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Commonwealth of Kentucky
Court of Appeals

NO. 2020-CA-1482-ME

B.K.B.

APPELLANT

APPEAL FROM WARREN CIRCUIT COURT
v. HONORABLE CATHERINE RICE HOLDERFIELD, JUDGE
ACTION NO. 20-AD-00013

COMMONWEALTH OF KENTUCKY,
BY AND THROUGH THE CABINET
FOR HEALTH AND FAMILY
SERVICES; L.W.B.; J.M.B.; AND
L.R.B.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT, K. THOMPSON, AND TAYLOR, JUDGES.

LAMBERT, JUDGE: B.K.B. has appealed from the October 14, 2020, order of the Warren Circuit Court involuntarily terminating her parental rights to L.R.B., a minor child. We affirm.

B.K.B. (the mother) is the biological mother of L.R.B. (the child), a daughter born in 2012 in Warren County. L.W.B. (the legal father) is the child's legal father as he was married to the mother when the child was born. J.M.B. (the biological father) is the child's putative father and was declared to be so via a 2018 default judgment entered in a paternity action.

This matter began with the filing of a juvenile dependency, neglect, or abuse petition by the child's paternal, biological grandfather in September 2017 (Case No. 17-J-00648-001). He stated in the affidavit that he had witnessed the mother with a needle in her breast and leg areas, that she would leave the child for days at a time, that she would not dress the child, and that she would laugh at the child when she had nightmares. In addition, he stated that the mother was "bad on meth" and had lost three other children in termination proceedings. Emergency custody was granted to the paternal grandfather. The adjudication and disposition hearings were held the same day, and the mother stipulated to neglect/abuse. The court concluded that the child was abused or neglected pursuant to Kentucky Revised Statutes (KRS) 600.020(1) and found that the mother had engaged in a pattern that made her incapable of caring for the child due to alcohol or other drug abuse. The court later returned the child to the mother's custody. In the disposition order, the court ordered the Cabinet for Health and Family Services

(the Cabinet) to file the pending relative home evaluation of the father¹ and to maintain an open case until at least the next court review; that the child was to remain in therapy as recommended by the treatment provider; and that the parents were to maintain stable housing and employment, complete a substance abuse assessment and follow all recommendations, and comply with and complete the Cabinet's case plan. A review was scheduled for May 2018.

In May 2018, the Cabinet filed a report indicating that the mother was working on her case plan. Caseworker Rachel Coleman stated that the mother was enrolled in parenting classes at the Family Enrichment Center, and she was receiving mental health services as well as drug and alcohol counseling. She had been testing negative on her drug screens. The mother was continuing to care for the child and met all of her needs. She was working with the housing authority to obtain housing outside of her mother's home. The mother was working for IGA and was compliant with her case plan. The biological father was set to complete his program at the Healing Place later that year. The child was in kindergarten, where she was doing well. She saw a counselor twice a month at LifeSkills and took two prescription medications. Ms. Coleman recommended that the child remain in the mother's custody.

¹ We presume this refers to the biological, paternal grandfather's home.

Ms. Coleman filed an updated report in July 2018. By that time, the mother and the child had moved to Morgantown, Kentucky. The mother planned to complete her parenting classes at the Mission on Main and would continue to see her current counselor until she found one in her new city. She continued to test negative on her drug screens, and she was continuing to care for and meet the needs of the child. The mother was living with a friend while she looked for a job and had applied for Section 8 housing. The biological father had completed his program at the Healing Place but had not attempted to contact the Cabinet. The child was doing well in the first grade and was continuing to see a counselor at LifeSkills. She had been diagnosed with post-traumatic stress disorder (PTSD) and attention deficit hyperactivity disorder (ADHD). Ms. Coleman again recommended that the child remain in the mother's custody.

A report filed in August 2018 indicated that the mother and the child had moved back to Bowling Green. The mother reported that she had been in a verbally abusive relationship and was currently living at BRASS.² She left the relationship before it became violent. The mother was seeking employment in Bowling Green and was planning to use housing aid through BRASS. She continued to test negative on her drug screens, and she was continuing to care for

² Barren River Area Safe Space, Inc., or BRASS, is a domestic violence shelter and program located in Bowling Green.

and meet the needs of the child. As in the prior reports, Ms. Coleman recommended that the child remain in the mother's custody.

A report filed in October 2018 indicated that the mother was no longer living at BRASS because she had violated the curfew. She was staying at the Salvation Army and was next on the list for housing assistance through the Housing Authority in Morgantown. Despite the moves, the child was having her medical, housing, and food needs met. The mother had not yet completed her parenting classes, and she was receiving SNAP and Medical Card benefits. She would be working at a gas station when she moved back to Morgantown. Regarding the child, Ms. Coleman stated that she was defiant at times but did not have any other reported behavioral issues.

The new action was initiated in October 2018 by Cabinet worker Ms. Coleman (Case No. 17-J-00648-002). As grounds for the action, Ms. Coleman stated:

On 10/24/2018 [the mother] is unable to meet the child's housing needs . . . and is homeless. [The Cabinet] has concerns about multiple moves causing [the child] to be truant at school. She has been at 3 different schools since the start of the school year. [The mother] has lived with different friends and the salvation army but at this time she does not have a safe stable housing environment for her child nor any stable income to provide for her child. [The Cabinet] is requesting the right to provide for the child's medical and educational needs while placed into [out-of-home care].

