

RENDERED: JULY 14, 2023; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2022-CA-1484-ME

S.R.S.

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT  
HONORABLE RICHARD A. WOESTE, JUDGE  
ACTION NO. 19-AD-00006

L.D.; R.B.; AND S.S., A MINOR  
CHILD

APPELLEES

AND

NO. 2022-CA-1486-ME

S.R.S.

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT  
HONORABLE RICHARD A. WOESTE, JUDGE  
ACTION NO. 19-AD-00007

L.D.; R.B.; AND S.S., A MINOR  
CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: THOMPSON, CHIEF JUDGE; EASTON AND KAREM, JUDGES.

THOMPSON, CHIEF JUDGE: S.R.S. (hereinafter referred to as Father) appeals from orders of the Campbell Family Court which allowed his two biological children to be adopted by R.B. (hereinafter referred to as Father 2) without his consent.<sup>1</sup> We find no error and affirm.

**FACTS AND PROCEDURAL HISTORY**

S.R.S. and S.M.S. (hereinafter referred to as the children) are twins and were born in 2007. The biological mother is L.D. (hereinafter referred to as Mother). Father and Mother were married in 2010, but divorced in 2014. Mother married Father 2 in 2017. In 2015, Father was arrested and charged with eighteen counts of sexual related offenses involving a minor. The minor in question was the half-sister of the children in this case and Father's stepdaughter. In 2017, Father pleaded guilty to the eighteen charges and is currently serving a twenty-seven-year prison sentence. The children have not seen Father since 2015.

In January of 2019, Father 2 petitioned the court to adopt the children. Mother supported the petition, but Father contested it. The case was delayed due

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<sup>1</sup> We will not use the names of the parties in this case in order to protect the privacy of the children.

to various reasons, but on November 4, 2022, the trial court entered orders allowing Father 2 to adopt the children over Father’s objections. This appeal followed.

### ANALYSIS

We review this type of adoption case pursuant to the clearly erroneous standard. *A.F. v. L.B.*, 572 S.W.3d 64, 70 (Ky. App. 2019).

The Court of Appeals . . . [is] entitled to set aside the trial court’s findings only if those findings are clearly erroneous. And, the dispositive question that we must answer, therefore, is whether the trial court’s findings of fact are clearly erroneous, i.e., whether or not those findings are supported by substantial evidence. “[S]ubstantial evidence” is “[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.

*Moore v. Asente*, 110 S.W.3d 336, 353-54 (Ky. 2003) (footnotes and citations omitted).

Kentucky Revised Statute (KRS) 199.502 states in pertinent part:

(1) Notwithstanding the provisions of KRS 199.500(1), an adoption may be granted without the consent of the biological living parents of a child if it is pleaded and proved as part of the adoption proceeding that any of the following conditions exist with respect to the child:

(a) That the parent has abandoned the child for a period of not less than ninety (90) days;

(b) That the parent had inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;

(c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;

(d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to a child named in the present adoption proceeding;

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

(f) That the parent has caused or allowed the child to be sexually abused or exploited;

(g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant

improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;

(h) That:

1. The parent's parental rights to another child have been involuntarily terminated;
2. The child named in the present adoption proceeding was born subsequent to or during the pendency of the previous termination; and
3. The condition or factor which was the basis for the previous termination finding has not been corrected;

(i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect; or

(j) That the parent is a putative father, as defined in KRS 199.503, who fails to register as the minor's putative father with the putative father registry established under KRS 199.503 or the court finds, after proper service of notice and hearing, that:

1. The putative father is not the father of the minor;
2. The putative father has willfully abandoned or willfully failed to care for and support the minor; or
3. The putative father has willfully abandoned the mother of the minor during her pregnancy and up to the time of her surrender of the minor, or the minor's placement in the home of the petitioner, whichever occurs first.

Here, the trial court found that KRS 199.502(1)(a), (e), and (g) applied. While only one of the above elements is required to grant adoption over the objection of a biological parent, we will discuss each of the three relied upon by the trial court.

We will begin with KRS 199.502(1)(e), failure to provide parental care and protection. Due to Father's incarceration and a no contact order entered in favor of the children, Father has not had contact with the children since 2015. This makes it impossible for Father to provide parental care and protection of the children; however, we believe his failure to provide parental care and protection began before his arrest. While Father did share joint custody of the children with Mother and was providing for their care, he was also raping and sexually abusing the children's half-sister. We believe that Father's actions were so extreme and heinous that he put his twin children in danger. While Father's crimes were committed against one child, they clearly had an effect on the entire household. In other words, Father was actively endangering the children's welfare. Father's actions negated any care he was providing to the children and showed he was substantially incapable of providing essential parental care and protection for the children. Further, his twenty-seven-year sentence indicates that there is no reasonable expectation of improvement in the near future. The trial court did not err in finding that Father was not providing parental care and protection to the children.

Next, we will discuss KRS 199.502(1)(a), abandonment.

Generally, abandonment is demonstrated by facts or circumstances that evince a settled purpose to forego all parental duties and relinquish all parental claims to the child. In defining “abandoned child” for purposes of a federal statute concerning a serviceman’s beneficiary, *Hafley v. McCubbins*, [590 S.W.2d 892, 894 (Ky. App. 1979)], said:

[Abandoned] meant neglect and refusal to perform natural and legal obligations to care and support, withholding of parental care, presence, opportunity to display voluntary affection and neglect to lend support and maintenance . . . . It means also the failure to fulfill responsibility of care, training and guidance during the child’s formative years. [Citations omitted.]

Abandonment is a matter of intent which may be proved by external facts and circumstances; otherwise, servicemen, prisoners of war, ship captains or persons requiring prolonged hospitalization would be likely candidates to have their parental rights terminated.

Wherefore, whether abandonment occurs through incarceration sufficiently to support terminating parental rights must be strictly scrutinized. Incarceration alone can never be construed as abandonment as a matter of law.

*J.H. v. Cabinet for Human Resources*, 704 S.W.2d 661, 663 (Ky. App. 1985)

(internal quotation marks and citation omitted).

We believe that Father’s imprisonment is not the only cause of his abandonment. Based on the facts of this case, Father’s criminal behavior was so

extreme and damaging to the family that it effectively negated all of his parental claims to his children. Father's intentional, criminal conduct removed him from his parental role. The trial court did not err in concluding that Father abandoned his children.

We will next discuss KRS 199.502(1)(g), failure to provide food, clothing, shelter, medical care, or education. We believe the trial court did err in this instance. The testimony at the adoption hearing indicated that before Father was arrested, he was paying child support and paying health insurance for the children. The evidence also indicated he was buying any other necessities that the children needed. Once he was arrested, he lost his job. Now, while in prison, he makes around \$50 a month working in the prison. KRS 199.502(1)(g) only applies if the failure to provide these necessities arises out of a reason other than poverty. Father is clearly impoverished; therefore, the trial court erred in finding that Father failed to provide these necessities for reasons other than poverty. We need not reverse and remand for this error because only one of the KRS 199.502(1) factors is needed, and, as we have discussed, two other factors are present.

### **CONCLUSION**

Based on the foregoing, we affirm the judgment of the trial court. The court did not err in allowing Father 2 to adopt the children over Father's objections.

ALL CONCUR.

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