

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

NO. 2020-CA-1328-ME

H.L.F.

APPELLANT

v.

APPEAL FROM GALLATIN CIRCUIT COURT  
HONORABLE LINDA R. BRAMLAGE, JUDGE  
ACTION NO. 19-AD-00005

C.L.W.H.; J.A.H.; AND W.L.J.H., A  
CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, KRAMER, AND K. THOMPSON, JUDGES.

COMBS, JUDGE: The biological mother of a minor child appeals from an order and judgment of the Gallatin Circuit Court granting the petition filed for adoption filed by the child's step-mother. After our review, we affirm.

Appellant, H.L.F. (Mother), is the biological mother of W.L.J.H. (Child), a boy born on February 17, 2016. On April 4, 2019, the Petitioner, C.L.W. (Step-mother), filed a verified petition for voluntary termination of

parental rights and adoption stating that she was the fiancée of the J.A.H., child's father (Father), and the prospective step-mother of the child. Mother, Father, and the "Parent and Next Friend" of the child were listed as respondents. However, the child was not named as a party.<sup>1</sup>

Following the filing of the petition, Father filed an entry of appearance and consent for adoption, Father and C.L.W. were married, and Step-mother filed a motion to amend her petition. The trial court appointed counsel for Mother, granted Step-mother's motion to amend, and appointed a guardian *ad litem* (GAL) to represent the child.

Step-mother filed a first amended verified petition for involuntary termination of parental rights and adoption on November 21, 2019, naming Mother, Father **and Child** as Respondents. Summonses were issued and served by certified mail -- the child's to be served through Father. On December 19, 2019, Step-mother filed proof of service of the amended petition. An attached certified mail return receipt showed that Step-mother signed for the child's summons.

On December 20, 2019, Mother filed an answer to the amended petition, incorporating "all other affirmative defenses contemplated and specified within Kentucky Civil Rules 8.03 and 12.02 . . . ."

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<sup>1</sup> The record is replete with errors and omissions that had to be corrected.

On May 5, 2020, the Cabinet for Health and Family Services (the Cabinet) filed its report recommending that the adoption be granted as long as all legal requirements were met. On May 11, 2020, Step-mother moved for a trial date. On June 23, 2020, the court entered an order setting the hearing for August 6, 2020. On August 5, 2020, Mother filed a motion to continue because the GAL's report was not yet available. That afternoon, the GAL filed her report.

On August 6, 2020, the hearing was conducted remotely by Skype. Mother's counsel argued for a continuance. The court denied the motion, noting that the GAL's report was not required; however, the court allowed counsel time to discuss the report with his client before commencing the hearing.

Father testified first. We summarize the substance of his testimony. His name appears on the child's birth certificate. A 2017 Carroll County juvenile case arose out of allegations that Mother was using drugs. Child began living with Father after a no-contact order was issued for Mother. Father and Step-mother started dating in October of 2017, and then began living together. Father believes that adoption is in the child's best interest. Step-mother treats the child as her own son, is very protective, addresses his educational needs, is trying to enroll him in a speech class (he has a stutter), and has cared for his day-to-day needs since 2017. Father testified that Mother has not helped with the child's educational needs, has not paid any child support, nor has she provided any type of assistance for him on a

consistent basis. Mother has not brought or offered anything for the child since 2017. To the best of Father's knowledge, the last time that Mother saw the child was in the Fall of 2017.

Step-mother testified. We summarize the substance of her testimony. She lives in Carrollton, Kentucky, with her husband (Father), her own son from a prior relationship, and Child. She and Father began dating in October 2017 and have been living together with Child since. They married in April 2019. She works the day-shift as a correctional officer at Indiana Department of Corrections. Her cousin and aunt are her baby-sitters. Step-mother knows every detail about Child. She takes him to medical appointments and has stayed with him in the hospital (he has asthma). She is trying to enroll him in an early head-start program for his stutter. According to Step-mother, Mother sent a pack of diapers and wipes and \$15 or \$20 for the child in December 2017. Mother has not seen the child since October 2017 due to the "no contact" order. Step-mother believes it would be in Child's best interest for her to adopt him. She is the only mother figure that he has known for three years. Step-mother believes that she has the ability to meet his educational, physical, and financial needs. She would not treat the child differently from her biological son.

Step-mother's counsel moved to introduce the birth certificate. Mother's counsel objected because it was not certified. The court continued the

hearing to allow counsel time to get a certified copy and to introduce it with a witness.