Ms. Coleman stated that the biological father was unable to care for the child because he was in a drug treatment program. Based upon the allegations in the petition, the court placed the child in the emergency custody of the Cabinet on October 25, 2018.

The court held a temporary removal hearing in November of that year. At the hearing, the biological father stipulated to the removal of the child. The mother did not appear; she and the child were still homeless, and the child was still missing school. By order entered November 1, 2018, the court placed the child in the temporary custody of the Cabinet and ordered the Cabinet to explore relative placement, permit visitation in its discretion, and assess the child for services. The mother was to negotiate a case plan, and the child was not to have any unexcused absences or tardiness.

The Cabinet filed an adjudication report in November 2018. The biological father reported to Ms. Coleman in late October that the mother told him that she could no longer care for the child. Ms. Coleman visited the child's school the same day because she could not get in touch with the mother to schedule a home visit that month. The school informed her that the child had been picked up late two times and had had seven unexcused absences and tardiness that year. The child told Ms. Coleman that she and the mother were living with the mother's friend and that she felt safe there. The mother called the school while Ms.

Coleman was there, and the two spoke. The mother said Ms. Coleman could not complete a home visit where she was currently living and that she would look for another place to live. She said her brother had recently been involved with the Cabinet and allegedly was abusing drugs. The mother told Ms. Coleman that she could not care for the child at that time. The father wanted the child placed into foster care so that she could have some stability. School records from the three schools the child had attended in the last two and a half months showed that she had eight and one-half unexcused absences and had been tardy four times. Ms. Coleman stated that since the removal and the child's placement into foster care, the child had been doing well and had started therapy at Alliance Counseling. The mother attended the first visitation of three, and the biological father attended two of the three visitations. Neither parent attended a November 6, 2018, case planning conference. Ms. Coleman recommended that the child remain in the Cabinet's custody and that both parents negotiate and complete a case plan.

The mother and the biological father entered into case plans in late December 2018. The mother was to ensure that she remained clean and sober by completing a substance abuse assessment and following all recommendations of the treatment providers; to address her mental concerns by working with the University of Kentucky Targeted Assessment Program (UK-TAP), attending therapy as recommended, and taking medications as prescribed; to address

domestic violence concerns by cooperating with BRASS services and completing all domestic violence assessments; to address parenting skills concerns by completing a parenting education course at the Family Enrichment Center; to obtain and maintain safe and stable housing; and to maintain stable employment.

A new Cabinet worker, Jessica Ingram, filed a report in January 2019.

At that time, the mother did not have a permanent address or transportation, and she was living with friends. She was self-employed selling health products. She began visiting with the child regularly in December 2018, and she provided Christmas and birthday gifts to her. She planned to sign up for parenting education and enroll in therapy in January to be prepared for court. The mother reported that she had voluntarily terminated her parental rights to three other children. She could not recommend any potential relative or fictive-kin for placement purposes. As to the child, who at that time was seven years old, Ms. Ingram reported that she had struggled with behavioral and developmental issues since she entered into foster care. In her initial placement, the child exhibited aggressive behaviors to other children. She moved to another placement with no children in December. She struggled with using the bathroom and displayed defiant and compulsive behaviors at home. She appeared to have cognitive delays and was in need of speech therapy. She was continuing to receive therapy. Her elementary school initiated an Individualized Education Program (IEP) evaluation with the parents'

permission. There were also some questions about the child's medical history being reviewed by her new pediatrician. Ms. Ingram recommended that the child remain in the Cabinet's custody at that time.

The court held an adjudication hearing in January, after which it ordered the child to remain in the Cabinet's temporary custody. The mother stipulated to dependency, and the court made a finding that the child was dependent pursuant to KRS 600.020(20). The disposition hearing was waived, and the court entered a disposition order on January 25, 2019. The court indicated that it had previously made a finding of dependency; that it was in the child's best interests that the court take custody from the parents; that reasonable efforts were made to prevent the child's removal from the home; and there were no less restrictive alternatives to removal. The court also ordered the child to remain in therapy and have an IEP and that the parents were to work their case plans.

The Cabinet filed a review report in April, this time by Cabinet worker Teatra Davis. Ms. Davis addressed the progress, or lack of progress, the parents had made on their case plans. The mother had been staying at her sister's house and was not currently working. She and the biological father had placed a hold deposit on an apartment. Ms. Davis mentioned issues with a potential relative placement with the paternal grandfather due to an ongoing sexual abuse investigation. The child was in first grade and had an active IEP. She had been

diagnosed with ADHD and reactive attachment disorder, and she continued to struggle with defiance, behavior issues, and developmental issues. She had moved to other foster homes since the last report. She moved to her current foster home at the end of March. The foster mother reported that she had to constantly remind the child to calm down when she saw her aggression beginning to rise. Part of her plan required the child to be within ear shot and eye shot of the foster parents or respite foster parents at all times. The foster mother stated the child was doing “okay” in school and mentioned there had been thefts of small items from the child’s classmates. At that time, the permanency goal was to return the child to the parents. The child reported that she missed them and wanted to be back home. The Cabinet again recommended that the child remain in its custody.

The parents filed a lease agreement dated April 8, 2019, which states that they leased an apartment for a year. The mother filed several negative drug screens.

