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

NO. 2021-CA-0593-ME

E.R.

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE CHRISTOPHER J. MEHLING, JUDGE  
ACTION NO. 19-AD-00155

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

APPELLEES

AND

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CABINET FOR HEALTH AND  
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T.A.; AND T.A., A CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, JONES, AND K. THOMPSON, JUDGES.

THOMPSON, K., JUDGE: E.R. (mother) appeals from the Kenton Family Court’s orders terminating her parental rights to L.A. and T.A. (the children).

The children were born to mother and to father.<sup>1</sup> L.A. was born in March 2004, and T.A. was born in August 2012. Mother and father had a total of four children together. The two older children are over the age of eighteen. One of these older children, M.A., aged out of foster care prior to termination proceedings and is therefore not a party to this action. However, M.A. is discussed in the context of the family’s history before the Kenton Family Court.

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<sup>1</sup> Father was served via a warning order attorney due to his current address being unknown. Father and mother separated following the removal of the children and father stopped any and all attempts at reunification prior to the petitions for involuntary termination being filed. Father’s initials are also T.A. and to avoid confusion, he is only referenced in the body of this Opinion as “father.” Father did not appeal from the termination of his parental rights and is not participating in this action. We only discuss father’s actions as needed to review the termination of mother’s parental rights.

The record reflects that the Cabinet for Health and Family Services (the Cabinet) became involved with this family in 2014, due to allegations of extreme truancy by M.A. and L.A. It was also reported that both children were coming to school with strong body odor and dirty clothes. Interventions were put in place and L.A. began attending school regularly, but M.A. was eventually removed from the home. M.A. had regular school attendance while in foster care, but then regressed when he was reunited with his parents.

It was also later discovered that T.A. was not attending preschool despite being enrolled. T.A. was also found to have a severe case of head lice. A home visit revealed a home that was dirty with the hallway and living rooms having puddles of dog urine and the floors of the kitchen and living room having dog feces on them. Both L.A. and T.A. also needed extensive dental care which was obtained by the Cabinet.

In March 2018, the Cabinet filed petitions for removal. Orders of temporary removal were entered on March 20, 2018, placing custody of the children with the Cabinet and allowing supervised contact with the admonishment that the case not be discussed by the parents with the children. On May 1, 2018, the family court entered orders finding each of the three children to be neglected or abused as defined by Kentucky Revised Statutes (KRS) 600.020(1) as their parents “[d]id not provide the child[ren] with adequate care, supervision, food, clothing,

shelter, and education or medical care necessary for the child[ren]’s well-being.”

All three children were placed in the custody of the Cabinet. L.A. and T.A. resided in a foster home together until L.A. later went into a group home. They have both been in the custody of the Cabinet since March 2018.

A case plan was entered which included mother obtaining a psychological evaluation and mental health treatment consistent with recommendations, maintaining a clean house, undergoing individual and family treatment, getting a medical card, maintaining employment, and not discussing the case with the children.

In September 2018, the Cabinet reported that M.A. was attending high school and enrolled in a credit recovery program in order to catch up academically. L.A., who has autism, was going to physical therapy and behavioral therapy once a week and occupational therapy every other week. T.A. was in elementary school and doing well.

In February 2019, the Cabinet reported to the family court that mother was living in a home that was owned, and apparently occupied by, a man whose identity had not been provided to the Cabinet. At that time, mother had unsupervised visits with all three children every Sunday night and dropped off L.A. and T.A. at school on Monday mornings. While it reported that parents were “doing well” regarding their case plan, there were concerns about the children’s

hygiene during their overnight stays, and potential inappropriate contact between M.A. and T.A. On another occasion it was reported that T.A. was sleeping in a bed in the same bedroom occupied by mother and mother's boyfriend.

