

RENDERED: JUNE 25, 2021; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2020-CA-1165-ME

A.R.

APPELLANT

v.

APPEAL FROM SPENCER CIRCUIT COURT  
HONORABLE S. MARIE HELLARD, JUDGE  
ACTION NO. 19-AD-00014

CABINET FOR HEALTH AND FAMILY  
SERVICES AND A.C.R., A CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, JONES, AND McNEILL, JUDGES.

COMBS, JUDGE: Appellant, A.R. (Mother), appeals from an order of the Spencer Circuit Court Family Division terminating her parental rights. After our review, we affirm.

Mother is the natural mother of A.C.R. (the child), a male born on November 15, 2018. J.P.G. (Father), the child's father, has not appealed the termination of his parental rights.

In March of 2018, some eight months prior to the child's birth, the Cabinet first became involved with the family after receiving a report of substance misuse by the parents and concerns about the condition of the home. Two children, C.G. and J.G., were removed and placed with E.S., a paternal cousin. In September 2018, C.G. and J.G. were placed in the permanent custody of E.S. due to the parents' lack of progress with their plans.

After the child was born in November 2018, he showed signs of withdrawal, and his meconium tested positive for suboxone. The Cabinet received a report that Mother bought suboxone off the street while not having a current prescription. On November 30, 2018, the Cabinet filed a juvenile dependency, neglect, and abuse petition. The child was removed and placed with E.S. along with his two brothers, C.G. and J.G. On December 18, 2018, Mother filed a stipulation to neglect or abuse in the juvenile proceeding, and the court entered an Adjudication Hearing Order finding the child neglected or abused.

On October 9, 2019, the Appellee, Cabinet for Health and Family Services (Cabinet), filed a Petition for the Involuntary Termination of Parental

Rights, alleging that the child is an abused and neglected child as defined in KRS<sup>1</sup>

600.020. It also alleged that:

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

[Mother and Father] for reasons other than poverty alone, have continuously or repeatedly failed to provide or are incapable of providing essential food, clothing shelter, medical care or education reasonably necessary and available for the Petitioner child's well-being and there is no reasonable expectation of significant improvement in the respective parents' conduct in the immediately foreseeable future, considering the age of the child.

On March 2, 2020, the Cabinet amended its Petition to include an additional statutory ground for termination (specifically 625.090(2)(j)) that the child had by then been in foster care for fifteen (15) cumulative months out of the most recent 48 months preceding the filing of the (amended) Petition.

On July 9, 2020, the matter was tried by Zoom due to Covid-19.

Kate Ray, a Social Services Worker in the Spencer County Office of the Department for Community Based Services for the Cabinet, testified. The Cabinet also presented testimony from E.S., the child's foster mother. Mother testified on

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

her own behalf. On August 20, 2020, the court entered Findings of Fact and Conclusions of Law (FFCL) and entered an order terminating the parental rights of both parents and Order of Judgment.

In its findings, trial court found “Ms. Ray’s testimony particularly credible and persuasive.” By contrast, the court had many concerns about Mother’s testimony -- especially her sobriety:

[Mother] has demonstrated recent behaviors warranting ongoing concerns, including two suboxone pills counts there [*sic*] were off or suspect, and no call or missed drug screens. The Court disbelieves [Mother’s] testimony that she was unable to reach the local DCBS office during the COVID-19 pandemic for random drug screens. If [Mother] had issues, she could have notified Ms. Ray by email, text, or cell phone, but she did not. The Court likewise disbelieves [Mother] was unable to position her phone during a recent Zoom home visit such that Ms. Ray could observe her count her suboxone pills. The multitude of items available in a home on which [Mother] could have propped her phone are too numerous to name. [Mother’s] “off” pill counts and missed drug screens coupled with [Mother’s] history of abusing suboxone cause this Court serious concern.