An Interested Party Review Board entered recommendations on May 8, 2019. The review board found that the Cabinet had made reasonable efforts to provide services to permit the safe return of the child to the home, that the Cabinet was in compliance with the case plan and court orders, and that the parents were not in compliance with the case plan and court orders due to instability on the mother’s part and a recent positive drug screen on the biological father’s part. As

barriers to permanency, the review board listed substance abuse, domestic violence, and environmental issues. The review board stated:

[The child] is doing well. She had issues with lying and stealing when she was initially placed in the current home but has made improvements. She interacts well with the other foster children in the home and at school. She participates in therapy and is prescribed medication.

Mom and Dad recently obtained housing. Mom has been released from parenting classes twice for noncompliance. Dr. Tapp referred Mom and Dad to Angel Arms Counseling to provide parenting classes, substance abuse classes, domestic violence classes, individual and family therapy. Dad is currently participating in Drug Court. He submitted to a test positive on March 9 and was incarcerated. The Case Worker requested Mom complete a drug screen. Mom submitted to a drug [screen] but from a different provider that [sic] was requested which was not a full panel. She is not complying with UKTAP. Mom and Dad have bi-weekly supervised visits with [the child.] Mom has had parental rights terminated on three older children.

The review board recommended that the child continue in her current placement and with her current therapist. It expressed concern with the parents' request to complete all of the classes and therapy through one provider.

The record also contains a domestic violence order and an amended domestic violence order entered in late 2009 and early 2010. The mother filed the petition against the legal father when they were married. The mother had also obtained a domestic violence order against the biological father in 2019. In addition, the record contains 2009 judgments voluntarily terminating the parental

rights of the mother and the legal father to three older children, who were deemed abused and neglected. They had been removed when the parents were evicted, the utilities were being shut off, there was no food in the house, and the children were sick but had not received any medical treatment. The parents had completed parenting classes but had done nothing else on their treatment plans.

On February 5, 2020, the Cabinet filed a petition to involuntarily terminate parental rights for the mother, the legal father, and the biological father. The Cabinet alleged that the child had been committed to its care since October 25, 2018, by the order of the Warren Family Court; that the parents (the mother, the biological father, and the legal father) failed to protect and preserve the child's fundamental right to a safe and nurturing home; that the child was abused and neglected; and that it was in her best interests that parental rights be terminated. The Cabinet also alleged that for six months the parents failed or refused to provide essential care and protection and there was no reasonable expectation of improvement; and that for reasons other than poverty alone, the parents failed to provide or were incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary for the child's well-being and there was no reasonable expectation of significant improvement in the immediately foreseeable future.

The Cabinet alleged that the parental rights of the mother and the legal father to other, older children had previously been voluntarily terminated and that it had offered or provided all reasonable services to the family but the parents had failed or refused to make any changes in their circumstances that would allow the safe return of the child. The Cabinet went on to state:

Child was removed when mother was homeless and for mother and [biological] father's drug use. There was also domestic violence between mother and [biological] father. Mother is somewhat consistent with her individual counseling and UK-TAP. Mother completed a BRASS assessment, but has not followed any of the recommendations. Mother and [biological] father were stable for a little while, but then that fell apart. Mother and [biological] father are now split up. Mother has no income. Mother has been inconsistent with her visits. Mother and legal father have previous termination of parental rights. [Biological] father says that he is attending counseling, but has not provided any proof. [Biological] father has done nothing else on his case plan. There has continued to be domestic violence between mother and [biological] father. [Biological] father is also inconsistent with his visits. [Biological] father has other children who are placed with relatives. Legal father is not the father of the child.

The Cabinet ultimately sought termination of parental rights and that it be granted custody of the child. Warning order attorneys were appointed for the legal father and the biological father, and a guardian *ad litem* (GAL) was appointed for the child. Counsel was also appointed for the mother and, later, for the biological father.

The GAL filed a report on behalf of the child on June 18, 2020, stating that she had met with the child and communicated with her therapist and teachers as well as the social workers and attorneys representing the parents. The GAL requested that the court terminate parental rights based upon the allegations in the petition. She referenced a March 4, 2020, review submitted by Cabinet worker Ms. Davis in which she reported that the child stated she did not want to be homeless again or move around all of the time. She went on to mention the trauma the child had endured. In addition, the legal father was not involved in the child's life and made no effort to reunify with her, and the biological father had not shown significant improvement or strongly indicated that he wanted the child returned to his care. As to the mother, the GAL stated that she had made some improvements and had completed many of the required tasks on her case plan. She had also reported clean drug screens for the last six months. However, the GAL went on to report that the mother continued to have stability issues and had recently married another man (the stepfather). In the March review, Ms. Davis reported concerns over the stepfather's completed assessment as well as his criminal history and unsubstantiated reports of substance abuse and domestic violence against his grandmother. The GAL believed it would be in the child's best interests for parental rights to be terminated. This would promote stability, the child's emotional well-being, and her continuity of care.

The court held a termination hearing on September 18, 2020. During the course of the hearing, the biological father informed the court that he wished to voluntarily terminate his parental rights as this would be in the child's best interests. The court accepted his consent to the voluntary termination of his parental rights.

Shauna Royce was the first witness to testify. She was the mental health therapist for the child. Ms. Royce had been seeing the child since March 2019 on a weekly basis, and she stated the child had PTSD and ADHD. The child had made significant progress over the time she had been seeing her. When the child first came into her care, she was behind in school and had to repeat first grade. She got into arguments and fights, and she was stealing. She was defiant and tried to ruin other people's belongings. She would throw tantrums, try to pull her hair out, and strip naked when she got upset. She would cry and scratch her arms. Now, she was no longer exhibiting those behaviors. The child was doing well with virtual school, and she would be going back to in-person classes in October. She was currently acting like a normal eight-year-old, whining about having to do her homework. The child needed to remain in a very structured, stable home to maintain her progress. She had anxiety if things were not structured.

