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Commonwealth of Kentucky

Court of Appeals

NO. 2020-CA-1290-ME

B.L.B. APPELLANT

v. APPEAL FROM BOURBON CIRCUIT COURT
HONORABLE LISA HART MORGAN, JUDGE
ACTION NO. 19-AD-00020

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
AND B.W.A.B., A CHILD APPELLEES

AND

NO. 2020-CA-1293-ME

B.L.B. APPELLANT

v. APPEAL FROM BOURBON CIRCUIT COURT
HONORABLE LISA HART MORGAN, JUDGE
ACTION NO. 19-AD-00021

CABINET FOR HEALTH AND
FAMILY SERVICES,

COMMONWEALTH OF KENTUCKY;
AND Z.N.B., A CHILD APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CALDWELL, JONES, AND TAYLOR, JUDGES.

CALDWELL, JUDGE: B.L.B. (Mother) appeals from the termination of her parental rights to B.W.A.B. (Son) and Z.N.B. (Daughter).[1] We affirm.

FACTUAL AND PROCEDURAL HISTORY

Daughter and Son were born to Mother and W.E.B. (Father) in 2009 and 2010, respectively. In 2014, the Cabinet successfully petitioned the Bourbon Family Court for removal of the children based on allegations of the parents' substance abuse, mental health issues, and environmental neglect. This prior case was closed in 2017, after the children spent much of 2015 and 2016 in foster care.

In October 2018, the Cabinet again petitioned the family court for removal after investigating allegations that Mother and Father had relapsed on cocaine. The Cabinet received emergency custody of both children in late October and both parents stipulated to neglect. Both children were placed in foster care

[1] To protect the privacy of the minor children, we will not refer to the children or their natural parents by their respective names.

shortly thereafter following placement in a relative's home for a weekend. The Cabinet filed petitions to terminate parental rights in October 2019.

The case proceeded to trial in late July 2020. The Cabinet presented the testimony of the ongoing social worker for the family. The social worker testified that the family had a history with the Cabinet since 2011 and a prior removal in 2014. But this social worker started working with the family in November 2018—when the case was transferred to her from the investigative social worker. She testified that both parents had admitted to relapsing on cocaine after Mother was reportedly diagnosed with cancer.[2]

The social worker noted concerns about Mother's substance use, mental and physical health, and home conditions shortly after the 2018 removal. The social worker testified that the parents had supervised visitation with the children until such visits were suspended in May 2019. She testified to preparing case plans, which were revised twice a year, for both parents. Mother's case plans included recommendations for obtaining services to address mental health and substance abuse issues.

[2] Although not discussed in trial testimony, reports in the written record indicate that no cancer diagnosis or treatment for Mother had been confirmed after Mother signed a release to allow inspection of her medical records from the hospital where she alleged she was receiving cancer treatments.

The social worker acknowledged that Mother had been consistent in her contact with the social worker for the last year. The social worker also testified that Mother appeared to have insight into risk and safety issues when asked about Mother's ability to protect her children. But the social worker felt Mother had failed to fully address her noted issues in such a way that the social worker would feel comfortable with Mother providing care and protection for the children.

The social worker had recommended both medical management and therapy to address Mother's mental health issues. The social worker recalled that Mother reported getting both medical management and therapy at Harrison Community Hospital. But when the social worker asked the hospital for verification, the hospital reported that Mother saw a nurse practitioner there for medical management but not for therapy. And the social worker spoke with the nurse practitioner, who was not a licensed counselor or therapist but simply provided medical management. The social worker noted that Mother had been compliant with taking prescribed medications and attending appointments for medical management.

The social worker also testified that Mother appeared to have been compliant with recommendations or requirements for Intensive Outpatient Program (IOP) clinic treatment for substance abuse since November 2019. But the social worker noted problems with getting medical records from My Turning

Point, a clinic providing drug screening, medications, counseling and case management, despite mother having signed an authorization for release of the records.

Concerning the children, the social worker recalled that both had been upset about hearing Mother had been diagnosed with cancer. And she testified that both children were aware of their parents' substance use and the court proceedings and that both had experienced trauma. But she noted differences in how each child was faring currently.

The social worker testified that Daughter entered residential treatment due to behavior issues in March 2020 and that Daughter remained there as of the time of trial. She recalled that Daughter expressed feelings of sadness, grief, and loss about losing contact with her parents. She believed that Daughter would be upset about termination, but that Daughter was aware she could not safely return home and would eventually understand the need to terminate.