In June 2019, the Cabinet reported to the family court that neither parent had made sufficient progress on their case plans. The Cabinet further reported that mother had discussed the case in front of her children and had behaved inappropriately in front of children, the foster family, and the Cabinet's employees. One incident involved mother taking children with her and her twenty-year-old son to a liquor store. Mother admitted taking the children along to a liquor store and admitted that her older son had a drinking problem. Cabinet worker Elizabeth Bailey also reported that mother called Bailey a liar and mother told T.A. to "shut up" when the worker was conducting interviews with the children. Further problems included mother not giving L.A. his prescribed medication during visits, unapproved contact between the children and mother's boyfriend, and mother's financial and housing insecurity. Mother was evicted from one apartment due to her adult son vandalizing the residence.

As of June 2019, mother had only attended one family therapy session with children which was in December 2018. Mother had cancelled or not attended any other sessions. At that point, the children and M.A. had been in the custody of

the Cabinet for 15 months. M.A. turned eighteen and chose to remain at his current foster home and thereafter move into independent living.

In July 2019, the Cabinet reported to the family court that visits between mother and children were not going well. Children were reluctant to visit with mother and had refused to get in the car with her. The children's therapist recommended a four-week cessation of visitation so that the children could be properly assessed without the anxiety caused by contact with mother. The children's therapist also recommended that mother "obtain skills related to emotional regulation and enhance her understanding of how her emotional responses impact her children." L.A. refused to participate further in family therapy while sessions with T.A. were later resumed.

In April 2020, the Cabinet informed the family court that the family continued to demonstrate instability, mother was continuing to change jobs and residences repeatedly, L.A. still refused to visit with mother and even T.A.'s video visits with mother were problematic. At that time, L.A. was continuing to do well in school while in foster care. It was also reported that T.A. had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and had been prescribed medication. T.A. had also recently been diagnosed with generalized anxiety disorder that was being addressed in therapy.

The Cabinet determined to begin the process of filing for termination of parental rights due to parents' inability to make progress and show that they could be protective. Given parents' lack of progress, the Cabinet filed petitions for involuntary termination of parental rights regarding L.A. and T.A. on October 29, 2019.

By the time of trial, L.A. had been removed from foster care and placed in a residential treatment facility due to violent outbursts. He turned eighteen in March 2022 and will continue to require extensive therapy services.

The trial in this matter was conducted on October 2, 2020, December 14, 2020, and March 19, 2021. Testimony was provided by Family Services Office Supervisor Ann Petty, Cabinet caseworker Beth Bailey, the family's therapist Emily Burch, Danielle Thamm, foster care manager at Diocesan Catholic Children's Home, mother, and Robert Kaminsky, mother's therapist with Bluegrass Behavioral Health.

Petty testified regarding her work as the supervisor on this matter since November 2017 and the records in this case. Petty testified regarding the situation where T.A. was sleeping in a bed in the same bedroom as her mother and her mother's boyfriend and that T.A. had exhibited sexually reactive behaviors. In her opinion, Bailey and Petty had been supportive of mother and had tried to

reunify the family but neither child could safely be returned to mother since mother had made no progress in her stability or mental health.

Bailey testified regarding the support offered to mother and to the underlying history of this matter including the underlying causes of the removal of the children in 2018. Bailey testified regarding her role since taking over the case in July 2018, shortly after removal, noting that mother changed residences eleven times since Bailey had taken over the case, and mother had not provided new addresses as necessary. Further, Bailey testified that mother had changed residences four times in the year leading up to trial. Bailey testified about one occasion with L.A. when mother barged into the room and called Bailey a liar. Bailey also testified to the circumstances of mother once being evicted due to her adult son throwing a party at the apartment causing significant damage to the residence.

Burch testified that mother was distracted at times during sessions and that, in the beginning, mother had been unable to control her emotions. Burch described mother as being emotionally unavailable and not supportive of T.A., which led T.A. to withdraw out of fear of upsetting her mother. However, mother had shown progress in later sessions. According to Burch, mother had attended thirteen sessions but had missed ten sessions. Mother did not notify Burch in advance to reschedule or to cancel which caused T.A. to be repeatedly



disappointed in not seeing her mother. Burch further testified that T.A. needed nurturing, validation, and comfort but that mother was incapable of providing these to T.A.