The child had a real fear of being homeless. She had spoken about living under a bridge with her mother and biological father and living in a car. The child told Ms. Royce about witnessing drug use and domestic violence in the home with the biological parents. The child reported that she had watched her father steal items because they did not have money. She, in turn, would steal from children at school and other foster children. The child told Ms. Royce two days before the hearing that she wanted to stay in her foster home. "I would give everything I have to stay here." When asked about her mother, the child would say that she loved her. As to their visits, the child told Ms. Royce she would tell her mother where she wanted to go and what she wanted her to buy for her. She did not report any inappropriate behavior from the mother during the visits. Ms. Royce was concerned because when the child talked about going back to live with her mother, she said she did not know the stepfather and was afraid that there might be fighting like her parents used to do. Ms. Royce believed the child would need therapy for a while even in a stable, consistent home.

Rachel Coleman testified next. She had been employed by the Cabinet and handled neglect and abuse cases when she worked there. She worked on the child's case. It was originally an educational neglect case. She worked with the mother and briefly with the biological father at the beginning before she left her position. She did not remove the child from the mother while she was the

caseworker. She said the mother was cooperative at the beginning. There were issues at the end with getting in contact with the mother. Ms. Coleman expressed concerns with the mother's moving and that it would take time to get in contact with her again.

Jessica Ingram testified next. She was an ongoing caseworker with the Cabinet, and she had worked with this family from mid-November 2018 through January 2019. She created case plans for the family to address domestic violence issues in the home, parenting skills, housing, employment, substance abuse issues, and mental health issues. The mother had not completed any of these tasks while she acted as the caseworker. Ms. Ingram established a supervised visitation schedule. The mother was consistent with weekly visitation during that time, and the visitations were appropriate. As to the child, Ms. Ingram stated that the foster parents had put in a two-week notice due to the child's extreme behaviors. Ms. Ingram transferred the child to a private foster care agency where she could get her therapeutic services. When she entered the private agency, the child had been exhibiting many extreme behaviors, including defiance, peeing and defecating on her bedroom floor, and lying. It took a month before she began to progress with her therapist.

Michelle Yoebstl from Wilson Counseling testified next. She is a certified alcohol and drug counselor, and she worked with the mother in this

capacity beginning in July 2019. She last saw the mother in September 2020. The mother was confused and unmotivated when they first met. They discussed triggers and coping strategies as well as the effect domestic violence had on her drug use. The mother had not relapsed since she had been in therapy, and Ms. Yoebstl said she was doing much better now. She was working, had a place to live, and was working on her goals. She was confident in her decisions. Ms. Yoebstl referred the mother to targeted case management in August 2019 and to a mental health therapist. The mother had completed all eight sessions with her, and she continued doing therapy with her so they could continue case management services. Ms. Yoebstl stated that the mother had not used drugs or alcohol. She could not testify as to whether the child could be returned to her. Ms. Yoebstl had previously worked with the mother for a short time while she was at BRASS. The mother did not complete that program because she found an apartment on her own.

Lori Humbert testified next. She had worked with the mother at Wilson Counseling as a licensed clinical social worker to provide individual and family therapy. The mother's initial assessment was in April 2020. At that time, she noted that the mother had a previous diagnosis of PTSD, and they worked to process this disorder. The mother was compliant with services Ms. Humbert provided and worked on her relationships with the child and past events. She last saw the mother in August 2020. She noted that minimal progress had been made.

The mother had been working to ensure stability and to address her co-dependency so that she could maintain independent living. The only concern Ms. Humbert had about the return of the child was the mother's lack of insight toward the marital relationship and her relationship with the child. She had never seen any interactions between the mother and the stepfather or her daughter, so she could not speak to that. She did not have any concerns about the mother's ability to care for the child.

The next witness to testify was Callie Smith. She had worked for the Cabinet in the past as a social service worker, and she carried ongoing cases for child abuse and neglect. She worked with this family in Warren County as the case manager from May 2019 through January 2020. They created a new case plan when she took over the case involving parenting skills, mental health, domestic violence, housing, employment, and UK-TAP. The mother completed tasks on the plan while she had the case, including parenting classes, drug tests, counseling, and assessments. She also obtained housing and employment. The mother was married to the legal father while they worked together and subsequently got divorced. She then was engaged to another person. Ms. Smith met her fiancé (the stepfather) and did a criminal records check on him that revealed charges of disorderly conduct, public intoxication, and possession of drug paraphernalia. The charges were just under two years old. He did not drug screen when she asked,

stating that he was at work and providing a letter to this effect, although he did sign a case plan including various assessments and parenting classes. He was working on these tasks when Ms. Smith left the Cabinet.

As to the child, Ms. Smith said she was still having anger outbursts and problems getting along with other children when she took over the case. The mother never maintained independent housing but was listed as a resident with the stepfather. Ms. Smith worked with the mother on getting housing and paying off bills. The mother had obtained housing in late December 2019. Her main task on the case plan was maintaining stability and independent housing. She had “checked all the boxes” on her case plan but the stepfather had not. Ms. Smith had observed the mother’s supervised visitations with the child. They would play, talk, and dance. She was not concerned with the interaction between them. The mother and the stepfather had been living together since the summer of 2019. The couple had broken up at one point, and the mother stated she thought he was using drugs, which prompted Ms. Smith to request a drug screen for the stepfather when they got back together. Visitation went to unsupervised in early 2020. The stepfather had contact with the child through facetime calls and one time in person at the office.