The social worker also testified to Daughter having been diagnosed with reactive attachment disorder (RAD) and post-traumatic stress disorder while in treatment, and to Daughter's emotional condition improving since she began receiving treatment and therapy. She also confirmed that Daughter had spent a large portion of her life in out-of-home care based on Cabinet records. The social

worker testified that Daughter needed consistency in caregivers and in her treatment and therapy.

The social worker recalled that Daughter frequently asked about her parents and was concerned that they were not okay, were on drugs, or might not even be alive. When asked whether Daughter's main concern was whether the parents were on drugs, the social worker stated that Daughter mainly expressed concerns that they were no longer alive. The social worker also testified that Daughter expressed feelings of affection for her parents.

The social worker's testimony about Son indicated that he had responded differently to the situation than Daughter. The social worker testified that Son asked whether his parents had done their "homework"—meaning complying with case plans. She testified to telling him that they had done some of it, to which he responded that his parents did not care about him. The social worker believed Son was doing well in foster care and was bonded to his foster family. She further testified that Son and his foster family desired that Son be adopted by the foster family.

The social worker testified that Mother and Father had brought some meals, gifts, and toys when they had supervised visits with children, but otherwise had not done anything else to provide food, clothing, medical care, and education for their children since the children were removed in October 2018. She further

opined that neither parent did or could provide essential parental care and protection for the children and that she did not think they could reasonably be expected to improve enough to permit the children's safe return to the home within a reasonable time, given the children's ages. She expressed doubt that providing additional reunification services would help, opining that Mother and Father would have already improved if they were ever going to improve, as nearly two years had passed since the 2018 removal.

After the Cabinet presented the social worker's testimony, Mother then testified, although Father declined to do so. Mother acknowledged that her past behaviors, resulting in the children's removal, had caused the children harm including contributing to Daughter's developing RAD. She also testified to taking steps towards improvement in recent months including working on her General Equivalency Diploma (G.E.D.) and frequently attending Narcotics Anonymous (N.A.) meetings which were offered online. According to her testimony, in-person N.A. meetings had been suspended since March 2020 due to the COVID-19 pandemic, so she could only attend meetings via Zoom and she was not aware of any way for verifying her attendance at online Zoom meetings.

As the Cabinet had only been able to obtain Mother's drug screen records dating back to late October 2019, Mother brought with her, and was permitted to admit into evidence, more recent drug screen records from the last few

months which were mostly negative. She testified that, like the Cabinet, she had encountered difficulty in obtaining drug screen records from the clinic which had administered the tests over the last several months.

Mother also acknowledged in her testimony that these records showed that, within the last few months before trial, her drug screens included a positive for THC/marijuana use and a positive for opiates. She explained that the positive for opiates was from a urine screen and was a false positive caused by her handling her grandmother's liquid morphine without gloves. She also asserted that other laboratory tests ordered after the urine screen showed that the positive for opiates was a false positive.

Mother also testified that she no longer regularly saw Father, but only occasionally ran into him when she was out. Father apparently had worse substance abuse issues than Mother, had less consistent contact with the social worker, and any contact he had with Mother was viewed as posing an additional risk to the children if they were returned to Mother's care. Although Mother was not directly asked during her testimony about any cancer diagnosis, she responded to other questions about her physical and mental health. She confirmed being diagnosed with conditions including diabetes, neuropathy, bipolar disorder, anxiety and depression, and a physical disorder causing weakness and muscle problems in her hands.

In addition to Mother's own testimony, she had hoped to present the testimony of two other witnesses although neither actually testified at trial. Specifically, she sought to present the testimony of her sponsor via telephone but she was evidently not able to reach her sponsor during the trial.

Mother also indicated she had wanted to have a counselor and/or case manager, whom she simply referred to as Mary Catherine, testify but that Mary Catherine was not available due to being in a meeting. So, she asked for—and was allowed to admit into evidence—a letter on My Turning Point LLC letterhead purportedly from Mary Catherine Carroll stating that Mother had made many improvements in her life in the past year and commending Mother for taking responsibility for herself and for taking care of ill relatives. In response to questioning about Mary Catherine's credentials, Mother admitted that she did not know exactly but stated that Mary Catherine had been to college and that others in the same office were seeking the same qualifications possessed by Mary Catherine.

