

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001544-ME

O.M.F.L.

APPELLANT

v. APPEAL FROM BOONE FAMILY COURT  
HONORABLE LINDA R. BRAMLAGE, JUDGE  
ACTION NO. 06-AD-00001

THE KENTUCKY CABINET FOR HEALTH  
AND FAMILY SERVICES AND M.A.O.L.,  
AN INFANT

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \* \*\* \*

BEFORE: THOMPSON AND WINE, JUDGES; HENRY,<sup>1</sup> SENIOR JUDGE.

THOMPSON, JUDGE: O.M.F.L. (O.L.) appeals from an order of the Boone Family Court terminating her parental rights to her infant child, M.A.O.L. (M.L.). Concluding that the family court did not err, we affirm.

On February 24, 2005, O.L. was arrested by federal authorities while attempting to pass through Customs at the Greater Cincinnati International Airport in

---

<sup>1</sup> Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

Hebron, Kentucky. She was charged with conspiring to import heroin into the United States. At the time of her arrest, O.L.'s infant child, M.L., was with her. M.L. and O.L. maintained dual citizenship in Nigeria and in the U.S. The following day, the Boone Family Court awarded the Cabinet for Families and Children (Cabinet) temporary custody of M.L..

After several months, O.L. pled guilty to conspiring to import heroin into the United States and was sentenced to forty-four months' imprisonment in the custody of the U.S. Bureau of Prisons. On January 6, 2006, the Cabinet filed a petition to involuntarily terminate the parental rights of O.L., who remained in federal custody. In response, O.L. moved the court to direct the Cabinet to cooperate in facilitating an interstate home evaluation for the purpose of placing M.L. in the custody and care of a relative in the State of Texas. However, when the prospective relative failed to attend the hearing, the family court denied O.L.'s motion for an interstate home evaluation.

On June 26, 2006, the family court conducted a hearing on the Cabinet's petition to involuntarily terminate O.L.'s parental rights. The evidence before the trial court revealed the following: (1) that O.L. knew that importing drugs into the United States was illegal; (2) that O.L. intentionally committed this illegal act while her infant child was present with her; (3) that O.L.'s illegal actions resulted in her child being abandoned because M.L. was left without a suitable custodian or caregiver in the U.S. other than the Cabinet; and (4) that O.L. would be serving a lengthy prison sentence and

would be unable to provide for the needs of M.L.. Based on these facts, the family court issued an order terminating O.L.'s parental rights. This appeal follows.

On appeal, the appellant states that she was unable to find any trial error that would entitle her to relief from the termination order. Consequently, O.L. requests this Court to independently review the record to ensure that her rights to fundamental fairness and at least one level of appellate review are protected. Because the termination of parental rights is of constitutional magnitude, we will review the record for errors as did the court in *Fite v. Commonwealth*, 469 S.W.2d 357 (Ky. 1971).

On appellate review of an involuntary termination order, we apply the “clearly erroneous” standard of review to the trial court's findings of fact based upon clear and convincing evidence, the standard of proof required to terminate parental rights, as provided in the Kentucky Rules of Civil Procedure (CR) 52.01. *V.S. v. Com., Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky.App. 1986). “Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent-minded people.” *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 117 (Ky.App. 1998) (citing *Rowland v. Holt*, 253 Ky. 718, 726, 70 S.W.2d 5, 9 (1934)). If supported by substantial and probative evidence in the record, the trial court’s findings of fact will not be disturbed. *Id.* at 116.

KRS 625.090 explains the grounds for the involuntary termination of parental rights. In order to terminate parental rights, the circuit court must find by clear

and convincing evidence that the child has been abused or neglected as defined in KRS 600.020(1).<sup>2</sup> KRS 625.090(1)(a)(2). The circuit court then must find by clear and convincing evidence the existence of at least one of the enumerated statutory grounds for the termination of parental rights.

Included in these grounds are the following: (1) the abandonment of the child for a period of not less than ninety (90) days; (2) the continuous and repeated failure or refusal to provide essential parental care and protection for the child for a period of not less than six (6) months; and (3) the continuous and repeated failure or refusal, for reasons other than poverty alone, to provide essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being. KRS 625.090(2)(a), (e), and (g). After the circuit court finds the existence of at least one enumerated ground, the court's final step is determining whether the termination is in the best interest of the child. KRS 625.090(3). Having set out the standard of review and the applicable law of involuntary termination, we turn to the family court's findings of fact and conclusions of law.

---

<sup>2</sup> KRS 600.020(1) provides that an "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when his parent...(d) continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;...;(h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child.

After conducting a hearing, the family court issued an order terminating

O.L.'s parental rights that provided, in pertinent part, the following:

[t]he Court having heard the evidence and found by clear and convincing evidence that:

1. The child, M.L., is an abused and neglected child as defined in KRS 600.020(1).
2. The respondent parents of said child, for a period of not less than six (6) months, have continuously or repeatedly failed or have refused to provide or have been substantially incapable of providing essential parental care and protection for the child and there is no reasonable expectation of improvement in parental care and protection, considering the age of the child.
3. That the respondent father abandoned the child for a period of not less than ninety (90) days.
4. The respondent parents, for reasons other than poverty alone, continuously or repeatedly failed to provide or are incapable of providing essential food, clothing, shelter, medical care or education reasonably necessary and available for the child's well-being and there is no reasonable expectation of significant improvement in the parental conduct in the immediately foreseeable future, considering the age of the child.
5. Termination of parental rights is in the best interest of the child.
6. The Cabinet for Health and Family Services is best qualified to receive custody of the child.

NOW, THEREFORE, IT IS ORDERED AND ADJUDGED that the parental rights of the respondent mother and the parental rights of the respondent father<sup>3</sup> of M.L., in and to the said child be and they are hereby terminated and,

---

<sup>3</sup> M.L.'s father has not appealed the termination of his parental rights.

IT IS ORDERED AND AJUDGED that the full care, custody and control of the infant petitioner M.L., be vested in the Cabinet for Health and Family Services, Commonwealth of Kentucky, with authority to place said child for adoption and it is further ORDERED and ADJUDGED that the infant Petitioner, M.L., shall be and hereby is made a ward of the State.

Having reviewed these findings of fact, we conclude that the family court's findings are supported by substantial evidence in the record; thus, the findings were not clearly erroneous. The evidence before the family court was of a probative and substantial nature sufficient to convince ordinarily prudent-minded people that the facts were as the family court determined. Additionally, the family court correctly applied the involuntary termination statute to the facts as demonstrated in its order.

For the foregoing reasons, the order of the Boone Family Court terminating O.L.'s parental rights is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Marcus D. Gale  
Covington, Kentucky

BRIEF FOR APPELLEE:

Cynthia Kloeker  
Covington, Kentucky