On August 18, 2020, Mother filed a motion to dismiss, alleging violations of KRS<sup>2</sup> 625.050(7) and KRS 625.080(5),<sup>3</sup> claiming that “Petitioner has failed to plead as required by KRS 199.502(1), any subpart as they relate to Respondent [Mother].”<sup>4</sup>

On August 27, 2020, Step-mother corrected the error as to the birth certificate by noticing the filing of a certified certificate record of birth from the Office of Vital Statistics. The document filed with the court is an original. It bears the seal of the Commonwealth of Kentucky and is signed by the state registrar.<sup>5</sup>

On August 27, 2020, Step-mother also filed a motion to exclude Mother’s

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<sup>2</sup> Kentucky Revised Statutes.

<sup>3</sup> KRS 625.050(7) requires that a petition for involuntary termination of parental rights (TPR) be fully adjudicated within six months of the service on the parents. KRS 625.080(5) requires that a TPR hearing be held within sixty 60 days of the motion for a trial date.

<sup>4</sup> KRS 199.502(1) provides that an adoption may be granted without the biological parent’s consent if any of certain enumerated conditions are pled and proven with respect to the child.

<sup>5</sup> In her notice of filing, Step-mother cites Kentucky Rule of Evidence (KRE) 902(1). The rule, entitled “Self-authentication[.]” provides that:

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

- (1) Domestic public documents under seal. A document bearing a seal purporting to be that of . . . any state, district, [or] Commonwealth . . . and a signature purporting to be an attestation or execution.

witnesses and exhibits because her witness and exhibit lists were not filed in a timely fashion.

The hearing resumed remotely on September 3, 2020. Before commencement of the hearing, the court noted that there had been an issue with the birth certificate and that counsel had submitted a proper document. The court also heard argument on pending motions. The court denied Mother's August 18, 2020, motion to dismiss but granted Step-mother's motion to exclude Mother's witnesses and exhibits. Further discussion ensued about the birth certificate. Mother's counsel then made a motion for a directed verdict on grounds of lack of proof of paternity when Step-mother rested her case. The court denied Mother's motion for directed verdict.

Mother testified. We summarize the substance of her testimony. Mother testified that Father is the child's father. They never married. For the first year of his life, Child lived with them, Mother stayed at home, and Father worked. At some point, the Cabinet filed a case and the child was removed. Father received custody. Mother subsequently had another child -- a daughter, who was later removed from Mother's care and was placed with Father and Step-mother for close to a year -- even though the daughter is not the biological child of Father. Mother has since regained custody of her daughter.

Mother then testified about her efforts to re-open the juvenile case involving her son. The only thing that she has not completed is parenting classes, and she is about half-way through. Mother objects to Step-mother's adopting Child. She disputed that she had not supported the child for approximately three years. She testified that she spoke with Step-mother daily, gave them money numerous times, paid a baby-sitter for the child and his step-brother so she could have supervised visits with her daughter, and bought gifts. Mother agreed that it has been 90 days or more since she has seen the child and six months or more since he has been in her primary care.

Mother is a recovering addict. Her boyfriend also is a recovering addict. Mother could not recall when he was last in jail, but he had been incarcerated for methamphetamine within the last 12 months. At the time of the hearing, Mother did not have visitation with the child. When her daughter was born, Mother was still on probation for public intoxication. After her daughter was born, Mother was convicted of possession of drug paraphernalia.

On October 2, 2020, the trial court entered detailed findings of fact and conclusions of law and order and judgment terminating parental rights and granting adoption.

On October 12, 2020, Mother moved to reopen on grounds that she "wishes to file post trial motions and a notice of appeal." The court granted that

motion. On October 13, 2020, Mother filed a motion requesting findings regarding her motions to dismiss and for directed verdict. On October 20, 2020, Mother filed a notice of appeal from the order terminating parental rights and granting the adoption and from the orders denying her motions to dismiss and for directed verdict. On November 17, 2020, the trial Court entered an order making additional findings of fact. On November 20, 2020, Mother filed an amended notice of appeal to include that last order.