Mother also testified to seeing a medical professional at least monthly for thirty minutes to an hour to discuss her mental health medications and seek advice on other life issues. She believed that these visits constituted therapy as well as medical management. She was unsure of exactly what the professional's credentials were but thought they were like that of a psychiatrist. (Based on the name she gave for the professional, this appears to be the nurse practitioner whom

the social worker testified to verifying that Mother saw for medical management but not for therapy since this person was not a licensed therapist or mental health counselor).

Mother also admitted that she had never been employed, although she indicated that she was currently seeking her G.E.D. to perhaps open up opportunities. She testified that she had been determined to have a disability relating to her hand weakness in 2013. In response to questions about income, she testified that she currently received about $800 monthly for disability benefits as well as some income for her terminally ill grandmother who lived with her. She admitted that she would no longer receive any income for her grandmother when her grandmother passed away. She also explained that while her grandmother was still living, her grandmother's bed could be placed in her room or the living room so each child could have his/her own room in her three-bedroom rental house.

When asked about providing for Daughter's special needs, she testified she would take her to therapy and had spoken to her counselor about her Daughter's needs. In response to questions whether she knew of a therapist who could treat RAD or knew what type of treatment would be needed, she stated she knew of a therapist who could help with children with "everything"—meaning, seemingly, any sort of problem.

After a brief recess to allow Mother additional opportunity to contact witnesses for telephonic testimony, which apparently proved futile, the family court went back on the record after reviewing the documents in the case files and made detailed oral findings. After discussing the statutory requirements of Kentucky Revised Statutes (KRS) 625.090 regarding terminating parental rights, the family court explained its conclusion that termination of both parents' rights to both children was warranted. The family court reviewed the timeline of events happening after the 2014 and 2018 removals. It found that the children had spent twenty-three cumulative months in foster care out of the forty-eight months immediately preceding the filing of the termination petitions in October 2019.

The family court found that both children had been adjudged to be neglected, with both parents stipulating to neglect. It also found multiple grounds of parental unfitness. And it found it in both children's best interest to terminate parental rights of both parents.

Regarding Mother specifically, the family court interpreted the letter from Mary Catherine Carroll as showing only that Mother had just recently started to improve in May 2020. The family court found that Mother had not made improvements for a long time, was only beginning to show progress, and that recent adjustments had not been made within a reasonable time to permit the children to return home. The family court also found that both children would

suffer negative effects if returned home, expressly finding that Daughter's special needs could not be met at home and that Son was doing well with his foster family and would be devastated to return to his prior home. The trial judge specifically stated that all findings were by clear and convincing evidence, and asked counsel to draft findings of fact and conclusions of law in accord with the oral findings made on the record.

In September 2020, the family court entered orders terminating parental rights of both parents to both children and supporting written findings of fact and conclusions of law. Mother filed a timely appeal, but Father did not appeal. Further facts will be provided as necessary in discussing issues on appeal.

Standards Governing Courts in Termination of Parental Rights Cases

Before terminating parental rights, the family court must find clear and convincing evidence[3] to support each of three parts of the standard established by KRS 625.090. First, the child must have been found to be an "abused or neglected" child as defined by KRS 600.020(1). KRS 625.090(1)(a). Second, termination must be in the child's best interest. KRS 625.090(1)(c). Third, the family court must find at least one ground of parental unfitness. KRS 625.090(2).

[3] *Clear and convincing evidence* does not mean uncontradicted proof, but "proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent-minded people." *Commonwealth, Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010).

In determining the child's best interest and whether there are ground(s) of parental unfitness, the family court must consider the factors listed in KRS 625.090(3).

Termination of parental rights is a grave action which the courts must conduct with "utmost caution." *M.E.C. v. Commonwealth, Cabinet for Health and Family Servs*., 254 S.W.3d 846, 850 (Ky. App. 2008). Thus, the evidence to support termination must be clear and convincing. KRS 625.090; *see also Santosky v. Kramer*, 455 U.S. 745, 769-70, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) (holding due process requires proof by at least clear and convincing evidence for terminations).

