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NOT TO BE PUBLISHED

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

NO. 2022-CA-0219-ME

T.C.

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE CHRISTOPHER J. MEHLING, JUDGE  
ACTION NO. 20-AD-00051

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND  
FAMILY SERVICES; AND Z.C.,  
A MINOR CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, CETRULO, AND GOODWINE, JUDGES.

CETRULO, JUDGE: Appellant T.C. (“Mother”) appeals the Kenton Circuit Court order granting Appellee Cabinet for Health and Family Services’ (“Cabinet”)

motion to involuntarily terminate Mother's parental rights to Z.C., her minor child.<sup>1</sup>

## **FACTS AND PROCEDURAL HISTORY**

The Cabinet initially became involved with Mother in 2001, regarding concerns about her parental supervision of her oldest child. Mother participated in case plan services, but ultimately, the trial court involuntarily terminated her parental rights to that child in 2006. In 2010, the Cabinet again became involved with Mother, concerning allegations of domestic violence and inadequate living conditions as to her second-born child. Again, Mother participated in case plan services; however, she voluntarily terminated her parental rights to that child in 2012. In those cases, there were concerns that Father was domestically violent.

Two years later, in 2014, Mother gave birth to Z.C., the child involved here ("Child").<sup>2</sup> In June 2015, a little over a year after Child was born, the Cabinet received reports concerning substance abuse and domestic violence. In response, the Cabinet filed a dependency petition to ensure the safety and well-being of Child. In that petition, the Cabinet recommended that Mother complete a psychological assessment to determine her cognitive ability to care for Child. The

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<sup>1</sup> The trial court established K.R. was Z.C.'s father ("Father") through a paternity judgment. The trial court terminated Father's parental rights to Z.C. as well, but he did not participate in the proceedings and is not part of this appeal.

<sup>2</sup> Z.C. is the only child involved in this appeal.

trial court conducted a hearing on that petition, found dependency, and ordered Mother to complete the psychological evaluation. Further, the trial court entered a no-contact order between Mother and Father, who was not living with Mother at that time. Child remained in Mother's custody.

In late 2015, Dr. James Rosenthal, a licensed psychologist ("Dr. Rosenthal"), conducted a psychological evaluation<sup>3</sup> and found Mother's intellectual skills were in the borderline range, but he could not provide an opinion on her parenting ability because he had not seen Mother interact with Child. Instead, he recommended that the Cabinet speak with Mother's therapist. At that time, the therapist did not express concerns with her parenting. In March 2016, the trial court closed the case because Mother was accessing community resources for housing, participating in case management services, and had completed parenting classes. The no-contact order remained in place.

In May 2018, the Cabinet again became involved with the family and filed a neglect petition, alleging drug abuse, corporal punishment, and repeated violation of the no-contact order. Mother did not test positive for drugs, so the trial court did not remove Child at that time, but it did order Mother to cooperate with the Cabinet; refrain from corporal punishment; and ensure no contact with Father,

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<sup>3</sup> Although Dr. Rosenthal later sent a letter detailing that he had found Mother was in the "borderline range," the full report from his evaluation was misplaced and could not be reviewed.

*i.e.*, comply with the no-contact order. In July 2018, Mother admitted neglect with the possibility of amending that finding to dependency. That finding was never amended.

The Cabinet filed its third petition later that year, alleging that Mother and Father continued to violate the no-contact order. In December 2018, Father had shown up at Child's school, and the school reported that it had visited Child's home and found Father there. Mother testified<sup>4</sup> that the school also reported domestic abuse in the household, which Mother denied. The trial court then converted the case to a removal hearing and granted temporary custody to the Cabinet. The trial court adopted the Cabinet's case plan and recommendations as disposition orders. Those recommendations included continuation of the no-contact order as well as participation in the University of Kentucky Targeted Assessment Program ("UK TAP"), counseling at NorthKey Community Care ("NorthKey"), and domestic violence classes with Women's Crisis Center.

In March 2019, the trial court committed Child to the Cabinet's custody. Around that time, Natasha Cowan became the family's social services worker ("SSW Cowan"). Following Child's removal, Mother actively engaged with case plan services and completed UK TAP. Following that assessment,

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<sup>4</sup> Mother testified in December 2021 and was present with her counsel, Cabinet's counsel, Child's guardian *ad litem*, and Father's counsel. Father was not present.

