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Commonwealth of Kentucky

Court of Appeals

NO. 2022-CA-0364-ME

O.P., SR. APPELLANT

APPEAL FROM NELSON CIRCUIT COURT
v. HONORABLE JOE G. BALLARD, JUDGE
ACTION NO. 20-AD-00020

CABINET FOR HEALTH AND
FAMILY SERVICES; K.A.R.; AND
O.P., JR. APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CALDWELL, CETRULO, AND COMBS, JUDGES.

CALDWELL, JUDGE: O.P., Sr. (“Father”) appeals from the termination of his parental rights to O.P., Jr. (“Child”).[1] We affirm.

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[1] Pursuant to court policy and to protect the privacy of the minor child, we do not refer to the child, his natural parents, or his siblings by name.

FACTUAL AND PROCEDURAL HISTORY

Child was born to Father and to K.A.R. ("Mother") in March 2017. Mother's three older children, who are not biologically related to Father, also lived in the same home with Father and Mother. We refer to Child's half-siblings collectively as "Siblings" and individually by their birth order (Oldest Sibling, Middle Sibling and Youngest Sibling). Mother has cognitive and mental health challenges.[2] Father is originally from Mexico and his primary language is Spanish.

In December 2017, the Cabinet for Health and Family Services ("CHFS") filed a Dependency, Neglect and Abuse (DNA) Petition regarding Child in Nelson District Court. According to the petition, CHFS received a report alleging Youngest Sibling was physically abused on November 2, 2017. It investigated and found Youngest Sibling had multiple bruises to her face and body.

According to the DNA petition, Father had a history of disciplining Oldest Sibling with a belt and Mother said she lost control and beat Youngest Sibling with a belt. The DNA petition also stated that Oldest Sibling reported Youngest Sibling's bruises resulted from Father throwing her into a bathtub as

[2] This appeal concerns only the termination of Father's parental rights. Mother is a named appellee but did not file a brief. Mother's rights are not at issue here and we express no opinion on them. However, some discussion of facts concerning Mother is necessary to address the issues raised by Father upon appeal.

discipline. The DNA petition asserted that Child and Siblings "are at risk of physical harm" from inappropriate discipline.

Child was placed in the same foster home as Siblings in mid-November 2017.[3] He has continued to live there since his initial placement.

In mid-December 2017, the Nelson District Court entered a temporary removal order placing Child in the temporary custody of CHFS. It found Youngest Sibling had been injured in a manner inconsistent with explanations given by Mother and Father.

In April 2018, the district court entered an adjudication order noting both Mother and Father stipulated to Child being neglected. The court concluded the parents had created or allowed to be created a risk of physical or emotional injury by non-accidental means. It ordered, pending disposition, Child was to remain in the temporary custody of CHFS. No child support order was entered requiring that Father pay a specified amount of money while Child remained in foster care.

CHFS provided case plans and set up supervised visits. Initially, Father and Mother had supervised visits with all four children, but Father's

[3] Child and Siblings had been briefly placed with relatives of Father who lived in a nearby town before being placed with the foster family. But Father's relatives were not related to Siblings and were not able to have all four children reside with them on a permanent, full-time basis.

supervised visits with Siblings ceased following allegations that Father had sexually abused one or more Siblings. (The sexual abuse allegations are considered unsubstantiated as they were never formally substantiated.)

Although Father's supervised visits with Siblings ceased, Father was still allowed supervised visits with Child. Father consistently exercised his rights to supervised visits with Child and frequently brought along toys and snacks for Child. Father indisputably complied with all case plan requirements including attending parenting classes and submitting to a parenting assessment.

In 2018 and 2019, clinical psychologist Dr. Paul Ebben met with Father twice to prepare a parenting assessment – first without an interpreter and the second time with an interpreter present. Dr. Ebben also reviewed CHFS documents and interviewed Oldest Sibling and Middle Sibling as well as the foster father. Dr. Ebben noted language and cultural differences which made it more difficult to evaluate Father's parenting capacity and impossible to administer standardized tests – even with an interpreter present. Nonetheless, Dr. Ebben expressed significant concerns that Child would be at risk in Father's care.