Despite the family court's authority to terminate parental rights if the requirements of KRS 625.090(1)-(3) are shown by clear and convincing evidence, KRS 625.090(5) provides that the family court also has discretion **not** to terminate parental rights if "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) if returned to the parent . . . ."[4]

The family court's ruling on a petition for involuntary termination of parental rights is accorded great deference on appellate review. Its findings are

[4] KRS 625.090(4) also states that if a child has been placed with the Cabinet, parents may present evidence about the reunification services provided by the Cabinet and "whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent." But from our review of the record and the appellant's brief, it does not appear that Mother has argued, either in her trial testimony or this appeal, how additional services would help facilitate the safe return of her children to her home.

reviewed under the "clearly erroneous" standard of Kentucky Rules of Civil Procedure (CR) 52.01[5] and thus shall not be disturbed unless they are not supported by substantial evidence. *M.P.S. v. Cabinet for Human Resources,* 979 S.W.2d 114, 116 (Ky. App. 1998). Yet the Kentucky Supreme Court has interpreted "the bulk of" KRS 625.090 as "reflect[ing] a default preference against termination, which is why it states that no termination of parental rights shall be ordered *unless* the court makes the statutory findings based on the higher standard of proof of clear and convincing evidence." *D.G.R. v. Commonwealth, Cabinet for Health and Family Services*, 364 S.W.3d 106, 112-13 (Ky. 2012).

Although there is apparently no dispute here that the family court at least facially made statutorily required findings by clear and convincing evidence, Mother contends that the family court issued clearly erroneous factual findings not supported by substantial evidence regarding grounds of parental unfitness and termination being in each child's best interest. Mother claims that the family court erred in concluding that she failed to prove that her children would not continue to be neglected if returned to her care. We discuss each argument in turn.

[5] CR 52.01 governs "all actions tried upon the facts without a jury" and provides in pertinent part: "Findings of fact, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."

Substantial Evidence Supports Family Court's Findings of Parental Unfitness

In its orders terminating the parental rights of Mother to each child and supporting findings of fact and conclusions of law, the family court found the grounds of parental unfitness stated in KRS 625.090(2)(e) and (g):

> (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;
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> . . .
>
> (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[.]

Regarding the KRS 625.090(2)(e) ground of failure or inability to provide essential parental care and protection, the family court specifically found that Father's substance abuse continued based on recent drug screens, that Mother continued to have contact with Father, that Mother continued to use marijuana based on recent drug screens, and that both parents lacked necessary financial resources and failed to improve living conditions in the home. The family court also noted the Cabinet's provision of a case plan and services to address instability

and substance abuse, but it found that both parents failed to make sufficient progress on case plans, failed to provide any care to the children during the pendency of the case, and did not provide financial or other support to the children. The family court found the failure to provide essential care had lasted at least six months and found no reasonable expectation of improvement given the children's ages and length of time in foster care and the parents' lack of progress.

The family court also noted in its findings, regarding the children being abused or neglected children, that the parents engaged in a pattern of conduct making them incapable of providing for the children's needs due to recent substance abuse. The family court specifically noted Mother's recent positive drug screens for marijuana and opioids.

Regarding the KRS 625.090(2)(g) ground of failing to provide necessities such as food, clothing, education, and medical care, the family court found that for reasons other than poverty alone, both parents had failed to provide any substantial care or financial or other support to the children during the pendency of the case. It found that their failure to provide necessities lasted at least six months and that improvement was unlikely given the children's ages and length of time in foster care and the lack of progress by the parents. It further found that the Cabinet had offered services and that additional services would be unlikely to result in lasting parental adjustments enabling the children's safe return.

Mother asserts that the Cabinet produced no evidence that she continued to abuse substances after October 2019. But Mother produced documentary evidence and testified herself to positive drug screens for THC/marijuana and opiates within a few months preceding the trial. The family court had the unique opportunity to determine witness credibility, *see* CR 52.01, and was not required to accept her explanation—for which no supporting scientific or medical evidence was presented—that handling liquid morphine without gloves had produced a false positive screen for opiates. Even if the positive screen for opiates was a false positive, Mother admitted to having a recent positive drug screen for marijuana in her trial testimony. Thus, we perceive no error in the family court's finding that Mother failed or was unable to provide essential care or protection due to continuing substance abuse in light of substantial evidence supporting this finding.

