Mother, the visits did improve when they took place at the Family and Children's Place because the workers there were more helpful and supportive.

Cindy Kamer, the Seven Counties Services clinical supervisor and family court liaison, testified that despite Mother's successful completion of many parts of her treatment plan, she remained unable to account for the injuries to her children or to acknowledge their seriousness. Mother could not identify any signs or symptoms of distress or pain in the children before they were removed, although their injuries were extensive. Their foster mother testified that when the children were moved into her home they displayed troubling behaviors such as extreme hyperactivity, extreme physical rigidity, screaming and crying at night. She also reported that the two youngest daughters required medication for the pain caused by their injuries.

Kamer testified that Mother also struggled to recognize the impact the abuse had on the children's behavior, instead attributing all of their problems solely to missing her. Moreover, although Mother blamed Father for the children's injuries, she denied ever seeing him in a temper nor was she able to identify any "red flags" in his behavior.

Mother testified that she believed that Middle Daughter's skull fracture was caused when she fell off a bed. She said the child cried at the time. When asked if she sought medical attention for her, Mother testified that she took her to the hospital six months later. As to Youngest Daughter, she testified that Father caused all the fractures although she did not suspect it at the time. She admitted that Youngest Daughter cried more than a normal baby, but testified that she did not know they were cries of pain, nor did she observe any bruises.

During his participation in the Alternatives for Families program, Father acknowledged that he should have taken the children to the hospital when he observed his daughter's black eye but explained that Mother asked him not to. Father was diagnosed with adjustment disorder, anxiety, and depressed mood. Father completed a substance abuse evaluation and was referred for sixty-six random drug screens. He received three positives, seven "no shows" and stopped participating in the screenings in December 2019. Father described Mother as being physically aggressive with him and told the caseworker that he had been a victim of domestic violence. A forecast assessment found that Mother was the likely abuser. The forecast assessment also recommended that the children remain in the care of the Cabinet because Father had no stable housing, means of financial support, lacked community support, and had never been a fulltime caregiver for the children. Father did complete parenting classes but failed to complete anger

management or protective parenting courses. The case worker stated that Father could be rough during visitation with the children. His visits with the children were suspended on March 17, 2020.

The Cabinet filed petitions to involuntarily terminate Mother's parental rights to her four children and Father's parental rights to his three children on October 24, 2019.

A trial was held on June 2 and 4, 2020, and the family court subsequently entered findings of fact and conclusions of law and orders terminating Mother's parental rights to her four children and Father's parental rights to his three children. These appeals by Mother and Father followed.

Standard of Review

Kentucky Revised Statutes (KRS) 625.090 provides that a circuit court may involuntarily terminate parental rights only if the court finds by clear and convincing evidence that a three-pronged test has been met. First, the child must be deemed abused or neglected, as defined by KRS 600.020(1); have been diagnosed with neonatal abstinence syndrome at the time of birth; or the parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that abuse, neglect, or injury is likely to occur to the child at issue. KRS 625.090(1)(a). Second, the court must also find the presence of at least one of the eleven grounds listed in subsection (2) of the statute. KRS

625.090(2). Third, the court must find that termination of parental rights is in the child's best interest, and the court is provided with a series of factors that it shall consider when making this determination. KRS 625.090(1)(c); KRS 625.090(3).

“[T]o pass constitutional muster, the evidence supporting termination must be clear and convincing. Clear and convincing proof is that of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent minded people.” *R.P., Jr. v. T.A.C.*, 469 S.W.3d 425, 427 (Ky. App. 2015) (citations and quotation marks omitted). Our standard of review “is confined to the clearly erroneous standard in CR [Kentucky Rules of Civil Procedure] 52.01, based on clear and convincing evidence.” *C.R.G. v. Cabinet for Health and Family Services*, 297 S.W.3d 914, 916 (Ky. App. 2009) (citation omitted). “Pursuant to this standard, an appellate court is obligated to give a great deal of deference to the family court’s findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them.” *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014) (citation omitted).