Teatra Davis testified next. She works as an ongoing social worker for the Cabinet and was serving as the current worker for this family. She testified

that the child was placed in the custody of the Cabinet in October 2018 due to educational and environmental neglect based upon a report by the biological father and paternal, biological grandfather. Prior to her removal in October 2018, the child was supposed to be seen by a provider at LifeSkills in Morgantown for her diagnoses of attention deficit disorder (ADD)/ADHD, PTSD, oppositional defiant disorder, chronic childhood insomnia, and bipolar disorder. As to educational neglect, the child was living between Bowling Green and Butler County, and the school staff had not seen the child in about a month. Ms. Coleman had gone to the school to investigate, and a utilization review began. The investigation revealed the chronic homelessness. The child had to repeat the first grade as she had missed so many days. The environmental neglect was also due to the homelessness. The mother was living at a friend's home in Butler County that was inappropriate. Ms. Coleman, the worker at the time, had not seen the family for a home visit for a month or two, and no one could confirm where they were living.

Ms. Davis first took over the case from Ms. Ingram in February 2019. At that time, she case planned with the mother and the biological father. They had gotten back together by that time. The mother was dropped from parenting classes at the Family Enrichment Center for missing sessions in October 2018. When she was transferring the case to Ms. Smith in May 2019, neither parent had been working their case plans. By July, Ms. Smith had presented the case to the legal

team to discuss next steps. The mother then began working on her case plan in August 2019. When Ms. Davis took over the case again in January 2020, the family court had changed the goal to adoption. Since that time, the mother had worked on her case plan. As of the date of the hearing, the mother had completed parenting classes, gotten random drug tests, maintained employment, paid old fines, provided proof of paying rent, and was seeing counselors for substance abuse and mental health issues. Once the goal change occurred, the mother began working on her plan, more so once the hearing was set. Nothing was done consistently.

Ms. Davis' concerns about returning the child to the mother were the child's statements about homelessness worries and her stepfather. If the mother were in a home by herself, Ms. Davis said that the hearing would not be happening. She then discussed her concerns about the stepfather, including a verbally aggressive contact she had with him at a court hearing in March 2020 when the stepfather accused the Cabinet of "holding things" against the mother when she had made improvements. Ms. Davis then discussed various assessments the stepfather had undergone, either at the Cabinet's request or otherwise, where he had not provided accurate information regarding his criminal and substance abuse history. Ms. Davis went on to relate an incident between the stepfather and his grandmother in January 2019 when the grandmother called law enforcement to her

home. The stepfather had broken several items, thrown an ashtray at her, and threatened her when she refused to give him money to buy drugs. When questioned by officers, the stepfather said his grandmother had been the aggressor but stated he used drugs daily. The officer suggested treatment and did not arrest him. Another concern was a verbal argument between the mother and the stepfather in the fall of 2019. She called 911, and dispatch could hear the argument. After the call was disconnected, law enforcement responded. They said they did not need any assistance.

The child was currently in a private child caring (PCC) foster home; this would be her adoptive placement if termination of parental rights were to be granted. Ms. Davis went on to testify that the child was a different child from when she came into care and had made great progress. Ms. Davis had not seen substantial progress by either the mother or the biological father in their ability to care for the child. In August 2020, Ms. Davis reported that she had to have a discussion with the mother, the child, and the therapist due to the child's behavior after she found out about court in June. The mother had told the child she hoped she could come home soon. She instructed the mother to redirect the child when she asked about this. Ms. Davis had observed visits between the parents and the child. She observed two visits with the mother; she had to redirect the mother from questions from the child asking about the biological father. The child had

told Ms. Davis that during unsupervised visits, they would go to Walmart and she would get to pick out gifts. She expected this with the foster parents, who did not allow this. She would throw fits when told she could not get anything.

Ms. Davis did not believe the mother or the biological father could provide the child with essential parental care and protection at that time. Neither parent had demonstrated the ability to provide the child with the necessities of life, although the mother had purchased some clothes for the child. The child had been in out-of-home care for many months. There was no reasonable expectation of improvement in the parents' conduct in the immediately foreseeable future to provide care for the child. The Cabinet had rendered all reasonable in-home and out-of-home services to the parents, and no other services could be provided. She believed it was in the best interest of the child that termination be granted. In October, the child would have been in care for three years³ and while the mother had housing with the stepfather, the child stated that she did not want to have to choose between her mother and her biological father. The child had expressed concerns that if she were to be placed back into one of their homes, she would have to deal with homelessness and be removed again.

³ We note that at the time of the hearing, the child had been removed from the home and in the care of the Cabinet for close to two years.

Ms. Davis said she had not witnessed any inappropriate interactions between the child and the stepfather. The child shared with her that she was fearful of living in the home with the stepfather; she did not push her on where this fear came from. The mother married the stepfather in early 2020 and was added to the lease in March 2020. The mother knew the last goal on her plan was independent housing, which she did not achieve because she moved in with the stepfather. The stepfather had also not worked his case plan that he had signed in August 2019. Ms. Davis did not know if he had been in any legal trouble since September 2019. The stepfather was reassessed in July 2020. He acknowledged his use of drugs as of five years ago as well as criminal charges against him. There were no follow-up recommendations.