Dr. Ebben expressed concern that Father appeared to have no remorse or empathy about what had happened to the children and instead appeared defensive. Dr. Ebben also opined that Mother lacked the capacity to properly care for Child, in part due to her cognitive challenges. Dr. Ebben noted Mother and

Father remained a couple at that time, but Father said he would choose custody of Child over remaining with Mother, whom Father still viewed as able to take care of the children. (Father and Mother later separated a few months prior to the termination trial.)

Dr. Ebben also noted Father denied other allegations despite admitting to using a belt on Oldest Sibling once without leaving marks. And according to Dr. Ebben's reports, Father claimed he knew nothing about any maltreatment of children by Mother since he had been at work at the time of the incident leading to the children's removal.

Dr. Ebben stated Middle Sibling and Oldest Sibling reported that Father had put Youngest Sibling's head in a toilet to discipline her and that neither wanted to return to Father. Dr. Ebben also noted the foster father said Siblings acted afraid to see Mother and Father and were protective of Child, but the children were otherwise doing well. Dr. Ebben took note that much of the information he received from Father and Siblings was inherently subjective and that he was unable to perform standardized tests due to language and cultural differences. But ultimately, Dr. Ebben opined that he could not support continuing efforts to reunify Father with Child since he viewed Siblings' accounts as credible.

Apparently, sometime after Dr. Ebben issued his first or second report, CHFS sought to change the goal for Child from reunification with Father to

adoption. In March 2020, the district court entered a permanency order concerning Child. The district court stated it agreed with Dr. Ebben that Child was in danger of future physical abuse – based on Father having physically abused other children in his care and Father's allowing Mother to care for Child despite her limitations. The district court further adopted Dr. Ebben's findings and conclusions.

In June 2020, CHFS filed a petition in Nelson Circuit Court to terminate Mother's and Father's parental rights to Child. The petition alleged, *inter alia*, that the parents failed to or were incapable of providing essential parental care and protection, and that Child was in foster care for over fifteen months prior to the filing of the petition.

Following various continuances, the court conducted the termination trial in mid-December 2021. Dr. Ebben and the investigating and ongoing social workers testified for CHFS. Mother and Father also testified.

In January 2022, the circuit court entered its findings of fact and conclusions of law explaining its decision to terminate. Father filed a timely motion to alter, amend or vacate. The circuit court denied this motion in early March 2022 and entered the order terminating Father's parental rights to Child. Father filed a timely appeal.

Standards Governing Courts in Termination of Parental Rights Cases

Before terminating parental rights, the circuit court must find clear and convincing evidence[4] to support each of three parts of the standard established by KRS[5] 625.090. First, the child must have been found to be an "abused or neglected" child as defined by KRS 600.020(1). KRS 625.090(1)(a). Second, the circuit court must find at least one ground of parental unfitness. KRS 625.090(2). Third, termination must be in the child's best interest. KRS 625.090(1)(c). In determining the child's best interests and whether there are ground(s) of parental unfitness, the circuit court must consider the factors listed in KRS 625.090(3).

Termination of parental rights is a grave action which the courts must conduct with "utmost caution." *M.E.C. v. Commonwealth, Cab. for Health and Family Servs*., 254 S.W.3d 846, 850 (Ky. App. 2008). Thus, the evidence to support termination must be clear and convincing. KRS 625.090; *see also Santosky v. Kramer*, 455 U.S. 745, 769-70, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982) (holding due process requires proof by at least clear and convincing evidence for termination of parental rights). Even so, the decision of a circuit court

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[4] *Clear and convincing evidence* does not mean uncontradicted proof, but "proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent-minded people." *Com., Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010).

[5] Kentucky Revised Statutes.

to involuntarily terminate parental rights is accorded great deference on appellate review, and its factual findings are reviewed under the "clearly erroneous" standard of CR[6] 52.01,[7] meaning, they shall not be disturbed unless they are not supported by substantial evidence. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998).