Mother also asserts the Cabinet admitted she complied with her substance abuse treatment program since November 2019 and failed to produce evidence of her not addressing mental health needs after October 2019. But the social worker testified to being unable to verify that Mother was obtaining therapy in addition to medical management of her mental health needs. The medical professional whom Mother believed provided therapy and medical management told the social worker she was not a licensed therapist and did not provide mental

health therapy. As both therapy and medical management were recommended for addressing her mental health needs, the social worker's testimony is substantial evidence that Mother was not fully complying with recommendations for addressing her mental health issues.

Thus, given the evidence of recent positive drug screens and lack of compliance with recommendations to obtain therapy for mental health issues, we perceive no reversible error. The family court's finding that Mother had not sufficiently complied with case plan requirements nor made sufficient improvements to enable her to provide essential care or protection to the children was supported by substantial evidence.

Mother asserts that the Cabinet and the family court effectively treated her as having the burden to prove that termination was unwarranted after the July 2019 goal change. She alludes to the Cabinet's "scant proof post-August 2019" and argues it quit working her case after the goal change hearing. And she argues the family court's oral findings that reasonable expectation of improvement was unlikely were unduly focused on past, pre-goal change events such as prior relapse history and length of prior reunification efforts.

But the family court did not rely solely upon events occurring before the July 2019 hearing. Instead, it also cited Mother's continuing contact with Father, ongoing mental and physical health concerns, evidence of more recent

marijuana use, and lack of reliable financial resources. In short, the family court did not look only at pre-goal change events and its finding of no reasonable expectation of improvement in parental care is supported by substantial evidence and does not reflect an erroneous shifting of the burden of proof to Mother.

Mother asserts that the evidence was uncontroverted that she was no longer in a relationship with Father. However, she also admitted in her testimony that she occasionally encountered Father, so the family court's finding that she continued to have contact with Father was not clearly erroneous.

Mother also claims that no testimony about environmental issues was presented by the Cabinet at trial despite the family court's written and oral findings indicating environmental neglect (*i.e.*, oral allusion to "remaining in the same home environment with no improvements on living conditions as is one of the concerns throughout the second case . . ." as quoted on page 14 of Appellant's brief). From our review of the record, Mother testified about the number of bedrooms in her home and her plans to move her grandmother's bed if the children returned there. And the social worker only briefly and generally mentioned in her testimony that there had been concerns about the condition and cleanliness of the home at the time of the 2018 removal.

There is a paucity of substantive trial testimony in the record provided to us about conditions in the home indicating environmental neglect from our

review of the record. But we believe any unsupported finding as to lack of improvement in conditions of the home was harmless, *see* CR 61.01, in light of the evidence supporting findings that Mother had recently used illicit drugs and was unable to provide essential care and protection due to recent substance abuse and failure to fully follow mental health recommendations. In other words, even if we removed the findings about environmental neglect, the family court's finding that Mother was unable to provide essential care and protection due to continuing substance abuse and failure to fully address mental health issues was supported by substantial evidence. And this finding of parental unfitness, combined with other findings on statutorily required factors, was sufficient to support its termination decision.

We also note that the social worker testified that Mother did nothing since the removal to provide financial support or necessities except for bringing some food, toys, or other gifts to supervised visits which had ended over a year before trial. Mother has not challenged this testimony or pointed to any conflicting evidence on this matter. Thus, the family court's finding that Mother had failed to provide necessities such as food, clothing, shelter, medical care, and education for at least six months was not clearly erroneous.

Mother also contends that the family court improperly only looked at the past and did not fully consider the future or her present attempts to improve in

concluding that there was no reasonable expectation of improvement based on its finding of her lack of sufficient progress while the case was pending. She claims that the family court's decision to terminate is thus contrary to our discussion in *M.E.C.*, 254 S.W.3d at 855.

We are certainly aware that Mother testified to recent improvements such as working to get her G.E.D., taking steps to improve her physical and mental health such as attending daily N.A. meetings online, and frequently talking with a counselor to develop coping skills and prevent relapses. But the family court had the unique opportunity to judge the credibility of witnesses, *see* CR 52.01, and we cannot say that the family court was obligated to believe that Mother's testimony about recent efforts to improve showed a reasonable expectation of improvement in her providing essential parental care and protection or in providing necessities for the children.

