

RENDERED: JUNE 17, 2022; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2021-CA-0581-ME

K.M.H.

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT  
HONORABLE MONICA K. MEREDITH, JUDGE  
ACTION NO. 20-AD-00026

CABINET FOR HEALTH  
AND FAMILY SERVICES,  
COMMONWEALTH OF  
KENTUCKY; AND  
F.E.M.H., A MINOR CHILD

APPELLEES

AND

NO. 2021-CA-0582-ME

K.M.H.

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT  
HONORABLE MONICA K. MEREDITH, JUDGE  
ACTION NO. 20-AD-00027

CABINET FOR HEALTH  
AND FAMILY SERVICES,  
COMMONWEALTH OF KENTUCKY;  
AND B.J.H., A MINOR CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CETRULO, LAMBERT, AND McNEILL, JUDGES.

CETRULO, JUDGE: The Bullitt Circuit Court granted the petition of the Appellee, Cabinet for Health and Family Services (the “Cabinet”), for involuntary termination of parental rights of Appellant K.M.H. (“Mother”) and M.S. (“Father”), the biological parents of F.E.M.H. and B.J.H. (“children”). The Cabinet filed petitions individually for each of the children, and both orders terminating parental rights were consolidated in this appeal. After reviewing the record and applicable law, we affirm.

**I. FACTUAL AND PROCEDURAL HISTORY**

Mother and Father had two children: F.E.M.H. (the “Older Child”) was born in July 2015 and B.J.H. (the “Younger Child”) was born in April 2017. On August 22, 2020, the Cabinet filed a petition for termination of parental rights. On March 31, 2021, a trial was held. Amory Haley, a licensed clinical social worker and the children’s therapist (“Therapist Haley”), and Brenda Smith, the Cabinet’s case manager assigned to the children (“Case Manager Smith”), testified

at the termination hearing. Mother was present, testified, and was represented by counsel.<sup>1</sup>

Case Manager Smith testified that the Cabinet's involvement with this family began in April 2017 when the Cabinet received a report alleging abuse against the Older Child. After the Cabinet substantiated the abuse accusation, both children were placed in the temporary custody of Father. In June 2018, Mother stipulated that she placed the children at risk of harm by failing to properly supervise, and the circuit court made a finding of neglect. By early March 2019, Father was no longer able to care for the children, and the circuit court granted Mother temporary custody. In late March 2019, Mother completed her case plan and regained custody. A month later, in April 2019, Mother was arrested on an outstanding warrant, and both children were placed in the custody of the Cabinet. The Cabinet placed them in a foster home where they have remained.

In May 2019, Mother stipulated to a finding of neglect<sup>2</sup> and agreed to a case plan with the Cabinet. Case Manager Smith testified that Mother's participation in case planning meetings was sporadic, and she failed to complete her case plan goals. According to the case plan, Mother was ordered to follow

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<sup>1</sup> Father was represented by court-appointed counsel at the termination hearing, but he personally did not appear, nor is he a party to this appeal.

<sup>2</sup> Mother had placed the children in the care of an elderly and disabled woman who was unable to care for them.

court orders; obtain a mental health assessment and follow any recommendations made; obtain a chemical dependency assessment and follow any recommendations made; complete a parenting assessment; obtain and maintain stable housing and employment for a minimum of six months; and submit to random hair and urine drug screens at the cost and request of the Cabinet.

Specifically, per the Cabinet's drug screen protocol, Mother was required to call in daily and provide drug screens if/when her name was called. Since the children's removal, Mother was directed to screen 33 times: she provided six tests, and no-showed 27 times. All six screens were positive for various drugs including methamphetamine, amphetamine, benzodiazepines, fentanyl, and marijuana. Mother testified that she was unable to participate in random screens due to her lack of transportation<sup>3</sup> and stable housing. The last drug screen Mother provided was in March 2020, and it was positive for fentanyl and marijuana.

Additionally, Case Manager Smith testified that Mother did not provide proof of stable housing or employment, nor proof she completed her mental health, substance abuse, and parenting services. Mother acknowledged that she did not complete inpatient substance abuse treatment, but stated she maintained

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<sup>3</sup> Mother did not have a driver's license or vehicle, and her Medicaid transportation was available only by appointment on Mondays, Wednesdays, and/or Fridays.

her sobriety in the six months leading up to the termination hearing. Mother admitted she had not completed parenting classes nor enrolled in mental health treatment.

Additionally, Case Manager Smith testified that Mother had failed to maintain consistent contact with the Cabinet and her children. The Cabinet offered Mother weekly visitation, but she only attended six of the 25 offered visits. In October 2019, after Mother unsuccessfully completed the case plan, the Cabinet suspended her visits. Prior to the suspension, Mother provided some clothing, books, and food for her children.