Thamm testified that mother's frequent job changes were unremarkable as this commonly occurs with low-wage workers. Thamm did, however, testify that she saw many of the same problems with mother's behavior in December 2020, that she saw in 2018.

Mother testified she engaged in family and individual therapy, had taken parenting classes, and had maintained employment and housing. She testified she had also completed her mandated mental health assessment. Mother noted she was enrolled in counseling at the time of trial and had been seeing Robert Kaminsky at Bluegrass Behavioral Health. Mother countered allegations of job and housing insecurity by testifying that her job changes were not caused by any misconduct but had been occasioned by opportunities for increased income; she was presently working as a lead assistant manager for Speedway and was supplementing her income by delivering for DoorDash. She also testified that her eviction was not her fault as it was caused by her adult son breaking into her home and intentionally vandalizing it after mother had refused to allow him to move into the home. She testified that she had been on Section 8's waiting list for two years and the only housing assistance offered to her by the Cabinet was helping her fill

out the Section 8 application. Mother also testified that she was now living with her sister and brother-in-law and intended to continue to do so while saving money to buy a home.

Kaminsky, who became mother's therapist in May 2020, testified that mother's initial counselor diagnosed her with Post-Traumatic Stress Disorder (PTSD) and Complicated Grief Disorder. Kaminsky testified that the poor decisions made by mother were the result of cognitive dysfunction and emotional dysregulation. He testified that mother had limited emotional intelligence but was hard-working, highly motivated, and passionate about her children. He also testified that mother had made significant improvement and that she could become an effective parent in time.

On April 21, 2021, the family court entered written findings of fact and conclusions of law determining that the grounds for termination sought in the petitions for each of the children were met and parents' parental rights to the children were terminated.

The family court found that each child was neglected as defined by KRS 600.020(1) and that it was in children's best interest for parents' parental rights to be terminated. The family court stated that the Cabinet had met its burden of proof to terminate consistent with KRS 625.090(2) and that it considered all factors in KRS 625.090(3). As to mother, the family court found that it was

previously determined in the dependency, neglect, and abuse action that mother had neglected the children, but the family court also found that mother neglected the children by: (1) continuously or repeatedly failing or refusing to provide essential parental care and protection for the children; (2) not providing the children with adequate care, supervision, food, clothing, shelter, education, or medical care necessary for children's well-being; (3) failing to treat her own mental health issues; and (4) failing to be protective of her children and instead making poor parenting decisions and continuing to be confrontational and emotional with her children. The family court also concluded that parents' failures to provide for their children were for reasons other than poverty alone.

On appeal, mother argues that the family court's findings of fact are refuted by the evidentiary record and are otherwise clearly erroneous. Specifically, mother argues that the family court's findings are clearly erroneous that: (1) mother never underwent a psychological evaluation and her mental health issues were untreated; (2) she failed to obtain permanent housing; (3) she failed to obtain stable employment; (4) she missed many doctor's appointments and school meetings; and (5) there was no reasonable expectation of improvement. Mother also asserts that the Cabinet failed to offer adequate reunification services.

Whether termination is appropriate depends upon whether the statutory requirements contained in KRS 625.090 are met.

Termination of a party's parental rights is proper upon satisfaction, by clear and convincing evidence, of a three-part test. First, the child must have been found to be an "abused or neglected" child, as defined by KRS 600.020. KRS 625.090(1)(a). Second, termination must be in the child's best interest. KRS 625.090(1)(b). Third, the family court must find at least one ground of parental unfitness. KRS 625.090(2).

*B.E.K. v. Cabinet for Health & Family Servs.*, 487 S.W.3d 457, 464 (Ky.App. 2016).

Because the family court has wide discretion in deciding to terminate parental rights, "our review is limited to a clearly erroneous standard which focuses on whether the family court's order of termination was based on clear and convincing evidence." *Cabinet for Health & Family Servs. v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014). "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 & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010).