Analysis

Under the first prong, KRS 625.090(1)(a), the trial court found the four children to be abused and neglected as defined in KRS 600.020, based on the prior proceedings.

Under the second prong, KRS 625.090(2), the trial court found the presence of factors (e) and (g) for all four of the children: “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[.]” KRS 625.090(2)(e), and “[t]hat 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[.]” KRS 625.090(2)(g).

In regard to Middle Daughter, who had sustained the skull fracture, the trial court also found the presence of factor (b): “That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury[.]” KRS 625.090(2)(b).

In regard to Youngest Daughter, who suffered the black eye, bruising on her face and multiple fractures in different stages of healing, the trial court found the presence of factors (b) and also (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[.]” KRS 625.090(2)(c).

Under the third prong, KRS 625.090(3), the family court made the following findings to support its determination that the termination of Mother’s parental rights was in the children’s best interest. Under factor (a), which requires consideration of a parent’s mental illness or mental retardation if it renders the parent consistently unable to care for the child for extended periods of time, the court found credible evidence that Mother suffers from Personality Disorder with Turbulent and Histrionic Traits, as well as Dysthymic Disorder. The trial court quoted from an evaluation which opined that Mother could have perpetrated the injuries upon the children and that her intent in doing so was unclear, as “the type of behaviors that might have brought about these injuries could constitute normalized behavior” for Mother. The evaluation recommended that the children should not be placed in her care until a significant reduction of risk could be assured.

Under KRS 625.090(3)(b), which requires a consideration of acts of abuse or neglect toward any child in the family, the family court found from the totality of the evidence that the children had been subjected to scenes of domestic violence in the home; to inappropriate discipline and physical injuries; to substance abuse by their parents; and that their material, emotional, and healthcare needs had

been neglected. The court further found that the children had been harmed by their parents' failure or inability to comply with remedial orders and court-approved treatment plans and by their parents' failure or inability to provide material support.

Under KRS 625.090(3)(c), the family court found that the Cabinet had made reasonable efforts to reunite the children through referrals for substance abuse counseling, parenting classes, domestic violence counseling, random drug screens, and supervised visitation sessions. In the related factor, KRS 625.090(3)(d), the court relied on the Cabinet caseworker's testimony that the parents had not been fully compliant with the Court's remedial orders with respect to the completion of necessary parenting groups and counseling and good attendance and supervision during visits with the children, with the result that the children had been unable to return safely to their parents' care and remained instead in the custody of the Cabinet for not less than twenty months. The court further found that the Cabinet had been meeting the children's physical, mental, and emotional needs and that the children were thriving with their foster parents who were planning to adopt the children if parental rights were terminated.

Under KRS 625.090(3)(f), which requires the court to consider the parent's "payment or the failure to pay a reasonable portion of substitute physical

care and maintenance if financially able to do so[.]" the court found that Mother and Father had not provided any financial assistance to the children.

Finally, the family court considered KRS 625.090(5), which provides the court with the discretion not to terminate parental rights "[i]f the parent proves by a preponderance of the evidence that the child will not continue to be an abused or neglected child as defined in KRS 600.020(1)[.]" The court refused to exercise this discretion, stating it had concluded "that two of these children suffered severe physical injuries while in the custody of their parents, the cause of which no parent is admitting or identifying with any certainty. As a result, not only are these two children at risk of further physical harm/lack of protection, but so are their two siblings if returned to that same environment, especially given the parents' ongoing treatment needs and concerning behaviors."

Mother's Appeal

Mother argues that there was insufficient proof to support the family court's findings under KRS 625.090(2). We begin our review by emphasizing that "[u]nder the language of KRS 625.090(2), the existence of only one of the grounds in that section needs to be proven by clear and convincing evidence."

Commonwealth, Cabinet for Health and Family Services v. T.N.H., 302 S.W.3d 658, 663 (Ky. 2010).

