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NOT TO BE PUBLISHED

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

NO. 2021-CA-1089-ME

S.P.

APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT  
HONORABLE RICHARD A. WOESTE, JUDGE  
ACTION NO. 21-AD-00020

COMMONWEALTH OF KENTUCKY,  
BY THE CABINET FOR HEALTH  
AND FAMILY SERVICES; AND  
K.N.W.

APPELLEES

AND

NO. 2021-CA-1090-ME

S.P.

APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT  
HONORABLE RICHARD A. WOESTE, JUDGE  
ACTION NO. 21-AD-00021

COMMONWEALTH OF KENTUCKY,  
BY THE CABINET FOR HEALTH

AND FAMILY SERVICES; AND  
M.M.L.S.

APPELLEES

OPINION  
AFFIRMING

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

JONES, JUDGE: This consolidated appeal arises out of two judgments entered by the family court division of the Campbell Circuit Court (“family court”) pursuant to KRS<sup>1</sup> 625.090 terminating the parental rights of S.P. (“Mother”) to her two minor children, K.N.W. and M.M.L.S. (collectively “the Children”).<sup>2</sup> On appeal, Mother argues that the family court’s findings of fact were not supported by substantial evidence and that it abused its discretion by refusing to give her more time to complete her case plan. Having reviewed the record and being otherwise sufficiently advised, we conclude that substantial evidence supports the family court’s findings of fact and that it did not abuse its discretion. Accordingly, we affirm.

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<sup>1</sup> Kentucky Revised Statutes.

<sup>2</sup> K.N.W.’s biological father is K.W; M.M.L.S.’s biological father is M.S. The orders on appeal also terminated the parental rights of the Children’s biological fathers; the fathers have not appealed.

## I. BACKGROUND

Mother gave birth to K.N.W. in October 2016 and to M.M.L.S. in November 2018. The Cabinet for Health and Family Services (“Cabinet”) first became involved with this family in 2019 after concerns were raised regarding Mother’s substance abuse as related to her care of the Children. After substantiating its concerns, the Cabinet initiated dependency, neglect, and abuse (“DNA”) actions on behalf of the Children, which resulted in findings of neglect by Mother and removal of the Children from Mother’s care. After a short time, the Children were returned to Mother on the condition that she continue to work with the Cabinet. This reunification was short lived.

In 2020, the Cabinet once again became concerned about Mother’s care of the Children. As a result, following an emergency hearing, the Children were again removed from Mother’s care on or about June 18, 2020. They were initially placed with a relative but later removed and placed together in an adoptive foster home where they continue to reside.

Following the second removal, the Cabinet met with Mother and developed a case plan for her. Mother’s case plan required her to continue therapy, undergo a substance abuse assessment, work on completing her GED, drug screen twice monthly, maintain stable housing and employment, not allow others to reside with her without Cabinet approval, and to cooperate with the Cabinet. After

Mother failed to make sufficient progress on her case plan, the Cabinet filed termination petitions with the family court in April 2021.

The family court scheduled a termination hearing for July 29, 2021. Although Mother was aware of the hearing and had previously indicated that she would be in attendance, she did not appear at the hearing with her appointed counsel, who was unsure of her whereabouts at that time. The hearing went forward with Mother's counsel representing her interests.

In support of termination, the Cabinet called Taylor Graham, the family's case manager, to testify on its behalf. Ms. Graham testified regarding the Cabinet's history with the family, which began due to concerns about Mother's substance abuse as related to her care for the Children. The Children were most recently removed from Mother's care due to concerns about continued substance abuse by Mother, unstable housing, and Mother's propensity to allow her various paramours to stay in the home while the Children were present. Ms. Graham testified that when the Children were removed from Mother's care in the summer of 2020, they were found to have burns and bruising on their bodies.

Next, Ms. Graham testified regarding Mother's case plan. She explained that while Mother had partially complied with several of the requirements, the only requirement Mother had totally satisfied was the requirement that she maintain employment. Ms. Graham explained that Mother

was required to drug test twice per month. To regain visitation with the Children Mother had to have three consecutive negative drug screens, which she had failed to produce since the Children's removal the following summer. Ms. Graham noted that while Mother drug tested the week prior to the termination hearing, she had not previously done so since November 2020. As to the other requirements of Mother's case plan, Ms. Graham testified that Mother claimed to be continuing with her therapy at NorthKey Community Care, but she had been unable to verify this assertion. According to Ms. Graham, Mother also failed to demonstrate to her that she had done any work toward completion of her GED. Mother also continued to change her residence frequently sometimes without timely notifying the Cabinet. Ms. Graham testified that she was skeptical of Mother's claim that the residence she said she was moving into the next month would prove to be permanent given Mother's previous, frequent moves and her eviction in 2020. Ms. Graham also testified that Mother had not kept up to date regarding the Children's welfare, and that even though Mother was employed, she had not provided any clothes or other necessities for the Children during the time they were committed to the Cabinet.

Ms. Graham testified that she did not believe reunification was prudent at that time because Mother had failed to demonstrate that she was able to appropriately care for the Children through completion of her case plan. Ms. Graham explained that despite the Cabinet's best efforts, she still had concerns

about Mother's unstable housing, habit of allowing her various paramours to reside with her, general inability or unwillingness to provide for the Children, and unresolved substance abuse issues. Ms. Graham did not believe there were any additional services that could be provided to Mother that would allow for reunification in the foreseeable future.

Lastly, Ms. Graham testified regarding the Children's progress since being removed from Mother's care. According to Ms. Graham, the Children were bonded with their foster family and had made great strides in their overall well being and behavior. Specifically, since the foster care placement, K.N.W., the older child, had grown out of trying to behave like her sister's parent. With the Cabinet's assistance, the foster family was able to meet all the Children's needs, and Mr. Graham expected the Children to continue improving and thriving if that placement was maintained.