Despite some similarities (such as evidence of both substance abuse and efforts towards self-improvement), Mother's case is distinguishable from *M.E.C.* in many respects. For instance, Mother admitted to never having been employed in contrast to M.E.C. having full-time employment by the end of trial. And we are not aware of any evidence of Mother being hospitalized or incarcerated during the months preceding the filing of the termination petition as was M.E.C. *See id*. at 854. In sum, given the unique facts of *M.E.C.*, we cannot say that it

would compel different findings regarding grounds of parental unfitness under the facts here. In short, we perceive no reversible error in the family court's findings of grounds of parental unfitness under KRS 625.090(2).

Substantial Evidence Supports Family Court's Findings of Termination of Mother's Parental Rights Being in Children's Best Interest

Mother argues that the family court's finding that termination was in the children's best interest was clearly erroneous. She correctly notes that in determining whether, by clear or convincing evidence, termination is in a child's best interest under KRS 625.090(1)(c), family courts must consider the factors set forth in KRS 625.090(3) including a parent's making efforts and adjustments in "circumstances, conduct or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child." KRS 625.090(3)(d).

Mother challenges the family court's finding that she had not made sufficient efforts and adjustments to return her children home within a reasonable time, considering the age of the children, as not supported by substantial evidence. The family court had found that both parents had continued positive drug screens despite years of services and that there were continued problems in the condition of the home making the children's return home not in their best interest.

Mother asserts that the Cabinet only presented documentary evidence of her drug screens which were at least nine months old—based on the late

October 2019 date of certification of her drug screen records—and most over eleven months old—based on the late August 2019 date of certification of the underlying juvenile action records. From our review of the record, Mother is correct about the dates of certification of the Cabinet's documentary evidence about drug screens and other matters. However, Mother admitted in her own testimony to more recent positive drug screens in 2020 and presented her own documents showing positive drug screens in 2020.

Mother also asserts that the Cabinet admitted that Mother was compliant with substance abuse treatment since at least November 2019, that Mother was compliant with mental health treatment since at least January 2020, and that the Cabinet presented no evidence about environmental issues. As we stated previously, any unsupported findings about environmental issues were harmless given evidence of positive drug screens and lack of full compliance with mental health recommendations.

Mother asserts that the family court misinterpreted the letter from Mary Catherine Carroll as indicating that Mother had only recently seen Carroll when, in fact, Carroll had been seeing Mother earlier but only became Mother's case manager in May 2020. And she disagrees with the family court's interpretation of the letter as indicating that Mother only began to show improvement in May 2020, arguing that "the broader context of the letter suggests

that Mother had made tremendous progress in the intervening year, *prior* to May 2020." (Appellant's brief, p. 11).

We agree with Mother to the extent that Carroll's letter[6] does not explicitly state that Carroll believed that Mother's improvements only began to occur in May 2020 and in fact states Carroll's opinion that "[i]n the past year I have seen [Mother] make many improvements in her life." (See quote from Appellant's brief on page 11, letter also attached as exhibit to Appellee's brief). But the family court was not compelled to wholeheartedly accept the opinions set forth in the letter as reliable or persuasive, particularly in light of Carroll being unavailable for cross-examination or other further questioning and the lack of information about her credentials.

Mother argues that in determining termination to be in the children's best interest, the family court improperly focused on past behavior to the exclusion of considering future parenting capacity, citing *M.E.C.*, 254 S.W.3d at 855. And she asserts that in her case, "the whole of the Cabinet's proof was singularly focused not only on the past, but the *distant* past, with little regard for Mother's uncontroverted progress in the ten months following the filing for termination, and

[6] The letter does not contain a handwritten signature. The letter ends with the typewritten text "Sincerely, Mary Catherine Carroll." There is nothing to indicate Carroll's credentials or whether she was attempting to provide an electronic signature.

certainly no regard for her future parenting capacity." (Appellant's brief, pp. 11-12).

The Cabinet contends, however, that Mother was not really in full compliance with her case plan recommendations given the evidence that the provider whom Mother claimed to see for both medical management and therapy was not a licensed therapist and did not provide therapy. The Cabinet also points to a lack of dispute that the children had not seen the Mother for over a year prior to trial. Mother does not refute this as she did not file a reply brief and the written record confirms that supervised visits were suspended in May 2019.

The Cabinet also asserts that Son lacks a bond with his parents and wants to be adopted by his foster parents, an assertion that is supported by the social worker's testimony about Son telling her his parents did not care about him and about the foster family's and Son's desire for adoption. And the Cabinet asserts the family court's finding that Daughter has serious emotional issues for which Mother is unprepared to provide needed therapy and support is supported by substantial evidence. Despite some conflicting evidence, we agree.