ANALYSIS

Father argues the circuit court's termination of his parental rights must be reversed. He argues the circuit court could not properly terminate his parental rights under KRS 625.090, because, in his view: 1) the circuit court found reasonable expectations of improvement in Father's parental care and protection, 2) there was no evidence of reasonable efforts to reunify the family, and 3) the circuit court placed undue emphasis on Child's relationships with Siblings over Father's constitutionally protected relationship with Child in its best interest assessment.

[6] Kentucky Rules of Civil Procedure.

[7] CR 52.01 governs "all actions tried upon the facts without a jury" and provides in pertinent part: "Findings of fact, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."

I. No Reversible Error in Finding KRS 625.090(2)(j) Grounds Because it does Not Require a Finding of No Reasonable Expectations of Improvement

Father points out that he timely complied with all case plan requirements. And he contends the circuit court could not properly terminate his parental rights since, in his view, the circuit court "expressly found . . . a reasonable expectation of improvement in parental care and protection." (Appellant brief, p. 10.) What the circuit court actually stated in its findings was, that although it found no reasonable expectation of improvement in Mother's parental care and protection, "the court cannot say the same of [Father] based on the information presented at the hearing. [Father] may be capable of improvement."

Despite any equivocality in this finding, the circuit court still expressed that it could find no reasonable expectation of improvement in Father's parental care and protection. Such a finding of no reasonable expectation of improvement is clearly required to find KRS 625.090(2)(e) grounds (failure or inability to provide essential parental care and protection). But, unlike Mother, the circuit court did not make a finding of KRS 625.090(2)(e) grounds regarding Father. In its conclusions of law, the circuit court expressly concluded Mother was unable to provide essential parental care and protection but it made no similar conclusion about Father.

Although the circuit court determined KRS 625.090(2)(e) grounds were not established for Father, the circuit court did make the required findings for another ground set forth in KRS 625.090(2). And as KRS 625.090(2) expressly requires that the circuit court find "one or more" of the grounds listed therein, it is not required to find more than one ground set forth in KRS 625.090(2). Here, the circuit court made a finding of the grounds set forth in KRS 625.090(2)(j).

Specifically, the circuit court found Child had lived with the foster family since November 2017 and that the termination petition was filed in June 2020. Therefore, it found that Child had been in the Cabinet's care for over fifteen cumulative months prior to the filing of the petition. Thus, it made the necessary finding for KRS 625.090(2)(j) grounds: "That the child has been in foster care under the responsibility of the cabinet for fifteen (15) cumulative months out of forty-eight (48) months preceding the filing of the petition to terminate parental rights[.]"

Furthermore, there is no requirement that the court find a lack of any expectation of improvement in KRS 625.090(2)(j). Father has not disputed that Child was in foster care under the responsibility of CHFS for at least fifteen cumulative months preceding the filing of the petition.

Though KRS 625.090(2)(j) requires no finding of lack of reasonable expectation of improvement, Father argues the circuit court erred in terminating his

parental rights despite finding a reasonable expectation of improvement. He also contends reversal is required under recent case precedent – namely, *F.V. v. Commonwealth, Cabinet for Health and Family Services*, 567 S.W.3d 597 (Ky. App. 2018), and *K.D.H. v. Cabinet for Health and Family Services*, 630 S.W.3d 729 (Ky. App. 2021).

We do not agree with Father that these cited cases require reversal under the circumstances of his case. For example, both cases involve findings of different KRS 625.090(2) grounds. Neither case clearly compels reversal of Father's termination of parental rights due to significant factual distinctions.

As Father points out, the children in *F.V.* had been in foster care for over fifteen months by the time of the termination trial – which occurred about eighteen months after their entry in foster care. *See* 567 S.W.3d at 599-601 (children entered foster care in November 2015; termination trial began in May 2017). However, the children in *F.V.* had not been in foster care for fifteen months **before** the termination petition was filed. *Id.* at 600 (termination petition was filed in July 2016, about eight months after children entered foster care). KRS 625.090(2)(j) expressly requires a finding that the child has been in foster care under CHFS responsibility for fifteen months "preceding the filing of the petition for termination of parental rights." *See also K.D.H.*, 630 S.W.3d at 740 (noting the

required fifteen months of foster care must occur before the filing of the termination petition to satisfy KRS 625.090(2)(j)).

