

RENDERED: AUGUST 27, 2021; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-0287-ME

K.H. AND M.S.¹

APPELLANTS

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE SQUIRE N. WILLIAMS, III, JUDGE
ACTION NO. 20-AD-00029

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

APPELLEES

AND

NO. 2021-CA-0288-ME

K.H. AND M.S.

APPELLANTS

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE SQUIRE N. WILLIAMS, III, JUDGE
ACTION NO. 20-AD-00030

¹ The notice of appeal identifies M.S. as N.S. This Opinion uses the initials of the name appearing in the judgment and record below.

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; AND D.W.S., A
CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: LAMBERT, McNEILL, AND TAYLOR, JUDGES.

LAMBERT, JUDGE: K.H. (the Mother) and M.S. (the Father), collectively the Parents, appeal from the Franklin Circuit Court’s orders terminating their parental rights to T.M.S. (Child One) and D.W.S. (Child Two), collectively the Children. After carefully reviewing the record and applicable statutory and case law, we affirm.

The Parents were never married but are still together as a couple. The Cabinet for Health and Family Services (the Cabinet) became involved with the family in December 2018, when Child Two tested positive at birth for amphetamines and methamphetamines. The Mother admitted to marijuana and methamphetamine use during the pregnancy. She also failed to receive any prenatal care. The Father, who had a history of drug- and alcohol-related crimes, also admitted to marijuana use. The Cabinet filed petitions for dependency, neglect, or abuse (DNA) against the Parents, who stipulated that there were reasonable grounds for the removal of the Children. Emergency custody orders

were obtained, and the Children were placed in the care of their maternal grandparents. Case plans were implemented for the Parents, with the goal of reunification of this family.

In March 2019, the Parents stipulated to neglect. The Cabinet conducted reviews in July and October of that year. Permanent custody was awarded to the grandparents in October 2019 after the Parents failed to follow the case plans to which they had agreed.

In February 2020, the Cabinet received allegations of neglect and possible drug use in the grandparents' home. An investigation into the home revealed serious environmental issues: according to the ensuing report, gnats flew out when the door was opened, there was "barely a pathway to walk through the home," the floors were covered in dog feces and urine, and the grandparents were in the process of being evicted from their rented premises. Moreover, Child One suffered from a severe head lice infestation, and both children were "extremely dirty" and were behind on their well child visits and vaccinations.

The Cabinet brought DNA petitions against the grandparents, obtained emergency custody orders for the Children, and placed the Children in foster care. The next month, the Parents participated in executing new case plans, and the goal for the family continued to be reunification.

Neither Parent made significant, if any, progress toward completing the tasks on the case plans. In July 2020, the permanency goal for the Children was changed to adoption, and, in September 2020, yet another case plan was fashioned for each Parent. The same month, petitions for termination of parental rights (TPR) were filed against the Parents. By that time, the Parents had come under a joint indictment in Franklin Circuit Court for drug-related criminal activity. In October 2020, the Children were moved into an adoptive foster care home, where they have since remained. They are thriving in their new home, and the foster parents expressed interest in adopting the Children.

The final hearing was held via video conference on January 4, 2021. All parties and respective counsel appeared as well as the guardian *ad litem* for the Children. The Cabinet called the family's case worker as its sole witness. The case worker's testimony, supported by numerous exhibits, validated the Cabinet's grounds for termination of parental rights. The witness stated that the main barriers to reunification of the family were continued substance abuse, lack of stability in the home (neither parent was employed except sporadically), failure to provide suitable housing (they were living in a converted one-room shed when the Children were removed), and failure by both parents to complete the tasks on the various case plans. The Cabinet's exhibits were entered without objection by Parents' counsel.

The Mother testified on her own behalf. She admitted to the majority of the Cabinet's allegations of dependency and neglect, but insisted that she had recently made strides in obtaining employment (as a housekeeper in a motel), suitable housing (with electricity and running water), reliable transportation, and had been clean and sober "for a couple of months." She had been given a government-issued cell phone to keep in touch with the Children and her social worker. The Mother also stated that she had enrolled in parenting classes but could not remember the agency conducting the classes and admitted that she had only attended one class, which was in December 2020. The Mother lacked any documentation to support her testimony. She admitted to failing her drug screens "several times" since the children were removed in 2018. She also agreed that she failed to complete the tasks on her case plans. The Mother conceded that her drugs of choice were methamphetamine and marijuana. She had been using controlled substances for the past three to four years.

The Father did not testify. The Mother stated that he was employed full time doing electrical work, but again there was no documentation or proof of employment. Neither Parent offered any exhibits. The guardian *ad litem* did not call any witnesses or offer any exhibits.

The circuit court entered its orders terminating parental rights of the Parents on February 3, 2021. The Parents have appealed, arguing that termination was not in the best interests of the Children.