Specifically, in regard to the trial court's findings that the children had suffered physical injury, Mother admits that Youngest Daughter was seriously injured while in her care but denies having caused the injuries or knowingly allowed them to occur. She contends that no proof was presented that she inflicted or knowingly allowed injuries to be inflicted on Youngest Daughter. As to Middle Daughter, Mother admits she did not properly restrain her in the stroller but contends that no proof was presented that the child was hurt by anything other than accidental means. She points out that even Father, who wanted to shift the blame to Mother, believed that the child was injured by falling out of the stroller and not by some method of abuse. Mother's argument that Middle Daughter's injury was accidental is speculative and directly contradicted by the forensic medical report which stated that Middle Daughter's skull fracture was diagnostic of inflicted injuries.

Mother contends that the clear and convincing standard of proof to terminate parental rights was not met because there was no conclusive proof which parent caused the children's injuries. She argues that it is "flawed logic" that if neither she nor Father can definitively be found to have caused the injuries, they must both take the blame.

The issue is not primarily one of assigning blame to Father or to Mother, but of assessing the likelihood of future injury to the children. Although

Mother did not admit to causing the injuries herself, she testified that Middle and Youngest Daughters were only ever alone with her or with Father. In addition to the outward signs of injury, such as Youngest Daughter's black eye and bruised face, both Middle and Youngest daughters were in severe and noticeable pain from their fractured bones, according to their foster mother. This constituted more than sufficient evidence for the family court to conclude that Mother either caused the injuries to the children herself, allowed them to be inflicted on the children, or was dangerously oblivious to their signs of distress.

Mother further argues that she proved herself capable of providing essential care and protection to her children, as evidenced by her substantial completion of her treatment plan and regularly keeping in touch with her case worker. The family court found that Mother had completed the majority of the ordered treatment services, including random drug screens, domestic violence counseling, and psychological evaluations. The trial court expressed concern, however, about her ongoing denial that she caused her children's injuries or that she knew who caused them. Because there were multiple injuries, Mother's denial that she committed the injuries and her unwillingness to say Father committed them made her testimony less than credible to the family court. The court also expressed concern about Mother's denial that the children displayed behavioral problems when they were with her, stating: "She cannot be presumed to be able to

protect them upon reunification if she has no idea how they were injured, on multiple occasions, and minimizes the trauma they suffered. She also would not be able to protect and care for them properly if she denies their marked behavior challenges in her presence and minimizes their needs for supervision.” These statements by the family court are fully supported by the evidence.

Mother contends that the family court ignored the fact that after the removal of her children, she took on caretaking roles for other children, specifically her nieces, and informed the Cabinet. She argues that if the Cabinet was so concerned about her ability to care for children, it would have investigated the situation. The Cabinet’s apparent decision not to investigate Mother’s babysitting activities does not constitute sufficient evidence to undermine the family court’s conclusion that Mother was not capable of caring and protecting her own children. It is the family court, not the Cabinet, which makes this statutory determination.

Mother further argues that there was insufficient evidence to support the family court’s finding that she has failed to provide or is incapable of providing essential food, clothing, shelter, and other material care for the children. Mother has a history of unstable housing. She testified that Father would not leave her alone and kept calling and dropping by, which caused her to move in with relatives and file an EPO against him. In the fall of 2019 she moved to her mother’s

boyfriend's residence. At the time of the trial, however, she was living on her own in stable housing and was employed at UPS and by a cleaning service. Mother was never ordered to pay child support. Although Mother did bring food, toys, and various necessities to the visitation, she never made any attempt to contribute substantially to her children's care. When this evidence is viewed as whole, the family court's finding was not clearly erroneous.