Mother participated in counseling and domestic violence classes. Mother also began parent-child interactive therapy, and her therapist did not note any concerns when she completed the program.

Additionally, Mother engaged in counseling services at Bluegrass Behavioral Health and case management at Welcome House<sup>5</sup> in 2019. An August 2019 report noted that Mother had been somewhat inconsistent with her appointments and had been diagnosed with Borderline Personality Disorder, Post-Traumatic Stress Disorder, and Borderline Intellectual Functioning. SSW Cowan testified<sup>6</sup> that Mother was not satisfied with her therapist and moved to a different agency, which had resulted in gaps in engagement. Mother testified that she began attending Northern Kentucky Counseling in August 2019 and remained with the same counselor at the time of trial.

Additionally, Mother attended supervised visitation with Child. While visitation went well overall, SSW Cowan testified that there were some hiccups when Mother once brought expired food to a visit, making Child sick, and when she missed some visits because she ran out of bus passes. In early 2020, the visitations became virtual due to COVID-19. Once the visitation restrictions were

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<sup>5</sup> Welcome House is a homeless shelter in Northern Kentucky.

<sup>6</sup> SSW Cowan and Sue Edwards, Mother's long-term friend, testified in September 2021, and were present along with Mother and her counsel, Cabinet's counsel, Child's guardian *ad litem*, and Father's counsel. Father was not present.

lifted in May 2020, Mother continued with video visits, citing concern for COVID-19 exposure. SSW Cowan testified that the video visits increased to twice a week upon Mother's request.

Mother requested in-person visitation again in May 2021, but Child's therapist did not recommend in-person visitation. Therefore, SSW Cowan requested that Child's therapist integrate Mother into Child's sessions when appropriate. By trial, it had not been deemed appropriate. Before beginning family therapy, Child's therapist requested that Mother participate in one-on-one parenting sessions. While Mother waited for family therapy to begin, Family Nurturing Center enrolled Mother in the Nurturing Parenting Coaching program, upon SSW Cowan's request. Mother completed that program in March 2021; however, Child's therapist still did not recommend in-person visitation or family therapy to begin.

Additionally, SSW Cowan testified that the cleanliness of Mother's home had been an ongoing concern since Child's removal. From December 2018 until August 2019, SSW Cowan testified that Mother's apartment was cluttered; littered with old, rotten food; and infested with roaches and bed bugs. SSW Cowan testified that when she spoke to Mother about the conditions of her home, Mother did not appear to understand the Cabinet's concerns and how those

conditions could affect Child. Further, SSW Cowan recalled that initially Mother seemed to be in denial and blamed her landlord for failing to help her clean.

In August 2019, Mother eventually moved to a new apartment, and SSW Cowan testified that during her announced visits, the apartment appeared clean for the first year. However, the Cabinet was not able to complete court ordered *unannounced* visits because Mother would not answer the door or her phone. SSW Cowan further testified that during her last home visit in February 2020, she observed clutter accumulating and grew concerned.

Due to concerns with Mother's mental health and ability to understand potential safety risks in her home, the Cabinet recommended that she participate in a parental capacity evaluation. The trial court ordered Mother to complete that assessment and, in 2019, the Cabinet referred Mother to Dr. Jean Deters ("Dr. Deters"), a clinical psychologist.

Dr. Deters completed several interviews with Mother, Child, SSW Cowan, and the foster parents; conducted parent-child observations; reviewed documents from Bluegrass Behavioral Health, the Covington School District, Welcome House, NorthKey, Catholic Charities, and the Cabinet; and administered

psychometric testing. Further, Dr. Deters conducted an I.Q. Test, Adaptive Behavioral Functioning Test, Symptom Inventory, and Test of Variable Attention.<sup>7</sup>

Dr. Deters testified<sup>8</sup> that for the I.Q. Test, the average score was 100.<sup>9</sup> Mother scored around 71. Dr. Deters explained, however, that she found the verbal comprehension intelligence score to be more important. For that assessment, Mother scored a 66. That score put her in the “extremely low” category, which is the first percentile of verbal intelligence.