More importantly, the trial court in *F.V.* did not make a finding of the grounds set forth in KRS 625.090(2)(j) – instead, it found the grounds set forth in KRS 625.090(2)(e) & (g) (failure or inability to provide essential parental care and protection; failure or inability to provide necessities). 567 S.W.3d at 605. Thus, the trial court in *F.V.* was required to make a finding of lack of expectation of improvement in these regards to satisfy KRS 625.090(2)(e) & (g). And the trial court in *F.V.* did make a finding of lack of reasonable expectations for improvement. 567 S.W.3d at 607.

Ultimately, however, the termination of parental rights was reversed in *F.V.* because this Court determined that CHFS had "utterly failed" to prove lack of reasonable expectations of improvement, *id.* at 609 – after noting evidence of the father's efforts to improve himself and establish a relationship with his children after being released from incarceration. *Id.* at 607-08. Thus, our decision in *F.V.* is based on lack of substantial evidence to support the court's finding of KRS 625.090(2)(e) & (g) grounds. But the circuit court here did not rely upon these statutory subsections requiring a finding of lack of reasonable expectations of improvement.

In addition to being based on different KRS 625.090(2) grounds which required findings of no reasonable expectation of improvement, the *F.V.* case simply presented very different issues than those posed here. The proceedings here began due to indications that both Mother and Father had either physically harmed a child or allowed the other to do so. In contrast, the proceedings in *F.V.* were initiated based on the mother's drug use during pregnancy and the father (F.V.) initially had no contact with the children although he sought to establish contact later following paternity testing and his release from incarceration. 567 S.W.3d at 599-601. In short, nothing in *F.V.* compels reversal here.

Similarly, Father's citation to *K.D.H.* does not compel reversal here. Like *F.V.*, the KRS 625.090(2) grounds found in *K.D.H.* included failure or inability to provide parental care and protection and failure or inability to provide necessities as set forth in KRS 625.090(2)(e) & (g). 630 S.W.3d at 735-36. Again, unlike KRS 625.090(2)(j), those two provisions expressly require a finding of no reasonable expectations of improvement in those regards.

Also, the trial court in *K.D.H.* found an additional KRS 625.090(2) ground – abandonment. *See* 630 S.W.3d at 735 (citing KRS 625.090(2)(a)). This Court reversed the termination of the mother's parental rights in *K.D.H.* in part because the mother's actions did not support a finding of abandonment. 630 S.W.3d at 739. In contrast, the circuit court here made no finding of abandonment

on Father's part. In addition to findings of different KRS 625.090(2) grounds, including some requiring a finding of lack of reasonable expectations of improvement, *K.D.H.* is distinguishable in other important respects – despite any factual similarities such as the parents' complying with many case plan requirements.

Like *F.V.,* we concluded in *K.D.H.* that CHFS had "utterly failed" to prove lack of reasonable expectations of improvement in parental care and protection and ability to provide necessities. 630 S.W.3d at 738. And we noted that the mother in *K.D.H*. had not simply ignored CHFS recommendations. *Id*. (Similarly, we recognize here that Father also did not ignore CHFS recommendations.) But a key distinction is that the evidence compelled a finding that the mother in *K.D.H.* had "made significant efforts to remedy the problem which was the sole cause of the removal of the children from her care – drug use when in the company of maternal grandmother." *Id*. at 738.

In contrast to compelling evidence of K.D.H.'s efforts to remedy the sole cause of removal, here the evidence was conflicting whether Father had made significant efforts to remedy the problem which was the sole cause of the removal of Child and his siblings – risk of harm due to inappropriate discipline. Child and Siblings were removed because of the injuries suffered by Youngest Sibling apparently due to inappropriate discipline rendered by Mother and/or Father. And

Father stipulated to having neglected Child by creating or allowing "to be created a risk of physical or emotional injury by other than accidental means." (Record ("R."), p. 168).