We begin by stating our standard of review, namely:

Broad discretion is afforded to trial courts to determine whether parental rights should be terminated, and our review is limited to a clearly erroneous standard. *Cabinet for Health & Family Servs. v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014). A trial court's findings are not clearly erroneous if there is substantial evidence in the record to support them. *L.D. v. J.H.*, 350 S.W.3d 828, 829-30 (Ky. App. 2011) (citing *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986)). When the findings are supported by substantial evidence, then appellate review is limited to whether the facts support the legal conclusions which we review de novo. *Id.* at 830. If the trial court's factual findings are not clearly erroneous and the legal conclusions are correct, we are limited to determining whether the trial court abused its discretion in applying the law to the facts. *Id.* Finally,

[s]ince the family court is in the best position to evaluate the testimony and to weigh the evidence, an appellate court should not substitute its own opinion for that of the family court. If the findings of fact are supported by substantial evidence and if the correct law is applied, a family court's ultimate decision . . . will not be disturbed absent an abuse of discretion.

B.C. v. B.T., 182 S.W.3d 213, 219 (Ky. App. 2005) (internal citations omitted).

The termination of parental rights is a particularly fact-sensitive inquiry, so appellate courts are disinclined

to disturb a trial court's findings. *K.H.*, 423 S.W.3d at 211. Where the trial court's findings are not clearly erroneous, and they substantially support the TPR, we will affirm the order. *Id.* "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, 70 S.W.2d 5, 9 (1934).

Cabinet for Health and Family Services v. H.L.O., 621 S.W.3d 452, 462 (Ky. 2021).

Furthermore,

It is a fundamental right of every parent to raise his or her own child. *K.H.*, 423 S.W.3d at 209. KRS [Kentucky Revised Statute] 625.090 sets forth all the requirements which must be met before a court in Kentucky can involuntarily terminate a parent's rights to his or her child. Because of the heightened value of the right to parent a child, such proof must be clear and convincing in nature. *Santosky v. Kramer*, 455 U.S. 745, 747-48, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982). The statute requires the court to find three critical elements. First, the court must find that the child has been found to have been abused or neglected by a court of competent jurisdiction. KRS 625.090(1). Second, the court must find at least one of the eleven enumerated grounds for termination exists. KRS 625.090(2). Lastly, even if the Cabinet establishes both of these elements, the court must still determine that termination is in the child's best interest. KRS 625.090(1)(c).

H.L.O., 621 S.W.3d at 462 (footnote omitted).

In arguing that the circuit court erred in finding that the best interests of the Children dictated termination of parental rights, the Parents first contend that

the circuit court failed “to sufficiently consider the numerous placements of [the Children]” and how the three moves negatively affected them. This argument ignores the reality behind those changes in placements for the Children: They were first placed with relatives, pursuant to KRS 620.090(1)²; after the maternal grandparents proved themselves unfit to care for the Children, the Children were then moved to foster care, with the intention that the family be reunited; their last transition was to an adoptive family home once the goal for permanency was no longer reunification. The Children have remained in that home since October 2020.

In its 25-page findings of fact and conclusions of law, the circuit court painstakingly considered the evidence pertaining to each factor set forth in KRS 625.090. The circuit court specifically addressed the testimony of the Mother and the Cabinet’s witness and exhibits in reaching its conclusion. We have reviewed the entirety of the record and evidence, including the videotaped testimony of the witnesses, and adopt the circuit court’s findings as if fully set forth herein.

In summation, we believe the family court made individualized findings that [the Parents] neglected or abused [the Children] as defined by KRS 600.020(1). The family court’s findings were also amply supported by substantial evidence sufficient to meet the three-part test as found in KRS 625.090. Moreover, [the Parents

² This statute states, in pertinent part: “Preference shall be given to available and qualified relatives of the child considering the wishes of the parent or other person exercising custodial control or supervision, if known.”

have] failed to show that the family court abused its discretion in terminating [their] parental rights. For these reasons, we . . . hereby affirm the [Franklin Circuit] Court's order terminating [the Parents'] parental rights.

K.H., 423 S.W.3d at 214. The Parents' insistence that their situation might improve was not supported by evidence presented at the final hearing, and the circuit court properly ruled otherwise.

The Parents further maintain that the Cabinet presented insufficient evidence (namely, one witness) to meet its burden of demonstrating that termination was in the best interests of the Children. Again, we disagree. The case worker's testimony was uncontradicted, and it was supported by documentary evidence. The Cabinet met its burden of proof, and the circuit court's findings are supported by substantial evidence. We decline to disturb those findings or the circuit court's "ultimate decision[.]" *B.C. v. B.T.*, 182 S.W.3d at 219.

The orders of the Franklin Circuit Court terminating the parental rights of K.H. and M.S. to the Children are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS:

W. Steven Middleton
Frankfort, Kentucky

Chris Coffman
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BRIEF FOR APPELLEE:

Kate R. Morgan³
Shelbyville, Kentucky

³ Subsequent to briefing in this matter, Kate R. Morgan became the Clerk of the Court of Appeals, effective August 2, 2021. The parties were notified of such by order entered herein on July 23, 2021.