Next, on the Adaptive Behavioral Functioning Test – which also had an average of 100 – Mother scored a 61. Dr. Deters explained that this score suggested Mother was not likely functioning even as high as her I.Q. would have suggested.

Lastly, because of Mother’s low intellectual functioning and reading level, Dr. Deters administered a Symptom Inventory Screener. On that test, Mother “scored average on all scales,” but her score on psychoticism was high. Dr. Deters explained that the score was consistent with the Bluegrass Behavioral Health records, which indicated Mother had some “unusual perceptions.”

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<sup>7</sup> Dr. Deters administered the Test of Variable Attention to indicate whether Mother could stop herself from acting on impulse, but the scores were too inconsistent to make a determination.

<sup>8</sup> Dr. Deters testified in July 2021 and was present along with Mother and her counsel, Cabinet’s counsel, SSW Cowan, Child’s guardian *ad litem*, and Father’s counsel. Father was not present.

<sup>9</sup> This average had a standard deviation of 15, meaning any score of 100 plus or minus 15 (*i.e.*, above 115 and below 85) was “statistically different from the norm.”



Dr. Deters further stated that based on her findings, Mother met the criteria for an intellectual disability.<sup>10</sup> Dr. Deters noted, however, that those findings “d[id] not at all impact her ability to be crazy in love with [Child] and to want what is best for him always and to provide him nurturing and affection. [Mother] gets an A++ in that. And [Child] loves her in return.” However, Dr. Deters concluded that love, unfortunately, was not enough. Mother’s intellectual deficits, Dr. Deters explained, created a problem for both herself and Child.

Dr. Deters noted that throughout Mother’s history, she had difficulty maintaining housing, and difficulty maintaining financial needs like food, furniture, and day-to-day supplies. Records also detailed difficulties with hygiene and cleanliness of the home, which rose to dangerous levels at times. Additionally, there were records of Mother’s inability to screen out people who were dangerous for her and Child, *e.g.*, Father. Dr. Deters explained that if “you cannot do [those things] for yourself,” having the capacity to step outside yourself and do those things for a child would be “nearly impossible.”

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<sup>10</sup> This meant Mother met the following criteria: (1) deficits in intellectual function such as reading, problem solving, judgment, learning from experience, planning, abstract thinking, academic learning confirmed by both clinical assessment and individualized standardized intelligence testing; (2) deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility; without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living across multiple environments such as home, school, work, and community; and (3) onset of intellectual and adaptive deficits during the developmental period.

Ultimately, Dr. Deters agreed that Mother's limited intellectual capacity affected her ability to parent Child. Further, Mother's prognosis for improvement was low because "you cannot rehabilitate somebody's intellectual functioning" even if you could improve their quality of life. Specifically, Dr. Deters found that Mother's intellectual deficits adversely affected her ability to care for Child's physical and emotional needs and her protective ability. Additionally, Dr. Deters speculated that there would be more complicated needs as Child grew, but Mother would maintain her current deficiency. She explained that evidence of Mother's ability to access community services to survive on her own was different from her capacity to adequately parent. Dr. Deters emphasized that Mother could not, on her own, care for Child.

Dr. Deters recommended that Mother get more personal help with case management, home keeping, etc. through the Michelle P. Waiver<sup>11</sup> but found that there was a seven-year wait on such services. Dr. Deters could not think of any other service the Cabinet could have provided to assist Mother in her parenting capacity. In conclusion, Dr. Deters recommended that Mother be referred to the

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<sup>11</sup> This is part of Kentucky's Medicaid waiver program, which provides assistance to individuals with intellectual or developmental disabilities to help them live in the community as independently as possible.

Point Arc<sup>12</sup> for case management assistance. Mother testified that she is currently on the waiting list for that service.

Following Dr. Deters' assessment, the permanency goal was changed in March 2020. The next month, the Cabinet filed its petition to terminate parental rights. After months of unsuccessful attempts to contact Father, the trial court conducted a pretrial conference in May 2021 and set the matter for trial starting in July 2021. As noted, the witnesses testified over the course of three hearings, finishing in December 2021.