The circuit court did not explicitly find that Father made no efforts to remedy the problem which necessitated the children's removal. And there is some evidence of efforts to improve on Father's part in complying with case plan requirements and even testifying to learning a lot from parenting classes.

Despite Father's completion of case plan requirements and claiming to learn a lot from parenting classes, however, the ongoing social worker expressed doubts in her testimony that Father would be able to parent appropriately. She expressed concerns that he lacked protective capacity. Similarly, Dr. Ebben reported concerns that Father was not remorseful or empathetic about what happened to the children. Dr. Ebben also was concerned that Father did not fully recognize Mother's limitations and would allow Mother to take care of Child by herself.

These expressed concerns are reflected by the circuit court's finding in its discussion of Child's best interests – specifically, its finding that Father had not made the necessary permanent adjustments to permit Child's return home within a reasonable time. And this finding indicates that the circuit court perceived

that, unlike the mother in *K.D.H.*, Father had not made sufficient efforts to remedy the problems which led to Child's removal.

Further, based on our review, Father's own testimony about what he had learned since the children's removal and what he would do differently in the future – especially in regard to discipline – could be perceived differently by some fact-finders than others. A reasonable fact-finder might or might not perceive that his demeanor and answers to questions reflect a lack of empathy for Youngest Sibling's suffering injuries, a lack of sincere resolve to avoid physically injurious discipline,[8] or a lack of understanding of Mother's limitations. We must defer to the circuit court's assessment of the weight of the evidence and the credibility of witnesses and we cannot disturb factual findings supported by substantial evidence. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). *See also* CR 52.01.

In short, the circuit court's findings under KRS 625.090(2)(j) grounds are supported by substantial evidence and that section does not require a finding of a lack of reasonable expectations of improvement does not preclude termination.

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[8] Father asserts the investigating social worker testified to his stating he had "learned not to use a belt as a form of discipline from his interactions with social workers." (Appellant brief, p. 10.) The investigating social worker indicated such interactions with social workers were in the context of another CHFS investigation of the family in the earlier months of 2017. Father admitted to using a belt on Oldest Sibling on at least one occasion in his testimony. It is not entirely clear from his testimony whether this admitted incident occurred prior to his being advised not to use a belt or claiming he had learned not to use a belt for discipline.

II. No Reversible Error in Circuit Court's Not Concluding that CHFS Failed to Make Reasonable Efforts to Reunify Father and Child

Father also asserts that there was no evidence of reasonable efforts to reunify the family. However, CHFS presented evidence of various services provided to Father including case planning, parenting and anger management classes, supervised visits, and play therapy. Father contends that, despite such services, CHFS failed to make reasonable efforts to reunify the family – especially following the filing of Dr. Ebben's reports.[9]

Father notes he completed all case plan requirements. And he points out the ongoing social worker's admissions that his residence appeared to be an appropriate home and that Father and Child had a bond. He asserts CHFS "failed to even allow an unsupervised visit to occur, and without cause or reason changed the goal from reunification to termination without first completing its duty to reunite" Father and Child. (Appellant brief, p. 11).[10]

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[9] During the termination trial Father's counsel asserted that despite supervised visitation continuing, services actually aimed towards reunification essentially ceased following the filing of one of Dr. Ebben's reports. The ongoing social worker testified that Father and Child had attended play therapy several times, however, following the filing of a report of Dr. Ebben. The first report was completed in about August 2018 and the second report was completed around the end of September 2019. The play therapy occurred from April through November 2019, ceasing when the therapist believed it was no longer necessary – according to the social worker's testimony.

[10] The circuit court noted in a footnote in its findings of fact and conclusions of law that CHFS never directly said why there were never unsupervised visits. But the circuit court surmised that was due to allegations of physical and sexual abuse and concerns about separating the siblings.

In its summary of testimony, the circuit court stated that the ongoing social worker testified that the district court "waived reasonable efforts for reunification on February 28, 2020."[11] (Findings of Fact and Conclusions of Law, p. 6; R, p. 204.) But the circuit court's findings of fact do not explicitly discuss whether CHFS made reasonable efforts to reunify Father with Child prior to any court determination that reasonable reunification efforts were no longer required.