Additionally, Mother contends that the Cabinet failed to prove any of the grounds under KRS 625.090(2)(e) and (g) in regard to Son, who was born over a year after the removal of his siblings and was placed immediately in the custody of the Cabinet. She contends that he was born at the end of the case when she was completely compliant with her treatment plan and capable of taking care of him. Because she was not given this opportunity, she contends that the family court had absolutely no evidence to support its finding that she had failed to provide him with essential parental care and protection and essential food, clothing, shelter, medical care, and education. Mother was incapable of providing care, protection, and material support for her son because she refused to acknowledge or recognize any culpability for her abuse of the other children. The other children were not returned to Mother for fear that they were at risk of further physical injury. If these concerns existed for the other children, Son certainly could not be returned to Mother merely on the basis that he was born after the injuries to his siblings were

inflicted. As the guardian *ad litem*'s brief on behalf of the children aptly states: "The most compelling and terrifying evidence was provided by the forensic examiners, who concluded that two of the siblings suffered broken bones which were found to be in various stages of healing. This means that these serious injuries did not occur at the same time. . . . As the parents both have an obligation to protect the children under [KRS 625.090(2)], the difference in time between the identified injuries establishes additional fault supporting the fact that the parents not only allowed 'continuous' physical injury, [but] that they each had more than one opportunity to identify the source of each injury and to take protective action. This was not done. . . . [The parents'] attempts to separate the children without broken bones is likewise without merit, as one child was born after the current termination actions and conditions and factors that were the basis of the termination have not been corrected."

Finally, Mother argues that there was insufficient evidence that termination of parental rights was in the best interest of the children under the factors listed in KRS 625.090(3). She challenges the family court's finding under KRS 625.090(3)(a) that she suffers from a mental health disorder, specifically Personality Disorder with Turbulent and Histrionic Traits, as well as Dysthymic Disorder. This finding was based on a psychological assessment performed by a licensed clinical social worker. Mother argues that no proper foundation was laid

concerning the qualifications of the assessor and that there was no other evidence that she suffered from Personality Disorder with Turbulent and Histrionic Traits and that the Cabinet's own records do not show any treatment directed towards this latter disorder. The psychological assessment was one of the trial exhibits, which are not in the record before us. "It is incumbent upon Appellant to present the Court with a complete record for review. When the record is incomplete, this Court must assume that the omitted record supports the trial court." *Chestnut v. Commonwealth*, 250 S.W.3d 288, 303 (Ky. 2008) (citations omitted). We must assume that exhibit supported the family court's finding. As additional support for the family court's finding, we note that Cindy Kamer, a qualified mental health provider, testified at the trial that she diagnosed Mother with Dysthymic Disorder.

Next, Mother addresses the family court's finding under KRS 625.090(3)(b), which asks the court to consider "[a]cts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family[.]" Mother contends that the family court improperly focused on the parents' failure or inability to comply with the court's remedial orders even though Mother was compliant with everything except the PAA "through no fault of her own." But the family court's primary finding under this section was that the totality of the evidence showed that the children had been subjected to scenes of domestic violence in the home; to inappropriate discipline/physical injuries; to substance abuse by their parents; and

to neglect of their material, emotional and healthcare needs. The further finding that the children had been abused by their parents' failure or inability to comply with the court's remedial orders and case treatment plan applies to Mother insofar as she continued to refuse to admit culpability for the children's injuries or knowledge of how they occurred; minimized their injuries; and blamed their behavioral problems on their separation from her rather than on the trauma stemming from their abuse.

Mother also disputes the family court's findings under KRS 625.090(3)(c) and (d), which required the court to consider whether the Cabinet made reasonable efforts to reunite her with the children, and the connected inquiry regarding Mother's efforts and adjustments in that regard. Mother argues that the Cabinet made little to no effort to place the children, particularly Son, with family members. At the temporary removal hearing for Son, the family court wrote on the court calendar that it continued to be "very disturbed by the lack of communication" between the Cabinet and Mother regarding placement of Son. Allison Faulconer testified that the Cabinet did investigate placement of Son with a family member but did not perform a home study because this relative had no relationship with the children. The Cabinet is not required to consider relative placement. "Once the conditions of terminating parental rights are met, it is the duty of the Cabinet to then act in the best interests of the children. Placement

with relatives may be an option for consideration, but nothing more.” *R. C. R. v. Commonwealth Cabinet for Human Resources*, 988 S.W.2d 36, 40 (Ky. App. 1998), *as modified* (Jan. 29, 1999). The Cabinet chose to place Son in foster care with his siblings. This decision does not prove that the Cabinet was not acting in the child’s best interest. If the Cabinet believed it was not safe to return the other children to Mother, it certainly was not obliged to make additional efforts to reunite her with Son.