In January 2022, the trial court entered findings of facts and conclusions of law and judgment terminating parental rights (together, the "2022 Judgment"). The 2022 Judgment stated that the trial court had found, by clear and convincing evidence, that Mother neglected Child, pursuant to KRS<sup>13</sup> 600.020(1); that termination was in Child's best interest; and that the Cabinet met its burden of proof, pursuant to KRS 625.090, specifically noting that Mother was substantially incapable of providing essential parental care and protection and there was no reasonable expectation of improvement for a period in excess of six months considering Child's age. This appeal followed.

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<sup>12</sup> Point Arc's mission is to provide opportunities to people with intellectual and developmental disabilities to reach their highest potential educationally, residentially, socially, and vocationally. Those services are not tailored to parenting or reunification.

<sup>13</sup> Kentucky Revised Statute.

## STANDARD OF REVIEW

We use the clearly erroneous standard when reviewing whether the trial court lawfully terminated parental rights. *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) (citation omitted); *see also* CR<sup>14</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.*, 463 S.W.2d 62, 64 (Ky. 1970) (internal quotation marks and citation omitted).

## ANALYSIS

KRS 625.090 governs involuntary termination of parental rights. It provides a three-part test: a trial court “may involuntarily terminate parental rights if it finds, by clear and convincing evidence, [1] that the child is an abused or neglected child as defined in KRS 600.020(1) and [2] that termination serves the best interest of the child.” *C.J.M.*, 389 S.W.3d at 160 (citing KRS 625.090(1)(a)-

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<sup>14</sup> Kentucky Rule of Civil Procedure.

(c)). Third, under KRS 625.090(2), the trial court must show the existence of one or more of the eleven factors listed. *Id.*

Mother argues that the trial court failed to sufficiently support parts one and two of the analysis, but does not discuss the findings regarding part three. As such, we will focus on the findings of neglect and the Child's best interest.<sup>15</sup>

### **1. Finding of Neglect**

In the trial court's 2022 Judgment, it noted that Mother was responsible for neglecting the child under KRS 600.020(1)(a)2. and 4. A "neglected child" under those provisions means

a child whose health or welfare is harmed or threatened with harm when: (a) His or her parent . . . 2. Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means; . . . [and] 4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child[.]

*Id.*

First, the trial court found that Mother met the standard under subsection (2.) because of the conditions in the home, which it noted "[were] very dirty, including roaches, water flies, rotting food and bed bugs." While this was a

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<sup>15</sup> "Any part of a judgment appealed from that is not briefed is affirmed as being confessed." *Osborne v. Payne*, 31 S.W.3d 911, 916 (Ky. 2000) (citation omitted).

situation for which she blamed her landlord, the trial court further noted that there was “a lot of clutter.”

Further, the trial court found, under subsection (4.), that Mother had failed to provide essential parental care and protection for the child due to her inability to provide parental protection, as noted in Dr. Deters’ thorough testimony. The trial court noted that Mother has an intellectual disability that prohibited her from providing essential parental care and protection of the child “regardless of how hard she trie[d].”

Mother argues that the evidence supporting this finding was not sufficient because the record did not establish that the state of Mother’s home presented an ongoing risk of physical or emotional injury to Child. As for the trial court’s discussion on Mother’s intellectual disability resulting in neglect, Mother takes issue with the court’s “inappropriate and singular reliance” on Dr. Deters’ diagnosis. Mother argues she was denied “the opportunity to demonstrate behavioral change, solely because of her diagnosis.”

In *Cabinet for Health and Family Services v. K.S.*, 585 S.W.3d 202 (Ky. 2019), the Kentucky Supreme Court addressed a similar situation. There, the Cabinet removed the child following concerns of the mother’s ability to care for him, based on the conditions of the home (*e.g.*, bedbugs and roaches) and the presence of a person with prior abuse allegations. *Id.* at 204. Further, the mother

had been diagnosed with a pervasive developmental disorder and her full-scale I.Q. score was 65, which the licensed psychologist noted was “borderline mental retardation.” *Id.* at 204-05. Additionally, the licensed psychologist testified that “he found deficits in [mother’s] social judgment, age appropriate social relationships, and cognitive skills”; and that “he did not expect any improvement by [Mother] in [those areas] even with additional treatment.” *Id.* at 205.