As of January 2020, the mother had completed parenting classes, BRASS, and had begun working with a counselor. She did not have independent housing. While she had been ordered to do the case plan in 2018, she had not begun to work on the plan until 2019. Ms. Davis expressed concerns about the mother's verbal altercation with the stepfather, her status as a victim of domestic violence, and her divorce from the legal father and remarriage to the stepfather with knowledge of his history. The mother knew independent housing was a factor in her case. She referenced the stepfather's behavior outside of court and questioned how he acted in private if that was how he acted in public. Ms. Davis

questioned whether the mother would be able to walk away from future domestic violence and protect the child if something were to happen.

Regarding the child's progress, Ms. Davis stated that the child was overweight when she was removed, defecated on herself, and would spit on her foster family. Since the case has been transferred to Ms. Davis for a second time, there had not been issues like that, but the child continued to lie and steal. The child had been in five different placements through the Cabinet.

Ms. Davis discussed the domestic violence incident between the mother and the biological father in May 2019. The mother filed a petition seeking an emergency protective order/domestic violence order, stating that the biological father had attacked her and attempted to bite her lip off. The biological father contacted the Cabinet's office to let them know he was in jail. He had walked in on the mother using drugs, which led to the incident.

The mother did not start working on the October 2018 case plan until August 2019, and she had not been keeping referral appointments prior to that. In July 2019, the family court changed the goal to adoption. At that time, the mother started working on the case plan. Ms. Davis did not have any information about the stepfather's work on the plan. He had not been honest in his 2020 assessments regarding arrests and substance abuse issues. The mother had been staying at BRASS in 2018. She was kicked out for violating the curfew.

The mother did not present any witnesses or evidence in her case-in-chief.

On October 14, 2020, the court entered its findings of fact and conclusions of law as well as an order terminating parental rights. The court memorialized the biological father's statement on the record at the hearing that he wanted to voluntarily terminate his parental rights. In addition, the court made a finding that the legal father had abandoned the child along with other findings that he had neglected her. As to the mother's parental rights, the court found that the child had been committed to the Cabinet by the family court on October 25, 2018, in Case No. 17-J-00648-002; that the child was abused and neglected; and that termination would be in her best interests. The court stated, "[t]he family was homeless, and Child had been in three (3) different schools from August 2018 to October 2018. Child was being educationally neglected [due] to the number of days of school she had missed."

The court went on to find that the mother had failed to provide essential parental care and protection for the child; had failed to provide essential food, clothing, shelter, medical care, or education reasonably necessary for the child's well-being; and that her parental rights had been terminated as to three other children. As to the child's best interests, the court stated that the child needed stability that the Cabinet could provide through adoption; that she had been

in foster care for two years and eleven months; and that while the mother had housing, the child had expressed concerns about future homelessness. The child had stated that she did not want to return to her biological home and wanted her current foster parents to adopt her. The court found that the Cabinet had rendered all reasonable services to the mother to bring about a reunification of the family but the services had not been utilized. The court noted that the child had been removed when the mother had been homeless and using drugs and that there had been domestic violence between the mother and the biological father.

The court observed that the mother had not done anything on her case plan until the end of July 2019 when she began seeing a certified alcohol/drug counselor. The court discussed that the mother had goals she was working on and listed the other progress she had made, including completing the UK-TAP assessment, parenting classes, and substance abuse and domestic violence assessments in October 2019. The court commended the mother for her efforts.

The court then addressed the child's stepfather, whom the mother had married in February 2020.

[The stepfather] has a history of drug use and violent behavior. [The stepfather] had charges of disorderly conduct, 2nd degree; public intoxication, controlled substance; and possession of drug paraphernalia in February 2018. [The stepfather] has exhibited violent behavior on several occasions. There was an incident between [the stepfather] and his grandmother in 2019 in which he threw a glass ashtray at her and broke several

other items because she would not give him money for drugs. [The stepfather] told the investigating officer that he used drugs daily. In September or October 2018 Mother called 911 and dispatch could hear arguing in the background, but the call got disconnected so law enforcement went to the home. When they arrived, parties said they did not need any assistance. [The stepfather] became very agitated with the social worker following a court hearing sometime in 2020. The social worker refused to talk to him at that time due to his behavior. [The stepfather] obtained two (2) substance abuse assessments, but did not state things accurately on either one (1) of them. On the first assessment completed in January 2020 by More to Life Counseling, [the stepfather] did not disclose that he had been arrested on drug-related charges in February 2018 nor did he disclose the incident with his grandmother in January 2019. In the second assessment completed by Alliance Counseling later in 2020 [the stepfather] reported that he was arrested for public intoxication five (5) years ago rather than two (2) years ago. [The stepfather] also did not report the January 2019 incident with his grandmother at that assessment. [The stepfather] has only complied with one (1) random drug screen and several others were requested. [The stepfather] has not done anything on his case plan. Mother broke up with [him] at one (1) point last fall and reported that she suspected that he was using drugs. [The stepfather] refused to drug screen at that time. Mother has never maintained independent housing.