As Father points out, "reasonable efforts" and "reunification services" are defined in KRS 620.020(13) & (14). Furthermore, a circuit court must consider, for purposes of determining the child's best interest and whether KRS 625.090(2) grounds exist, whether CHFS "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[.]" KRS 625.090(3)(c). The circuit court evidently believed that the

[11] The district court's permanency order (dated February 28 and entered March 3, 2020) does not explicitly state that reasonable efforts were waived. It indicates CHFS previously made reasonable efforts to reunify the family. However, some written findings suggest the district court made findings of circumstances which would permit the cessation of reunification services under KRS 610.127 (*i.e.*, statements indicating district court believed that Father had physically abused other children and there was risk of future abuse to Child; also noting Father allowed Mother to care for Child despite the district court's finding mother did not have the capacity to care for the children). The district court also indicated it made additional findings on the record – presumably meaning oral findings in video recordings which were not included with the record on appeal from the termination in circuit court. We presume any missing portions of the record support the circuit court's decision. *Smith v. Smith*, 450 S.W.3d 729, 732 (Ky. App. 2014).

district court had concluded that reasonable reunification efforts were no longer required under KRS 610.127 as of early 2020.

Although Father contends that CHFS failed to make reasonable reunification efforts, especially after the filing of Dr. Ebben's report or the goal change, Father does not specifically discuss what other services should have been offered. Nor has Father drawn our attention to any evidence presented at trial about other services which should have been offered.

His counsel stated at trial – without offering supporting evidence – that Father requested, but never received, specialized parenting assessments to address language or cultural differences. The ongoing social worker testified such specialized assessments were not available in Kentucky. Dr. Ebben also testified there was nothing else available to him to address language and cultural differences to better assess Father's parental capacity. Reasonable efforts only require use of those reunification services "available to the community . . . ." KRS 620.020(13).

In sum, reunification services (other than supervised visits) ceased about two years after Child's removal and perhaps some services might have been of more benefit if tailored to address language and cultural differences. But this does not necessarily mean that CHFS failed to comply with statutory duties to make reasonable efforts to provide reunification services – especially as reasonable

efforts only require use of services available in the community and reasonable efforts may cease in certain circumstances defined in KRS 610.127. Father himself has not even pointed out what additional services available in the community should have been offered by CHFS.

Furthermore, the precedent cited by Father is distinguishable and does not compel reversal on the grounds of lack of reasonable reunification efforts. Unlike *K.D.H.*, there were no indications of case plan requirements imposing financial burdens on an indigent parent. *See* 630 S.W.3d at 738-39. Father did not testify to any financial difficulties in complying with his case plan, and he testified to being employed full-time and to earning sufficient money to support his household.

Father's brief summarizes his perception of the error in *K.D.H.* as mainly involving CHFS seeking "to be relieved of providing reasonable reunification efforts within a year of the adjudication hearing even though mother had made significant progress on her plan." (Appellant's brief, p. 12.) But Father points to no evidence in the record that CHFS similarly sought to be relieved of responsibilities to make reasonable reunification efforts within a year of adjudication. And there is evidence of services, including supervised visitation and play therapy, continuing for over a year and a half after adjudication in this case.

Unlike both *F.V.* and *M.E.C.*, this case does not involve issues about how a parent's incarceration affects how reunification services are provided or what constitutes reasonable efforts. And neither case compels reversal here – especially as we have previously discussed how findings of no reasonable expectations of improvement were not required to satisfy KRS 625.090(2)(j).

According to Father's brief, after the father in *F.V.* began to work his case plan after being released from incarceration, CHFS ignored his efforts and "basically said it would take too long for him to complete the case plan and didn't offer him all the available reunification services at its disposal." (Appellant brief, p. 12.) But Father, in this case, has not cited any evidence that CHFS failed to offer him all available reunification services or refused to offer him services because of the length of time it would take to complete a case plan.