The trial court was also concerned that Mother failed to provide documentation regarding her suboxone treatment or mental health services despite Ms. Ray’s repeated requests and that Mother could not articulate what she was working on in mental health treatment. The court was not convinced that Mother’s and Father’s relationship had indeed ended as reported or that Mother would be

protective of the child if he were returned to her care and custody. The trial court found as follows:

[Mother] has failed to make sufficient progress toward identified goals as set forth in her court-approved case plans to allow for the safe return of [the child] to her care. [Mother] has made some progress on her case plan. She completed parenting classes, has consistently participated in suboxone treatment, and reports to be participating in mental-health services. However, [Mother] has not maintained independent housing, as required by her case plan. [Mother] does not have independent transportation, as required by her case plan. [Mother] has not maintained employment sufficient to support herself and her child, as required by her case plan. Significantly, the Court heard nothing from [Mother] about how she intends now, or in the foreseeable future, to achieve these tasks. [Mother] has made little effort to locate independent housing or transportation. She has made little effort to increase her work capacity or find better-paying employment. [Mother] admitted she struggles to meet her own financial needs and gave no explanation for how she intended to meet [the child's] financial needs should he be returned to her care. [Mother's] housing situation is particularly precarious as she and her family [are] being forced to move and [Mother] admitted the family does not have a place to go. If the Court were to return [the child] to [Mother's] care today, she would not have a suitable place for [the child] to live. Recently, [Mother] has had inconsistent pill counts and missed a few drug screens. While these may seem like minor deficiencies, the Court must consider them in light of [Mother's] history of abusing suboxone. The Court is unable to confirm that [Mother] is following the recommendations of her therapist and continuously attending and participating in individual therapy because [Mother] failed to provide those records to the Cabinet, despite repeated requests from Ms. Ray. Simply put, while

[Mother] has made *some* adjustments to her circumstances, the Court is not convinced she has made *sufficient* adjustments such that her child can be returned to her care. Despite years of Cabinet involvement, a host of services before and after [the child's] birth, and three (3) case plans since November 2018, [Mother] has failed to make sufficient progress toward the case plan goal of reunification. As a result, [the child] has lingered in foster care for almost twenty months as of the date of trial.

The court determined that the child had previously been adjudged to be a neglected child by a court of competent jurisdiction in the underlying juvenile case following the stipulation by both parents. Additionally, the court found the child to be neglected by each parent as defined in KRS 600.020(1). The court concluded that termination of parental rights is in the child's best interest. The court also determined that at least one ground for termination as set forth in KRS 625.090(2) exists:

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 a determination of whether the trial court's findings are clearly erroneous. CR<sup>2</sup> 52.01.

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).

Mother's first three arguments pertain to the findings that a trial court is required to make under KRS 625.090 to satisfy that statute's tripartite test. We address these arguments in the order of the statute. The first prong is set forth in KRS 625.090(1), which provides that:

The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that:

- (a) 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction; [or]
2. The child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding[.]

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

Mother contends that the trial court abused its discretion in finding that she had neglected the child under KRS 625.090(1).<sup>3</sup> We disagree. The certified record from the juvenile proceeding was admitted into evidence. It is undisputed that there was a prior adjudication of abuse or neglect against Mother in the underlying juvenile proceeding; indeed, she so stipulated. Thus, the first prong of the tri-partite test, KRS 625.090(1)(a)1., has been satisfied. *D.G.R. v. Com., Cabinet for Health & Fam. Servs.*, 364 S.W.3d 106 (Ky. 2012) (Prior adjudications of neglect or abuse against parent satisfy first statutory hurdle).

The second prong requires the trial court to find by clear and convincing evidence that termination would be in the best interest of the child. KRS 625.090(1)(c). In conducting its best interest analysis, the court must consider the six factors enumerated in KRS 625.090(3)(a)-(f). *K.H.*, 423 S.W.3d at 212. The court properly did so in the case before us and concluded that termination would be in the child's best interest. Mother raises no issue in this regard.