Therapist Haley testified that when visitations with Mother were occurring, she observed an increase in emotional and aggressive behaviors in the Older Child. During one session with Therapist Haley, the Older Child became so aggressive and destructive that the child was referred to a psychiatrist immediately. Therapist Haley also testified that after visitation was suspended, the Older Child's behaviors improved, and she was less emotional. Therapist Haley stated that both children had made significant progress since she first began working with them, and it was her opinion that both children need consistency, structure, and ongoing therapy to maintain their progress.

Mother testified that due to the COVID-19 pandemic, she had difficulty maintaining stable housing and consistent employment, but that she had

worked off and on in the recent years.<sup>4</sup> Mother testified that she knew she owed child support, but was not sure how much she owed; the Cabinet clarified that she was more than \$4,000 in arrears.<sup>5</sup> Mother testified that if her children were placed back in her care, she would gain employment in order to provide for them.

The Cabinet submitted petitions to terminate parental rights for each of the children. The children's petitions were tried together without a jury. The circuit court's findings of fact, conclusions of law, and judgment terminating parental rights for each of the children laid out an explanation of its determination. It "found by clear and convincing evidence" that both children had been abused or neglected, as defined by KRS<sup>6</sup> 600.020(1); termination of parental rights was in the best interests of the children; and both Mother and Father had met at least one of the enumerated factors in KRS 625.090(2).

After that judgment, Mother submitted a *pro se* notice of appeal.<sup>7</sup>

Mother argues that termination is not in the children's best interest and that the

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<sup>4</sup> Mother testified that she worked briefly at a bakery and later as an in-home caretaker for an elderly gentleman.

<sup>5</sup> Some child support was garnished from her unemployment benefits.

<sup>6</sup> Kentucky Revised Statute.

<sup>7</sup> Mother stated that lack of transportation was the main barrier to her completion of the case plan and explained that now that she lives in Jefferson County with ample public transportation, that barrier no longer exists. She also stated she had stable living arrangements and was in therapy.

Cabinet did not prove by clear and convincing evidence any of the KRS 625.090(2) factors. We disagree.

## II. STANDARD OF REVIEW

We use the clearly erroneous standard when reviewing whether the termination of parental rights was lawful. *C.J.M. v. Cabinet for Health and Fam. Servs.*, 389 S.W.3d 155, 160 (Ky. App. 2012). “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 Fam. Servs. v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014); *see also* CR<sup>8</sup> 52.01. Substantial evidence is evidence that, when “taken alone or in the light of all the evidence, . . . has sufficient probative value to induce conviction in the minds of reasonable men.” *Blankenship v. Lloyd Blankenship Coal Co., Inc.*, 463 S.W.2d 62, 64 (Ky. 1970).

## III. ANALYSIS

“While the state has a compelling interest to protect its youngest citizens, state intervention into the family with the result of permanently severing the relationship between parent and child must be done with utmost caution.” *M.E.C. v. Commonwealth, Cabinet for Health & Fam. Servs.*, 254 S.W.3d 846, 850 (Ky. App. 2008).

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<sup>8</sup> Kentucky Rule of Civil Procedure.

KRS 625.090 provides for a tripartite test which allows for parental rights to be involuntarily terminated only upon a finding, based on clear and convincing evidence, that the following three prongs are satisfied: (1) the child is found or has been adjudged to be an abused or neglected child as defined in KRS 600.020(1); (2) termination of the parent's rights is in the child's best interests; and (3) at least one of the termination grounds enumerated in KRS 625.090(2)(a)-(j) exists.

*Cabinet for Health & Fam. Servs. v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014).

The first prong of the test was met by Mother's stipulation;<sup>9</sup> therefore, we must determine if the circuit court had substantial evidence to determine the termination was in the best interests of the children and that at least one of the elements of KRS 625.090 had been met.

**A. Best Interests: KRS 625.090(3)**

KRS 625.090(3)(a)-(f) outline the six factors a circuit court must consider when determining the child's best interest and a ground for termination.

*See K.H.*, 423 S.W.3d at 212.

In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:

- (a) Mental illness as defined by KRS 202A.011(9), or an intellectual disability as defined by KRS

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<sup>9</sup> In her appellate brief, Mother concedes "the [circuit] court properly found that the children were neglected as set forth in KRS 600.020(1) as that finding was based upon [Mother's] stipulation." Additionally, the Cabinet testified that Jefferson Circuit Court had previously adjudged that Mother abused these children and the Bullitt Circuit Court previously adjudged that Mother neglected them.



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.

KRS 625.090(3).

We note that the circuit court need not specifically address each factor for the findings to "lead us to believe that each factor was properly

considered.” *K.H.*, 423 S.W.3d at 212 (citing *D.G.R. v. Commonwealth, Cabinet for Health and Fam. Servs.*, 364 S.W.3d 106, 115 (Ky. 2012)). Therefore, the question is simply whether the circuit court properly considered the factors. *Id.* See also *R.M. v. Cabinet for Health and Fam. Servs.*, 620 S.W.3d 32 (Ky. 2021).