In *Moore v. Asente*, 110 S.W.3d 336 (Ky. 2003), the Kentucky Supreme Court defined substantial evidence as follows:

[E]vidence that a reasonable mind would accept as adequate to support a conclusion and 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. Regardless of conflicting

evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court. Thus, [m]ere doubt as to the correctness of [a] finding [will] not justify [its] reversal, and appellate courts should not disturb trial court findings that are supported by substantial evidence.

*Id.* at 354 (internal quotation marks, footnotes, and citations omitted).

As to mother's first assignment of error, it is correct that mother had indeed undergone a psychological evaluation which was repeated by her current counselor. Furthermore, her therapist Robert Kaminsky did testify as to her treatment and, in his opinion, the positive results she had obtained.

However, such facts do not undermine the ultimate determination reached, or the elements necessary to rule in favor of termination by the family court. As shown, there were still ample factual findings to support termination on other grounds. As such, these factual recitations may be considered harmless error. *T.R.W. v. Cabinet for Health & Family Servs.*, 599 S.W.3d 455, 464-65 (Ky.App. 2019), *discretionary review denied* (Feb. 12, 2020). Kaminsky also testified that without continued therapy, the skills that mother was attempting to develop were perishable. Contrarily, mother testified that she did not need any more services. Mother's continuing recalcitrance at maintaining therapeutic interventions adds no hope for reunification ever being in the best interests of these children.

As to mother's assertions that she had obtained permanent housing and stable employment the record is, at best, mixed. While mother seemingly always had housing and employment, neither were ever close to permanent or stable regardless of the reasons mother asserted for the changes. The record reflected at least sixteen job changes and eleven housing changes since removal of the children. Given the paucity of evidence offered by mother to support the notion that she could ever offer a stable housing situation to the children, or "stick with a job," we will defer to the family court's determinations on these issues since "judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court." *Vinson v. Sorrell*, 136 S.W.3d 465, 470 (Ky. 2004). The same is true regarding the finding of mother missing doctor's appointments and school meetings and most certainly true with regard to the most significant and elemental finding that there was no reasonable expectation of improvement.

As to mother's final assignment of error, the record and testimony in this matter clearly reflect significant efforts by multiple parties made with the hope and goal of reunification. KRS 620.020(13) defines reasonable efforts as "the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community in accordance with the state plan for Public Law 96-272 which are necessary to enable the child to safely live at

home[.]” The record on appeal supports a finding that the efforts extended and services afforded in this matter met the statutory standard.

There was more than sufficient evidence in the record to support these terminations. The family court made findings on all the required grounds for termination, finding that children were abused or neglected, finding parental unfitness established on multiple grounds, and finding that it was in children’s best interest that mother’s parental rights be terminated. These findings were supported by the evidence presented at the termination hearing and by the record as a whole. We are satisfied that mother’s failure to fully and finally resolve her personal problems and offer any reasonable expectation that she could provide the safe and nurturing environment for the children, needed for reunification, justify the termination of her parental rights.

We are also satisfied that the Cabinet made serious and continuing efforts to assist mother and gave her considerably more time than required by law to complete her assessments, follow recommendations, and achieve stability regarding her housing, employment, decision making, and emotional maturity.

The children have all remained in foster care without much, if any, positive experiences with visitation since March 2018. Other than mother’s testimony, there was no real hope expressed regarding reunification or mother’s ability to care for the educational, housing, medical, and emotional needs of these

children. While mother's efforts at bettering herself should be lauded, and her love for her children is not questioned, termination was appropriate. Mother simply is unable to presently, or in the foreseeable future, give the children the care they require. All grounds for termination were properly established, the children need permanency, and the youngest child needs a chance at adoption in accordance with her foster family's prior expressed hopes.

Accordingly, we affirm the Kenton Family Court's termination of mother's parental rights to the children.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE CABINET  
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