As to the child, the court found as follows:

Child is diagnosed with post-traumatic stress disorder and attention deficit hyperactivity disorder. When child first entered foster care she was extremely defiant. Child would lie, steal, fight, and argue. Child does not do any of that anymore. Child has to be in a structured, consistent, stable home. Child has a lot of fear and anxiety if things are not structured. Child has a real fear of being homeless again. Child has talked to her

therapist about living under a bridge and living in cars. Child has also talked to her therapist about witnessing a lot of domestic violence and drug use in her home. Child told her therapist “I don’t want to go anywhere. I want to stay here. I would give everything I have to stay here.” These statements were made two (2) days prior to the hearing and were referring to her current foster home.

The court found that the child had made substantial improvements in foster care and was expected to make more improvements once parental rights were terminated.

The court concluded that the child was an abused or neglected child as defined in KRS 600.020(1), that termination of parental rights would be in her best interests, that the factors in KRS 625.090(3) had been considered, and that the Cabinet had rendered all reasonable services to the parents. While it was clear to the court that the mother loved the child, the court recognized that the child had been in care for almost three years, that the child feared the mother could not provide her with stability, and that she had expressed fear of the stepfather. The child was also fearful that domestic violence and homelessness would happen again. The court recognized the progress the child had made in foster care due to the structure, stability, and consistency she experienced. The court stated that it was unsure if the mother could provide this for the child. Accordingly, the court terminated the mother’s parental rights as well as the parental rights of the biological father and the legal father. A separate order including the judgment

terminating parental rights was entered the same day. This appeal by the mother now follows.

On appeal, the mother argues that some of the findings of fact the court made were not accurate and that the court's reliance on these inaccurate findings constituted an abuse of discretion. We disagree.

In *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204 (Ky. 2014), the Supreme Court of Kentucky addressed the involuntary termination of parental rights, recognizing the concern such cases raise and setting forth the statutory elements the Cabinet must establish:

The involuntary termination of parental rights is a scrupulous undertaking that is of the utmost constitutional concern. *See M.L.B. v. S.L.J.*, 519 U.S. 102, 119-20, 117 S. Ct. 555, 136 L. Ed. 2d 473 (1996). The U.S. Supreme Court has unequivocally held that a parent has a "fundamental liberty interest" in the care and custody of his or her child. *See, e.g., Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). This fundamental interest "does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. . . ." *Id.* at 754-55, 102 S. Ct. 1388. Therefore, "[w]hen the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures." *Id.*

The Commonwealth's TPR statute, found in KRS 625.090, attempts to ensure that parents receive the appropriate amount of due process protections. 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.

K.H., 423 S.W.3d at 209.

In *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116-17

(Ky. App. 1998), this Court set forth the applicable standard of review and recognized:

The trial court has a great deal of discretion in determining whether the child fits within the abused or neglected category and whether the abuse or neglect warrants termination. *Department for Human Resources v. Moore*, Ky. App., 552 S.W.2d 672, 675 (1977). This Court's standard of review in a termination of parental rights action is confined to the clearly erroneous standard in [Kentucky Rules of Civil Procedure] CR 52.01 based upon clear and convincing evidence, and the findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings. *V.S. v. Commonwealth, Cabinet for Human Resources*, Ky. App., 706 S.W.2d 420, 424 (1986).

“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.” *Rowland v. Holt*, 253 Ky. 718, 726, 70 S.W.2d 5, 9 (1934).

More recently, the Supreme Court of Kentucky stated:

“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. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010).] Due to the fact that “termination decisions are so factually sensitive, appellate courts are generally loathe to reverse them, regardless of the outcome.” [*D.G.R. v. Commonwealth, Cabinet for Health and Family Services*, 364 S.W.3d 106, 113 (Ky. 2012).]

K.H., 423 S.W.3d at 211.

The mother’s first argument addresses the finding in paragraph 10 that the child was abused or neglected pursuant to KRS 600.020(1) as well as the presence of educational neglect to support this finding. The mother points out that she had stipulated to dependency in this case, not abuse or neglect, and that the court never made a finding of educational neglect. She blamed the school days the child missed on the domestic violence between her and the biological father, noting that the child had made “tremendous improvements” once that relationship ended in May of 2019.

Before it may involuntarily terminate the parental rights to a child, the family court must first find by clear and convincing evidence that:

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[.]

KRS 625.090(1)(a). The record establishes that the mother stipulated to neglect in the -001 trailer of the juvenile action in November 2017 and that the family court made a finding of neglect based upon this stipulation. The mother's later stipulation to dependency in the -002 trailer does not negate the prior finding of neglect. This Court rejected the same argument in *M.A.B. v. Commonwealth Cabinet for Health and Family Services*, 456 S.W.3d 407, 412 (Ky. App. 2015):

Appellant next argues that because the trial court found the children "dependent" in 2012, its 2010 finding that they were neglected could not form a basis for termination under KRS 625.090(1)(a). This is a creative argument; however, it is unsupported by the language of KRS 625.090(1). The statute clearly says that the Cabinet must prove by clear and convincing evidence that a trial court – including the present trial court – has previously found the child to be abused or neglected. Contrary to Appellant's argument in this case, neither the statute nor any other persuasive authority permits the existence of intervening adjudications to affect this burden. The trial court properly concluded as much, and accurately stated that it could not add to the statute what was not already there. We agree with the trial court's reading of KRS 625.090(1)(a).

(Footnote omitted.) Therefore, the finding of neglect or abuse in the earlier trailer of the juvenile action supports the family court's finding under KRS 625.090(1)(a)1.