At the outset, we clarify that this is an adoption proceeding governed by KRS Chapter 199 -- *not* by KRS Chapter 625. This Court explained the distinction between those statutory chapters in *E.K. v. T.A.*, 572 S.W.3d 80 (Ky. App. 2019):

[W]e acknowledge the . . . conundrum that plagues this Commonwealth's family court jurisprudence, which we are obligated to address. At its core, this is an adoption case; therefore, KRS 199 governs **the entirety** of the amended petition. Father initially filed a petition for the involuntary termination of parental rights under KRS 625, but the petition's amendment to include an adoption action under KRS 199 renders [the request for involuntary TPR] moot.

**By its nature, adoption under KRS 199 vitiates parental rights of biological parents. KRS 199.520(2). When there is a dual petition involving an adoption and involuntary termination of parental rights, the adoption supersedes the termination because KRS 199 encompasses KRS 625.**

*Id.* at 82-83 (emphases added).



The standard of review governing an adoption without consent is “the clearly erroneous standard in CR<sup>[6]</sup> 52.01 based upon clear and convincing evidence. The findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings.” *B.L. v. J.S.*, 434 S.W.3d 61, 65 (Ky. App. 2014).

Mother first argues that the court abused its discretion in allowing the petition for involuntary TPR to proceed pursuant to KRS Chapter 625 and that it was clearly erroneous in granting an involuntary termination. Again, KRS Chapter 625 does **not** govern the case before us because the adoption supersedes the TPR.

Mother next argues that: “The trial court abused its discretion in allowing the petition for adoption to proceed pursuant to KRS chapter 199 and was clearly erroneous in granting the adoption.” (Original emphasis omitted).

Mother contends that there is no evidence that Step-mother complied with KRS 199.505(3) (requiring an attorney to request that the Cabinet search the putative-father registry whenever an adoption is filed). It does not appear that the issue is preserved. Nor does it appear that Mother preserved the issues that she raises at the end of this argument regarding KRS 199.492 or KRS 199.590(6)(a).

Mother makes a sweeping statement at page 5 of her brief that: “[a]ll errors discussed below were preserved in the motions and objections of the

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

parties.” That statement fails to comply with the requirements of 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.” As we explained in *Koester v. Koester*, 569 S.W.3d 412, 415 (Ky. App. 2019), “[i]t is not the function or responsibility of this court to scour the record on appeal to ensure that an issue has been preserved.”

Mother contends that the court erred in denying her to motion continue the hearing. “The trial court has broad discretion in granting or denying a continuance; this court will not reverse for failure to grant a continuance absent an abuse of discretion.” *Airrich, LLC v. Fortener Aviation, Inc.*, 489 S.W.3d 254, 257-58 (Ky. App. 2016). The GAL’s report was brief, and the court allowed counsel time to discuss it with Mother. We find no abuse of discretion.

Mother argues “it was not testified to that the Petition or [Step-mother] met the legal requirements outlined in KRS §199.520(1) to grant the Petition[.]” The statute provides in relevant part that:

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

*Id.*

At page 10 of its findings of fact and conclusion of law, the trial court determined that “[t]hat the facts stated in the Verified Amended Petition for Involuntary Termination of Parental Rights and Adoption were established.” Further, “[t]hat all legal requirements, including jurisdiction” were met, that Petitioner “is of good moral character and reputable standing in the community and of sufficient means to be able to properly maintain and educate the minor child[,]” that the best interest of the child will be promoted by his adoption by Step-mother and that the child is suitable for adoption.

We are satisfied from our review that the contents of the amended petition comply with the requirements of KRS 199.490(1)<sup>7</sup> and that the requisite

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<sup>7</sup> KRS 199.490(1) governs the contents of an adoption petition and requires that the petition allege the following elements:

- (a) The name, date, place of birth, place of residence, and mailing address of each petitioner, and, if married, the date and place of their marriage;
- (b) The name, date, place of birth, place of residence, and mailing address, if known, of the child sought to be adopted;
- (c) Relationship, if any, of the child to each petitioner;
- (d) Full name by which the child shall be known after adoption;
- (e) A full description of the property, if any, of the child so far as it is known to the petitioner;
- (f) The names of the parents of the child and the address of each living parent, if known. The name of the biological father of a child born out of wedlock shall not be given unless paternity is established in a legal action,

facts were established. However, Mother argues that Step-mother's place of birth, the facts surrounding her marriage, and the child's place of birth as pled in the Petition "were not testified to." Step-mother and Father testified as to the date of their marriage. Furthermore, the Cabinet's report confirms the allegations of the amended petition.