And unlike *M.E.C.*, this was not a case where little to no services were provided and no significant efforts were made to address the obstacles the parent faced before a goal change was sought just several months after removal. *See* 254 S.W.3d at 852.[12] Instead, available services were provided for about two years before the goal change and an interpreter was provided for Dr. Ebben's second

[12] The circumstances of *M.E.C.* included the parent's being hospitalized and incarcerated for most of the several month period between removal and the goal change, difficulties in setting up visits with the children, undergoing substance abuse treatment, and being denied requested assistance with obtaining parenting classes. 254 S.W.3d at 849-50.

evaluation to minimize the effects of language differences. In short, we discern no reason to reverse on the basis that CHFS failed to comply with duties to make reasonable efforts to reunify Father and Child.

III. No Reversible Error in Circuit Court's Best Interest Determination

Lastly, Father takes issue with the circuit court's best interest finding, arguing it improperly prioritized Child's relationship with his siblings over Father's constitutionally protected interest in his relationship with Child. We disagree.

The circuit court did not discount the importance of the relationship between Father and Child. But the circuit court found that Child's relationship with Siblings was more important to Child under the circumstances of this case. It found Child had a stronger bond with Siblings than Father, recognizing the children lived together in the foster home for the vast majority of Child's life.

The circuit court also indicated it was terminating Mother's parental rights to all four children and the parental rights of Siblings' biological father so that Siblings would likely remain with the foster family. The circuit court recognized it would have to choose between severing Child's relationship with Siblings or with Father under the unique circumstances of this case.[13] Despite

[13] The circuit court believed that, due to allegations of sexual abuse and the foster family's and Siblings' feelings about Father, Siblings' relationship with Child would likely end if Child were returned to Father. If the termination petition were denied, the circuit court predicted that Child

recognizing Father's love for Child and desire for a continued relationship, it found termination to be in child's best interest – for reasons not solely based on Child's having a stronger bond with Siblings than with Father. It also took note of evidence of acts of neglect or abuse towards Child and Siblings, found that Father failed to make the necessary adjustments for Child to return to his care, and found that Child was thriving and improving in the foster home and was bonded to his foster parents who sought to adopt him.

As Father notes, precedent such as *Santosky* recognizes a parent's constitutionally protected interest in the custody and care of one's child – but there appears to be no precedent recognizing a similar constitutionally protected interest in sibling relationships. Nonetheless, the circuit court's termination of Father's parental rights here complies with the constitutional requirements set forth in *Santosky*. The circuit court made, by clear and convincing evidence, all findings required for termination of parental rights under KRS 625.090.

The circuit court found that Child was adjudicated to be neglected and that the requirements of one KRS 625.090(2) ground were met. Again, Father stipulated to neglect and the facts underlying the KRS 625.090(2)(j) finding are not disputed. So, especially since the fact that CHFS filed the termination petition is

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would likely ultimately be returned to Father and uprooted from the family he had known most of his life.

not disputed, termination was permitted so long as the circuit court properly determined that termination was in Child's best interest. *See* KRS 625.090(1)-(3).

Other requirements being clearly met, the key issue was Child's best interest. Far from ignoring Father's constitutionally protected interest, the circuit court thoughtfully assessed the situation and found that termination was in Child's best interest based partly – but not solely – on Child having a stronger bond with Siblings than with Father. Notably, the circuit court also discussed several other factors in KRS 625.090 and we discern no reversible error in its best interest assessment. Its factual findings are supported by substantial evidence, and we discern no abuse of discretion or misapplication of the law. Though Father claims the circuit court abused its discretion in considering Child's relationship with Siblings at all as part of its best interest determination, there was nothing improper in considering Child's bonds with his Siblings as well as his foster parents as factors affecting Child's emotional health and prospects for improvement if termination were granted. *See* KRS 625.090(3)(e).

In sum, we discern no reversible error in the circuit court's termination of Father's parental rights. Further arguments discussed in the parties' brief which we have not addressed in this Opinion have been determined to lack merit or relevancy to our resolving this appeal.

CONCLUSION

For the foregoing reasons, the judgment of the Nelson Circuit Court is hereby affirmed.

ALL CONCUR.

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