In addition, we agree with the Cabinet that the family court properly made a finding of neglect pursuant to KRS 625.090(1)(a)2. based upon the number of school days the child had missed or was tardy. KRS 600.020(1)(a)8. requires

the court to consider whether a parent has provided the child with adequate education necessary for the child's well-being, along with other needs. We reject the mother's blaming of the domestic violence between her and the biological father as causing the educational neglect as the Cabinet had been offering its support to the mother since 2017.

Accordingly, we hold that clear and convincing evidence supports the family court's findings and that the family court did not abuse its discretion in concluding that the child was an abused or neglected child pursuant to KRS 625.090(1)(a).

Next, the mother contends the finding in paragraph 12 that she had failed to provide essential care and protection for the child for at least six months and that there was no reasonable expectation of improvement was not supported by the record. She argues that for the four months leading up to the goal change, she had been diligently working on her case plan. Only the goal of independent housing had not been completed on her case plan in the nine months between that time and the hearing. She presents a similar argument related to the finding in paragraph 13 that, for reasons other than poverty, she had failed to provide essential care for the child and there was no reasonable expectation of improvement in the immediately foreseeable future.

We have thoroughly reviewed the record in this case, and based upon this review, we agree with the Cabinet that there was clear and convincing evidence to support the finding that these grounds existed under KRS 625.090(2)(e) and (g). The Cabinet's recitation of the evidence presented at the hearing in its brief fully supports the family court's decision, including the Cabinet's history with the family, substance abuse issues, homelessness, domestic violence issues, the mother's inability to complete services with BRASS, her failure to find independent housing, the time it took her to complete the tasks she did complete on her case plan, and concerns, most significantly, regarding the stepfather's history of substance abuse and violence. Based upon this extensive history, there was clear and convincing evidence to support the family court's findings that these grounds existed, and we find no error.

Next, the mother argues that the finding in paragraph 15, in which the court addressed the best interests of the child, that she had been in foster care for two years and eleven months was incorrect as the record reflects that she was placed into foster care on October 25, 2018, and the hearing date was September 8, 2020. That equates to one year and ten months, not close to three years. Our review of the hearing reflects that this mistaken calculation may have been the result of the testimony of Ms. Davis, who testified to the amount of time the child had been in foster care. The Cabinet agrees that the time had been miscalculated.

We note that the court did not make a finding under KRS 625.090(2)(j) that the child had been in foster care under the Cabinet's responsibility for 15 cumulative months of the 48 months preceding the filing of the petition, although the evidence established that this was the case. The Child went into foster care on October 25, 2018, and the petition was filed on February 5, 2020, more than 15 months later. Rather, this finding went to the court's best interests analysis.

In considering the best interest of the child, the family court must consider the factors set forth in KRS 625.090(3), which include:

- (a) Mental illness as defined by KRS 202A.011(9), or intellectual disability as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;
- (b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;
- (c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court;
- (d) The efforts and adjustments the parent has made in his 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;

- (e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and
- (f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

In this finding, the family court emphasized the child's need for stability that she would receive if the Cabinet could place her for adoption with her foster family. She had expressed fears of future homelessness and did not want to return to the care of the mother. Even with a proper calculation of the time, the child had still been in foster care for close to two years. Therefore, we find no error that would affect the family court's findings in this regard.

Next, the mother disputes the family court's finding in paragraph 16 that the Cabinet had rendered all reasonable services to reunite the family but the services had not been utilized. KRS 625.090(3)(c) requires that the court consider, "[i]f the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents[.]" The mother argues that the only goal she had not met on her case plan was to obtain independent housing. She asserts that she had applied for housing with a program but was unsuccessful. And she argues that she had moved in with the stepfather, who had stable housing.

As the Cabinet states, the Cabinet had been offering services to the mother since 2017. And while the mother had utilized the services, there was evidence to support that she had not made adequate adjustments to her circumstances that would support a finding that a return of the child to her care would be in the child's best interests. The Cabinet points to continued issues with domestic violence, including the mother's dismissal from the BRASS inpatient domestic violence program and her entry into a relationship with the stepfather after ending her abusive relationship with the biological father. The mother's failure to obtain independent housing is critical, considering her history of abusive relationships.

Next, the mother seeks review of the finding in paragraph 17, in which the family court stated that the child had been removed when the mother was homeless and for her drug use. The record reflects that the child was removed from the mother's care in 2017 due to the mother's suspected drug use and in 2018 because of homelessness. We find no error in this finding and do not believe it needs to be clarified.

Next, the mother addresses the family court's finding in paragraph 19 that the stepfather had completed two assessments but did not provide accurate information. She contends that this finding was not correct as the caseworker testified that she did not know whether he had accurately provided information in

his first assessment. Even if it were true that the stepfather had provided correct information in the first assessment, that still leaves his incorrect information in the second assessment. Ms. Davis testified that the stepfather had provided incorrect information as to his substance abuse and criminal issues. This information is vital to the best interests of the child assessment, as it would not be in the child's best interests to be in the residence of a person who abused drugs or alcohol and who exhibited violent and criminal behavior and was dishonest about such behavior.

We agree with the Cabinet that it had established, by clear and convincing evidence, all of the elements to support the involuntary termination of the mother's parental rights. The family court did not abuse its discretion in granting the Cabinet's petition.

For the foregoing reasons, the judgment of the Warren Family Court terminating the mother's parental rights is affirmed.

ALL CONCUR.

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