Mother testified, albeit generally, that she would obtain any needed counseling or treatment for her Daughter and claimed to know of a therapist nearby who could provide any needed services for children. While accepting some blame for Daughter's diagnoses, including her attachment disorder, stemming at least in

part from Mother's past conduct and prior family upheavals, Mother also testified that she believed that Daughter's separation issues would be alleviated, and that Daughter would be less sad and troubled if she were able to return home or at least have phone contact with Mother again. Perhaps another family court would have found Mother's testimony more persuasive concerning her ability to provide for Daughter's special needs but the family court's finding that Mother could not provide the needed consistency and specialized treatment for Daughter's special needs is supported by substantial evidence—the social worker's testimony.

The Cabinet also construes Mother's testimony about recent efforts to improve her physical and emotional health as indicating a sole focus on herself rather than her children. We do not necessarily share this view, as her testimony could also reasonably be construed to mean that she understood that she had to take care of her own mental and physical health in order to be able to take care of her children. Nonetheless, we cannot say that the family court's not finding Mother's testimony about her recent efforts to improve herself particularly persuasive as to future parenting capacity was erroneous in light of substantial evidence of recent positive drug screens and lack of full compliance with recommendations to address mental health issues.

No Reversible Error in Family Court Not Finding that Mother Proved Children Would Not Continue to be Neglected if Returned to Her Care

The family court expressly found that both children would continue to be neglected if returned to their parents' care. Mother contends that the family court abused its discretion in not concluding instead that Mother had shown by a preponderance of the evidence that the children would not continue to be abused or neglected. She argues she made consistent, substantial progress on her case plan over the last several months before the termination proceeding and that her testimony about making such progress was unrebutted by the Cabinet, which also failed to produce drug screen records for the last several months before the trial.

The Cabinet disagrees, pointing out that both children have lived with substitute caregivers during a large portion of their lives. It further pointed out that Mother was suspended from having supervised visitation over a year before the trial and "achieved nothing in the ensuing fourteen months that justified reinstating visits, much less any trial home visits for the children." (Appellee's brief, p. 10).

Upon our review of the record, we discern no reversible error in the family court's not finding Mother to have shown by a preponderance of the evidence that the children would not continue to be abused or neglected if returned to her care under the facts here.[7] Despite Mother's testimony about taking steps to

[7] Mother argues that the family court's not finding her to have shown by a preponderance of the evidence that the children would not continue to be neglected if returned to her care was an

improve herself, Mother also admitted to recent positive drug screens in her testimony and the records she provided show positive drug screens. Also, the social worker testified that Mother did not fully comply with recommendations to address her mental health issues—for example, not obtaining therapy for mental health issues. Furthermore, Mother did not come forward with additional evidence supporting her testimony about her efforts towards improvement—such as any sort of verification of her attending N.A. meetings online or testimony from her N.A. sponsor—with the exception of a letter lacking a formal signature from a counselor/case manager of unknown credentials who was unavailable to testify. Nor has Mother claimed to have sought a continuance to allow her N.A. sponsor or counselor/case manager to testify.

If accepted as true, Mother's testimony indicates she was making progress in many important respects in the months leading to trial. However, Mother still had recent positive drug screens and had failed to undergo recommended therapy to fully address her mental health issues. Also, Mother had a lengthy prior history indicating an inability or unwillingness to provide proper parental nurturing and support. Perhaps another family court would have found

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abuse of discretion. The Cabinet argues that this issue should be reviewed under the clearly erroneous standard instead. While we need not definitively resolve the appropriate standard of review for this particular issue here, we see neither clearly erroneous factual findings nor an abuse of discretion in the family court not resolving this issue in Mother's favor under the facts here.

Mother's testimony to support a more optimistic assessment of her future parenting capability. However, mindful of the family court's unique opportunity to weigh the evidence and judge the credibility of witnesses, we cannot say that the family court committed reversible error in not determining that Mother showed by a preponderance of the evidence that the children would not be abused or neglected if returned to her care upon our review of the record before us.

CONCLUSION

For the foregoing reasons, we affirm the judgments terminating the parental rights of Mother to Daughter and to Son.

JONES, JUDGE, CONCURS.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY.

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