Following the conclusion of the hearing, the family court entered written findings of fact and conclusions of law and judgments terminating Mother's parental rights pursuant to KRS 625.090. Mother now appeals the termination of her parental rights.

## **II. ANALYSIS**

KRS 625.090 sets forth the requirements which must be met before a court in Kentucky can involuntarily terminate a parent's rights to her child. First,

as it concerns these appeals, the family court must determine that the child is an abused or neglected child or that the child was previously determined to be an abused or neglected child by a court of competent jurisdiction. KRS 625.090(1)(a)1.-2. Second, a petition seeking the termination of parental rights must have been filed by the Cabinet pursuant to KRS 620.180. KRS 625.090(1)(b). Third, the family court must find that termination is in the best interest of the child. KRS 625.090(1)(c). Finally, the family court must find by clear and convincing evidence the existence of one or more of the eleven grounds (a) through (k) listed in KRS 625.090(2). Even if all these requirements are met, the family court may choose in its discretion not to terminate a parent's rights if the parent has established by a preponderance of the evidence that the child will not continue to be an abused or neglected child if returned to the parent. KRS 625.090(5).

After the termination hearing, the family court is required to make findings of fact and conclusions of law supporting its decision on the termination petition. *Id.* “Broad discretion is afforded to [family] courts to determine whether parental rights should be terminated, and our review is limited to a clearly erroneous standard.” *Cabinet for Health and Family Services v. H.L.O.*, 621 S.W.3d 452, 462 (Ky. 2021). Factual findings which are supported by substantial evidence of record are not clearly erroneous. *R. M. v. Cabinet for Health and*

*Family Services*, 620 S.W.3d 32, 37 (Ky. 2021). “Substantial evidence is that which is sufficient to induce conviction in the mind of a reasonable person.” *Id.* “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*. If the [family] court’s factual findings are not clearly erroneous and the legal conclusions are correct, we are limited to determining whether the [family] court abused its discretion in applying the law to the facts.” *H.L.O.*, 621 S.W.3d at 462.

The Children were previously found be neglected as part of prior DNA proceedings satisfying the first requirement of KRS 625.090. *See* KRS 625.090(1)(a)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[.]”). The Cabinet filed the termination petitions on April 27, 2021, satisfying the second requirement of KRS 625.090. KRS 625.090(1)(b). As to KRS 625.090(1)(c), the family court concluded that termination was in the best interests of the Children. It based this conclusion on Mother’s inability to complete her case plans making reunification in the foreseeable future undesirable, the improvements the Children had made while in foster care, and the likelihood of future improvements if the Children remained with their foster parents. These findings were supported by Ms. Graham’s testimony.



With respect to KRS 625.090(2), the family court determined that:

(1) for a period of not less than six months, Mother had continuously or repeatedly failed or refused to provide or had been substantially incapable of providing essential parental care and protection for the Children and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the Children, KRS 625.090(2)(e); (2) for reasons other than poverty alone, Mother had continuously or repeatedly failed to provide or was incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the Children's well being and that there was no reasonable expectation of significant improvement in Mother's conduct in the immediately foreseeable future, considering the age of the Children, KRS 625.090(2)(g); and (3) the Children had been removed from their biological or legal parents more than two times in a twenty-four month period by the Cabinet or a court, KRS 625.090(2)(k).

Mother's appeal primarily rests on her argument that the family court erred in finding that she only completed one task on her case plan, maintaining employment, making its determination that she was unlikely to improve in the future against the weight of the evidence. Mother points to various portions of Ms. Graham's testimony as evidence that she at least partially complied with most of the requirements of the plan. While it may be true that Mother partially complied

with the other elements of her plan, partial compliance does not equal completion. Most importantly, Ms. Graham testified that stable employment was the only part of the case plan that Mother completed to the Cabinet's satisfaction. This testimony supports the family court's findings.

Additionally, while Mother asserts in her appellate brief that her completion of the other requirements was hindered by the COVID-19 pandemic and related closures, there is no evidence in the record to support this argument. The only testimony in the record is from Ms. Graham, the Cabinet's witness. In fact, Mother did not even show up at the termination hearing to testify on her own behalf. Ms. Graham's testimony amply supports the family court's factual findings regarding Mother's failure to complete the majority of the tasks on her case plan, her habitual substance abuse issues, and her failure to support her Children. Mother failed to even complete the simplest of tasks by drug screening twice a month, which kept her from being able to visit with her Children. The family court appropriately concluded that there was no reasonable expectation of significant improvement in Mother's conduct in the immediately foreseeable future given Ms. Graham's testimony that Mother failed to complete most of her case plan to the Cabinet's satisfaction.

Mother's failure to show up for the hearing and offer testimony regarding how the pandemic thwarted her completion of her case plan effectively

nullifies her argument that the family court abused its discretion by not affording her additional time to complete her case plan prior to termination. Had Mother demonstrated a true inability to complete her case plan because of the pandemic, some additional leniency may have been in order. Here, however, Mother failed to offer proof to support the arguments of her counsel in this regard. Without such proof, the arguments of Mother's counsel regarding the pandemic's impact were nothing more than speculation and conjecture. In contrast, the actual evidence adduced at the termination hearing suggested that Mother's unwillingness to dedicate herself to her sobriety and the completion her case plan were the only true barriers.

### **III. CONCLUSION**

In sum, the family court's findings are supported by substantial evidence of record, and it correctly applied the law without an abuse of discretion in terminating Mother's parental rights pursuant to KRS 625.090. Accordingly, the judgments terminating Mother's parental rights are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Brenda L. Bonecutter  
Newport, Kentucky

BRIEF FOR APPELLEE:

Dilissa G. Milburn  
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