The psychologist testified that because of those concerns, the child was at risk of abuse or neglect if returned to the mother. *Id.* Additionally, the psychologist noted that the stress of caring for the child would “further impair [mother’s] ability to provide appropriate care, which would increase the risk of abuse or neglect.” *Id.* However, like here, the psychologist noted that despite mother’s parental shortcomings, she was capable of living “independently in an apartment by herself.” *Id.* A Cabinet services supervisor also testified that the mother “had completed most of the tasks in her case plan with the Cabinet but that he had ongoing concerns about her ability to parent the child over the long term due to her cognitive limitations.” *Id.*

Again, like here, the Cabinet had offered the mother many services, “but none could correct her ongoing cognitive impairments.” *Id.* There, it was clear that mother loved her child and that she worked well with the Cabinet;

therefore, the Cabinet worker testified that it was not mother's unwillingness to parent, but her inability to parent that had resulted in child's removal. *Id.*

Based on that evidence, the trial court terminated mother's parental rights. *Id.* at 207. The trial court's findings, "which it noted were based on clear and convincing evidence, included that while [mother] had completed most of her tasks with the case plan, her developmental delays impeded a return of the child to her. Further, the court concluded that [mother's] ability to change was limited due to her mental health diagnosis." *Id.* Specifically, the trial court noted that mother had "failed to protect and preserve the child's fundamental right to a safe and nurturing home and this is a neglected child." *Id.*

Our Supreme Court emphasized that "[t]he 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." *Id.* at 209 (citation omitted). There – like here – the trial court found mother, for a period of not less than six months, had continuously or repeatedly failed or refused to provide or had been substantially incapable of providing essential parental care and protection for the child and there was no reasonable expectation of improvement in parental care and protection, considering the age of the child; and mother, for reasons other than poverty alone, continuously or repeatedly failed or refused to provide or was incapable of providing essential food, clothing, shelter, medical



care, or education reasonably necessary and available for the child's well-being and there was no reasonable expectation of significant improvement in the parents' conduct in the immediately foreseeable future, considering the age of the child. *Id.* at 210.

The Kentucky Supreme Court agreed, finding that the testimonies of the psychologist and Cabinet worker provided clear and convincing evidence to support the findings and conclusions of the trial court. *Id.* Those findings, our Supreme Court explained, fit within the necessary definitions under KRS 600.020(1)(a):

These findings fit within the definitions of an “abused or neglected child” under KRS 600.020(1)(a). *See* KRS 600.020(1)(a)3 (“[e]ngages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child”); KRS 600.020(1)(a)4 (“[c]ontinuously or repeatedly fails or refuses to provide essential parental care and protection for the child”); KRS 600.020(1)(a)8 (“[d]oes not provide the child with adequate care, supervision, food, clothing, shelter, or medical care necessary for the child’s well-being”); and KRS 600.020(1)(a)9 (“[f]ails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet for fifteen (15) of the most recent twenty-two (22) months”).

*Id.* at 210-11.

The similarities in these cases are apparent. Here, Dr. Deters testified that Mother’s intellectual deficits adversely affected her ability to care for Child’s

physical needs, emotional needs, and impacted Mother's protective ability.

Additionally, Dr. Deters speculated that there would be more complicated needs as Child grew, but Mother would maintain her current deficiency because "you cannot rehabilitate somebody's intellectual functioning." Dr. Deters concluded that Mother could not, on her own, care for Child and that there were no additional services that could assist her parenting abilities.

SSW Cowan testified that her observations were consistent with Dr. Deters and that she was not aware of additional services that could result in the safe return of Child within a reasonable time. The 2022 Judgment stated that the trial court "finds that [this] is a neglected child, and both parents are responsible consistent with KRS 600.020(1)(a) in that this child was abandoned, has not been provided essential parental care and protection, has not been provided necessities, and has been subjected to a risk of physical or emotional injury as defined to the child by other than accidental means."

Pursuant to *K.S.*, we find the testimony of the witnesses provided clear and convincing evidence to support the trial court's findings and met the definitions for "abused and neglected child" under KRS 600.020(1)(a). Therefore, the trial court's finding of neglect was not clearly erroneous.

## **2. Child's Best Interest**

Next, Mother argues that the trial court failed to consider “the majority of the factors outlined” in KRS 625.090(3). KRS 625.090(3)(a)-(f) dictate that the trial court shall consider the following factors when determining a child's best interest:

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

Importantly, the trial 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)).