The Cabinet has a role in adoptions. In accordance with KRS 199.510, the Cabinet must investigate and file a confidential report with the family court before a hearing can take place. . . . Its statutory purpose is to give some assurance to the court of the veracity of the prospective adoptive parents' allegations, that they are financially able and morally fit to adopt the child, that adoption is in the best interest of the child, and that the child is suitable for adoption. KRS 199.510(1).

. . .

The first requirement of the report is that it state "[w]hether the contents of the petition required by KRS 199.490 are true . . ." KRS 199.510(1). . . .

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or unless an affidavit is filed stating that the affiant is the father of the child. If certified copies of orders terminating parental rights are filed as provided in subsection (2) of this section, the name of any parent whose rights have been terminated shall not be given;

(g) The name and address of the child's guardian, if any, or of the cabinet, institution, or agency having legal custody of the child;

(h) Any further facts necessary for the location of the person or persons whose consent to the adoption is required, or whom KRS 199.480 requires to be made a party to or notified of the proceeding; and

(i) If any fact required by this subsection to be alleged is unknown to the petitioners, the lack of knowledge shall be alleged.

[T]he statute does not require a special incantation to verify the petition. It is enough that the allegations in the petition and the report's findings parallel one another. KRS 199.510 requires only "that the report be made and submitted to the court [where it becomes] a matter within the competence of a qualified trial judge to weight [sic] and determine."

*A.F. v. L.B.*, 572 S.W.3d 64, 71-73 (Ky. App. 2019) (quoting *Warner v. Ward*, 401 S.W.2d 62, 64 (Ky. 1966)).

Mother contends that Step-mother's wishes for Child's post-adoption name "were not pled or testified to." We disagree. Paragraph 4 of the Amended Petition states the full name by which the child shall be known after adoption as required by KRS 199.490(1)(d). Although the Cabinet's report does not specifically address that element, it does set forth the child's full name. We conclude that that is sufficient. In *A.F. v. L.B.*, *supra*, this Court held that the sole omission of full name by which the child shall be known after adoption was "not enough . . . to conclude the report fails to say '[w]hether the contents of the petition required by KRS 199.490 are true[.]' KRS 199.510(1)(a)." *Id.* at 73.

Mother contends that the facts pled in paragraphs 6 and 7 of the Petition were not proven; *i.e.*, that paternity was not established by documentary evidence such as a birth certificate or a paternity judgment and that no evidence was produced regarding Father's guardianship status. However, this argument wholly lacks merit. The Cabinet's report parallels the allegations of the amended

petition and reflects that Father is the child's biological father and that he received full permanent custody in April of 2018. Testimony presented at hearing established that Father's name is on the child's birth certificate and that he is the child's father. The certified certificate record of birth was filed with the court. There is no genuine issue as to the identity of Father as the biological father in this case.

Mother contends that the facts pled in paragraph 8 of the petition (that she "has not provided care or support *in any form*") were not established." (Emphasis original.) We disagree. KRS 199.502(1) provides that an adoption may be granted without the consent of the child's biological living parents if it is pleaded and proved that any of certain enumerated conditions exist. The trial court concluded as follows:

Mother, for reasons other than poverty alone, has continuously or repeatedly failed to provide essential food, clothing, shelter, medical care or education reasonably necessary and available for the minor child's well-being and there is no reasonable expectation of significant improvement in the Respondent Mother's conduct in the immediately foreseeable future, considering the age of the child.

This conclusion satisfies KRS 199.502(1)(g) and is supported by substantial evidence; namely, the testimony presented at the hearing as found by the trial court:

Since the no-contact order in 2017, Respondent Mother has not supported the minor child in any way. She has not provided any money, education food, clothes or shelter. Petitioner testified that at one point in 2017, Respondent Mother gave Respondent Father \$20.00 and some diapers and wipes for the child.

Mother contends that the court must find that Step-mother is of good moral character and reputable standing in the community; she argues that no testimony or evidence was presented on these matters. However, testimony established that Step-mother cares for the child as if he were her own. She is employed by Indiana Department of Corrections. She has no criminal record. In addition, when Mother's daughter was removed, she was placed with Father *and Step-mother* for nearly a year. "As the fact-finder, the trial court was entitled to draw reasonable inferences from the evidence." *K.H. v. Cabinet for Health & Fam. Servs.*, 358 S.W.3d 29, 32 (Ky. App. 2011). Substantial evidence supports the court's determination that Step-mother is of good moral character and reputable standing in the community as required by KRS 199.520(1).