The third prong of the tri-partite test requires that the trial court find by clear and convincing evidence the existence of one or more of the grounds enumerated in KRS 625.090(2). In this case, the trial court found three:

(e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused

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<sup>3</sup> This is Mother's second argument.

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; [and]

...

(j) 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[.]

Mother contends that the trial court erred in terminating her parental rights because the Cabinet failed to establish by clear and convincing evidence grounds under KRS 625.090(2)(e) or (g). However, with respect to KRS 625.090(2)(e) as to Mother, the court found that:

[Mother] is likewise substantially incapable of providing [the child] with essential parental care and protection despite her progress. As outlined in the Court's factual findings, incorporated here by reference, she still lacks appropriate housing – or any stable housing at this point, she lacks independent transportation, she maintains a relationship to some degree with [Father] who has certainly not completed services, she struggles financially

to meet her own needs, and the Court continues to have concerns about [Mother's] suboxone treatment and whether [Mother] is again misusing suboxone. These factors coupled together lead this Court to conclude that [Mother] remains substantially incapable of providing essential care and protection for [the child].

A pivotal question for this Court is whether there is any reasonable expectation of improvement parental care and protection, considering the age of the Child [*sic*]. . . . With respect to [Mother], the Court acknowledges she has engaged in some services. The question is not whether [Mother] has improved her circumstances – she undoubtedly has to some degree – but whether there is a reasonable expectation she can provide *essential* parental care and protection to [the child] in the near future. It is particularly concerning to this Court that [Mother] has not obtained independent housing and transportation. The Court has given [Mother] almost two years to do so. [Mother's] refusal to consider housing outside Spencer County until recently likely impeded her ability to find appropriate housing, but that was [Mother's] choice. While [Mother] has maintained stable employment, she struggles to meet her financial needs. The Court heard nothing at trial indicating [Mother] has taken steps to improve her financial situation: she has not engaged in additional education or training, has not sought additional employment, and has not sought alternate employment. [Mother] appears to be taking no steps to find independent housing, obtain independent transportation, or improve her financial means. As a result, the Court concludes there is no reasonable expectation [Mother] can provide [the child] with essential parental care and protection within a reasonable period of time.

Mother asserted that she paid child support.<sup>4</sup> But that fact alone did not off-set for the court the gravity that Mother still had not obtained independent housing or transportation in nearly two years, nor had she taken any steps to improve her financial situation. We are satisfied from our review of the record that the court's findings have a substantial evidentiary foundation and that the third prong of the tri-partite test is satisfied.

Proof of the existence of only one ground under KRS 625.090(2) is required. *W.L.C. v. Commonwealth Cabinet for Health & Fam. Servs.*, 484 S.W.3d 737 (Ky. App. 2016). Accordingly, we do not address the remainder of Mother's argument as to KRS 625.090(2)(g) or her third argument that the trial court erred in finding that the child had been in the Cabinet's care for 15 consecutive months out of the 48 months preceding the filing of the amended Petition. KRS 625.090(2)(j).

Mother's fourth and final argument is that she was not afforded due process because the foster mother is an employee of the Cabinet. Mother contends that the Cabinet's attorney should have requested that a special prosecutor be appointed and that a social worker not acquainted with the foster mother should have handled the case.

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<sup>4</sup> At pp. 25-26 of its FFCL, the court noted Mother's efforts to financially support the child resulting in a small arrearage and considered that to be a neutral factor as to Mother.

Mother's Brief fails to comply with CR 76.12(4)(c)(v), which requires "at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner." The purpose of the rule is to ensure that "we, the reviewing Court, can be confident the issue was properly presented to the trial court and therefore, is appropriate for our consideration." *Oakley v. Oakley*, 391 S.W.3d 377, 380 (Ky. App. 2012). It is not apparent that Mother raised the issue in the trial court, and, therefore, we may not consider it.

We affirm.

ALL CONCUR.

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