Here, Mother argues “termination is not in the children’s best interest based on the facts of this case,” but did not specifically address any of the factors in KRS 625.090(3). However, the circuit court *did* address multiple elements of KRS 625.090(3) in the orders on appeal. The court discussed how the children were traumatized by the repeated disruptions in their living conditions; how visits with their mother required the need for therapeutic interventions; and how the Cabinet attempted to reunite Mother with the children, but Mother did not consistently attend visits or successfully complete her case plan. The Court pointed out how Mother was willing to find employment *if* she regained custody of her children, but was not taking proactive measures to actively seek gainful employment; and, the court raised the issue of Mother’s past drug use and her unwillingness to prove her sobriety, stating, “after failing to comply for more than six (6) months with the drug testing terms of her most recent reunification plan . . . she, approximately one week before the termination hearing, presented herself to the drug testing facility on her own accord . . . [but] took exception to the Cabinet’s

refusal to agree to pay for the testing.”<sup>10</sup> Based on the record, the circuit court did not abuse its discretion by finding that termination of Mother’s parental rights was in the best interest of the children.

**B. Grounds for Termination: KRS 625.090(2)**

Kentucky law requires a circuit court to find by clear and convincing evidence the existence of at least one factor enumerated in KRS 625.090(2). Here, the circuit court found that four of these factors were present. However, because only one factor is required, we need only address one, KRS 625.090(2)(e):

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

At the termination hearing, the circuit court heard testimony from Case Manager Smith, Therapist Haley, and Mother herself. Leading up to the termination hearing, the children were removed from Mother’s care on two different occasions. Since April 2017, the children have resided with Mother for only one month.<sup>11</sup> Immediately after the Older Child was removed from Mother’s

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<sup>10</sup> Mother testified that she did not have the funds to pay for the test herself.

<sup>11</sup> The children were removed from Mother’s custody in April 2017, then placed back in her care in March 2019. In April 2019, approximately one month later, the children were again removed from Mother’s care up until, and after, the termination hearing in March 2021.

care, the child was showing inappropriate sexual behavior, throwing fits, talking back, and arguing. After working with the foster family and Therapist Haley, the Older Child has shown “significant” progress. To maintain this positive progression, Therapist Haley recommended consistency, structure, and emotional support. She also recommended maintaining therapy for both children.

In all the months that Therapist Haley worked with the children prior to the termination hearing,<sup>12</sup> she had only two conversations with Mother. Mother initiated only one of the calls. During that call, Therapist Haley asked Mother to provide visitation information so she knew she had permission to speak with Mother; however, Mother never provided the information nor followed up with Therapist Haley. Additionally, Therapist Haley testified that the children’s behavior worsened after visits with Mother.

After the children were removed, Mother was unable to meet her case plan requirements pertaining to drug testing and assessment, mental health services, and parenting classes. Mother failed to maintain consistent housing or employment during that time. Mother argued that her lack of transportation was the barrier preventing her from meeting impromptu testing requirements, but she does not explain why she could not use her Medicaid transportation to complete the other scheduled requirements of her case plan. Case Manager Smith testified

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<sup>12</sup> Beginning – with the Older Child – in July 2019 until the termination hearing in March 2021.

that the Cabinet offered numerous services to Mother toward reunification, but still reunification was unsuccessful. Additionally, Case Manager Smith testified that based on her interactions with Mother, she had no reason to believe Mother's conduct, as it related to her case plan, would improve in the foreseeable future. She testified that the permanency provided by the foster family was in the best interests of the children.

During the termination hearing, the circuit court heard testimony that Mother could not afford to pay for a drug test prior to the hearing. When the Cabinet asked, "[i]f you don't have money to pay for one drug screen, how do you plan to pay for two children in your home?" Mother answered that **if** she got custody of her children, she would **then** get a job. However, the court found that Mother "has no concept that this determination is about her long term ability to provide consistency and stability to [the children<sup>13</sup>] that [have] been severely traumatized by being repeatedly disrupted and neglected." During the termination hearing, the court stated that Mother "has worked hard to put herself in a better place but I have to focus on the two children."

The circuit court's order contained substantial evidence supporting its decision to terminate Mother's parental rights and that such termination is in the best interests of the children. It is clear from the evidence presented that the circuit

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<sup>13</sup> This verbiage was used in both parental termination orders.

court considered the statutory requirements to make its determination. That evidence “has sufficient probative value to induce conviction in the minds of reasonable men.” *Blankenship*, 463 S.W.2d at 64. We therefore do not find the circuit court’s decision to be clearly erroneous.

#### IV. CONCLUSION

For reasons contained herein, we AFFIRM the Bullitt Circuit Court’s orders to terminate Mother’s parental rights.

ALL CONCUR.

BRIEF FOR APPELLANT

Monica Shahayda  
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BRIEF FOR APPELLEE:

Leslie M. Laupp  
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