Although KRS Chapter 625 does not govern this case, in her first argument Mother raised issues with respect to the Cabinet's not having been named a party and service of the amended complaint. "Since adoption is a statutory right which severs forever the parental relationship, Kentucky courts have required strict compliance with the procedures provided in order to protect the rights of the natural parents." *Day v. Day*, 937 S.W.2d 717, 719 (Ky. 1997).

“According to KRS 199.480, the only time the Cabinet is required as a party-defendant is when the child is in its ‘care, custody, and control.’” *E.K. v. T.A.*, 572 S.W.3d at 83. However, in this case, Child resides with Father and Step-mother. Therefore, the Cabinet is not an indispensable party. *Id.*

Father was named as a respondent in the original petition and he did enter an appearance; however, the child was not named as a party in the original petition. KRS 199.480(1)(a) mandates that the child to be adopted shall be made a party-defendant in an action for leave to adopt a child. Furthermore, KRS 199.480(2) requires that where the child to be adopted is less than 14 years of age, “and the . . . individual . . . has custody of the child, the service of process upon the child shall be had by serving a copy of the summons in the action upon the . . . individual . . . any provision of CR 4.04(3) to the contrary notwithstanding.”

The initial error in the omission of naming the child was subsequently corrected. The child was duly named as a Respondent in the Amended Petition as required, and summons was issued to be served upon Father by certified mail. However, the certified mail return receipt was not restricted to the addressee pursuant to CR 4.01(1)(a), and Step-mother signed for it. Mother continued to participate in the litigation and did not raise the defense of insufficiency of service of process in her motion to dismiss. However, she now raises that unpreserved issue on appeal. We conclude that she forfeited that defense. *See King v. Taylor*,



694 F.3d 650 (6th Cir. 2012) (even where defendant properly preserves Federal Rule of Civil Procedure 12(b) defense by including it in an answer, he may forfeit right to seek ruling on defense later by his conduct during litigation).

Mother's next argument is that the trial court abused its discretion and that it was clearly erroneous in utilizing information from parties' pleadings which was never introduced or admitted as evidence in making its findings of fact, conclusion of law, and judgment. She contends that Father's written consent to adoption fails to comply with KRS 199.011(17). That argument also appears to be unpreserved. Mother argues that the court should not have utilized the Cabinet's report because it was not introduced into evidence. The argument lacks merit. KRS 199.510(1) requires that the Cabinet "investigate and report in writing to the court[.]" Once submitted, the report is a matter for the trial judge to weigh and determine, *A.F. v. L.B., supra*. Mother also argues that the birth certificate was not entered into evidence. We have determined that the facts stated in the petition were established. Furthermore, as the trial court stated in its order of November 17, 2020, "[t]he court continued the hearing in progress until September 3, 2020, when a certified birth certificate was submitted and accepted by the Court."

Mother's final argument is that the trial court abused its discretion and that it was clearly erroneous in denying her motions for a directed verdict and to dismiss. Mother cites no authority with respect to the denial of her motion for

directed verdict. The sum-total of her argument is her conclusory allegation that a “Directed Verdict against [Step-mother] was appropriate and it was error for the Court to have overruled it.” As this Court held in *Hadley v. Citizen Deposit Bank*, 186 S.W.3d 754, 759 (Ky. App. 2005), “It is not our function as an appellate court to research and construct a party’s legal arguments, and we decline to do so here.”

The denial of Mother’s motion to dismiss was based on alleged violations of KRS 625.050(7) and KRS 625.080(5), which concern deadlines in involuntary TPR proceedings. Mother also alleged that Step-mother “failed to plead as required by KRS 199.502(1), any subpart as they relate to Respondent [Mother].”

The statutory deadlines of KRS Chapter 625 are not applicable to adoption actions under KRS 199.502. *See A.F. v. L.B., supra* (deadline in KRS 625.090(6) for court to enter findings of fact, conclusions of law, and decision inapplicable to actions brought under KRS 199.502).

Finding no error, we AFFIRM the judgment of the Gallatin Circuit Court granting the adoption in this case.

ALL CONCUR.

BRIEF FOR APPELLANT:

Grant Axon  
Warsaw, Kentucky

BRIEF FOR APPELLEES:

Ben Wyman  
Carrollton, Kentucky