Nevertheless, Mother contends that the trial court failed to discuss factors (c), (d), and (e); specifically, that it failed to address how Child’s welfare would improve if Mother’s parental rights were terminated and whether the Cabinet made reasonable efforts to reunify Mother and Child. Further, Mother claimed the trial court failed to acknowledge that Mother utilized the skills she gained through her completed case plan services. Again, Mother argues that the trial court’s reliance on Dr. Deters’ testimony was insufficient because it “cannot be concluded under the clear and convincing standard, based on Dr. Deters’ diagnosis and testimony alone, that termination of parental rights is in [Child’s] best interest.”

The Cabinet disagrees, however, and argues that the trial court clearly considered the factors. The Cabinet notes, pursuant to KRS 625.090(3)(a), the trial court correctly considered Mother’s intellectual disability, as certified by a qualified mental health professional, that rendered Mother consistently unable to

care for the child's physical and psychological needs. The trial court's findings cited to Dr. Deters' expert opinion that mother's intellectual deficits affected her capacity to learn and retain the skills necessary to parent a child.

The trial court detailed that

Dr. Deters testified as to mother's ability to parent [Child]:

- Mother's intellectual deficits affect her capacity to learn and retain the new skills that are necessary to parent a child. Because her issues are intellectual there is no program or service that can obtain improvement for mother;
- With two previous termination of parental rights from improper care and other adversities, she failed to learn from these past experiences;
- Mother's intellectual deficits adversely affect her ability to care for [Child] physically and emotionally, as well as herself;
- Mother's IQ indicates a serious difficulty understanding, remembering and using information. She has gross deficits in exercising judgment, planning, learning new things, applying new knowledge to tasks and understand[ing] and following instructions;
- Mother lacks many of the skills she needs to live independently;
- Mother can live independently but is overly dependent upon community resources; her quality of life is very poor. As she gets older, her needs will compound;

- Mother's limited parental capacity makes her protective ability and overall parenting at a dangerously low level for [Child];
- Mother needs to sign up for the Michelle P. Waiver. There is a very long waiting list (years long) for the services under the waiver;
- Mother does not have the capacity to protect [Child].

Again, in *K.S.*, the Kentucky Supreme Court provided a valuable blueprint for addressing a child's best interest in such cases. There, the trial court found the following:

It is in [the child's] best interests that the parental rights of [mother] be terminated. The minor child will be able to achieve permanency and stability. He is in an adoptive home, where his ongoing needs are being consistently met by the foster parents.

[Mother] has been consistently unable to care for the immediate and ongoing physical or psychological needs of the child because of the parent's emotional illness, mental illness, or mental deficiency as defined in KRS 202A.011(9) or KRS 202B.010(9), and the condition has been diagnosed by a qualified mental health professional.

*K.S.*, 585 S.W.3d at 211.

Based on those findings, the Kentucky Supreme Court stated that

[i]t is apparent that the family court considered the factors enumerated in KRS 625.090(3). In fact, the court made specific reference to the factors in KRS 625.090(3)(a), (c), and (d). Again, the testimony of [the psychologist] and [Cabinet worker] and [mother]'s underlying mental health and Cabinet records provide

clear and convincing evidence in support of the court's findings. We will not disturb these findings in our review.

*Id.*

Clearly, these cases have direct parallels. Here, the trial court conducted a similar, reasoned analysis of the evidence presented that showed it considered the factors enumerated in KRS 625.090(3). Further, the testimony of Dr. Deters and SSW Cowan provided clear and convincing evidence in support of the trial court's findings. Therefore, the trial court's finding that termination was in Child's best interest was not clearly erroneous.

### **CONCLUSION**

The trial court's decision to terminate Mother's parental rights to Child was supported by substantial evidence and therefore was not clearly erroneous. We AFFIRM the 2022 Judgment of the Kenton Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Stefanie L. Durstock  
Fort Mitchell, Kentucky

BRIEF FOR APPELLEE CABINET  
FOR HEALTH AND FAMILY  
SERVICES, COMMONWEALTH OF  
KENTUCKY:

Leslie M. Laupp  
Covington, Kentucky