In a related argument, Mother asserts that she was not offered any in-home services or additional visitation time to assist her in regaining custody, particularly of Son. The Cabinet witnesses testified that they were unaware of any additional services that would have assisted Mother. Furthermore, in addition to her non-participation in PAA, testimony was presented that Mother did not attend at least nine visits with the children when they were switched to a Zoom format. The family court recognized that Mother was largely compliant with her treatment plan, but also relied on the testimony of the Cabinet witnesses expressing concern that Mother remained unable to account for how the injuries to her children occurred, was unable to identify any symptoms of distress in her children that were indicative of injury, blamed Father for the injuries yet was unable to identify any behaviors on his part that were “red flags,” was struggling to identify the impact of the abuse on her children, and had problems supervising the children during

visitation. As the Cabinet has stated, it is not enough that a parent just goes through the motions and attends services; the parent must put into practice what is learned from the services to enable the child to be safely placed back into the home.

Mother argues that there was little evidence that there would be an improvement in the children's physical, emotional, and mental health if her rights were terminated whereas there was overwhelming evidence that the children would be best served by being placed with family members and efforts at reunification with her continued. Mother does not point to any specific evidence supporting this claim. The family court's finding that the children are doing much better since removal from parental custody and are attached to their foster parents is supported by clear and convincing evidence in the form of the Cabinet social worker's testimony and the testimony of the children's foster mother. The foster mother testified that the children have ceased to display troubling behaviors such as extreme hyperactivity, physical rigidity, screaming and crying at night, and having to be held all through the night. The children no longer have anxiety at being apart from each other and are able to sleep in separate rooms.

Finally, Mother acknowledges she did not pay any financial assistance while her children have been in the care of the state, but argues that the payment of support was neither addressed nor ordered in the underlying action and she brought

food, clothing and other necessities to her visits with the children. This issue was previously addressed in this opinion and certainly is not grounds for reversal of the family court's decision.

Father's Appeal

In his appeal, Father acknowledges that the trial court's findings supporting the termination of his parental rights cannot be challenged as clearly erroneous.

His sole argument concerns the family court's conclusion that "two of these children suffered severe physical injuries while in the custody of their parents, the cause of which no parent is admitting or identifying with any certainty. As a result, not only are these two children at risk of further physical harm/lack of protection, but so are their two siblings if returned to that same environment."

Father argues that there was significant and pervasive circumstantial evidence that Mother committed the acts of abuse, which the trial court failed to address in finding the children were abused or neglected pursuant to KRS 600.020(1). He contends that the only evidence he was the perpetrator was his admission that he failed to secure necessary medical treatment for Youngest Daughter's black eye.

Besides the fact that there was other evidence implicating Father, such as the case worker's testimony that he was rough with the children during

visitation and Mother's testimony that he was the only person besides herself who was ever alone with Middle Daughter and Younger Daughter, the statute does not require the family court to identify the perpetrator. A family court may find a child to be abused or neglected if his or her parent "[i]nflicts or allows to be inflicted upon the child physical or emotional injury . . . by other than accidental means"; or "[c]reates or allows to be created a risk of physical or emotional injury . . . to the child by other than accidental means[.]" KRS 600.020(1)(a). The evidence fully supported a finding that Mother or Father or both were responsible for inflicting the injuries; allowing the injuries to be inflicted; or creating a risk of injury.

Conclusion

For the foregoing reasons, the findings of fact, conclusions of law, and orders terminating the parental rights of Mother and Father are affirmed.

ALL CONCUR.

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