

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001504-ME

A.B.

APPELLANT

v. APPEAL FROM GRANT CIRCUIT COURT
HONORABLE REBECCA LESLIE KNIGHT, JUDGE
ACTION NO. 14-AD-00019

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; L.M.B. (AN INFANT)

APPELLEES

AND

NO. 2015-CA-001505-ME

A.B.

APPELLANT

v. APPEAL FROM GRANT CIRCUIT COURT
HONORABLE REBECCA LESLIE KNIGHT, JUDGE
ACTION NO. 14-AD-00020

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; G.E.B. (AN INFANT)

APPELLEES

AND

NO. 2015-CA-001506-ME

A.B.

APPELLANT

v.

APPEAL FROM GRANT CIRCUIT COURT
HONORABLE REBECCA LESLIE KNIGHT, JUDGE
ACTION NO. 14-AD-00021

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; C.D.B. (AN INFANT)

APPELLEES

AND

NO. 2015-CA-001507-ME

A.B.

APPELLANT

v.

APPEAL FROM GRANT CIRCUIT COURT
HONORABLE REBECCA LESLIE KNIGHT, JUDGE
ACTION NO. 14-AD-00022

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; A.L.B. (AN INFANT)

APPELLEES

OPINION
AFFIRMING
** ** *

BEFORE: KRAMER, CHIEF JUDGE; ACREE AND MAZE, JUDGES.

ACREE, JUDGE: A.B. (Father) appeals from the Grant Circuit Court's September 2, 2015 order and judgment involuntarily terminating his parental rights to four of his children, L.M.B., A.L.B., G.E.B., and C.D.B.¹ Father argues on appeal that the family court's termination decision cannot stand because (1) it is not supported by sufficient evidence to warrant termination, and (2) the court erred by failing to find that Father demonstrated by a preponderance of the evidence that the children will not be abused or neglected in the future. After careful review, we affirm.²

The Cabinet for Health and Family Services became involved with this family in September 2012 after receiving a call from the children's school that Mother appeared to be under the influence when picking up the children. Upon investigation, the family's transiency was discovered. Mother and Father had a trailer in Grant County, Kentucky, but were living in a hotel due to an unpaid water bill at their residence. Mother initially denied substance abuse and claimed that

¹ For purposes of this appeal, the individual cases of the four children have been consolidated by order of this Court.

² Pursuant to Kentucky Rules of Civil Procedure (CR) 73.08, CR 76.03, CR 76.12, and the policy of this Court, cases concerning child custody, dependency, neglect, abuse, and support, as well as domestic violence, are to be given priority, placing them on an expedited track through our Court. That did not occur in this case. Both human error and obsolete case management software resulted in an administrative delay in assigning this case to a merits panel for decision.

On June 24, 2016, after discovering the administrative error, the Clerk of the Court informed the Chief Judge and Chief Judge-elect who, together, assigned the case to a special merits panel of sitting Court of Appeals Judges who have given it the highest priority to offset any delay to the greatest extent possible. Additionally, the Court has sent a letter of explanation and apology to the parties and placed that letter in the record.

Finally, the Court has undertaken efforts to put into effect procedures to ensure that such an error is not repeated.

she had been off methadone for three months. However, she tested positive for methadone as well as other un-prescribed substances at the end of September 2012.

The Cabinet received a second report on the family in December 2012 regarding Mother's unstable mental health. The report stated Mother had gone to a hospital in Indiana because of depression and thoughts of suicide. She stated she was overwhelmed and homeless. At this time, the family had been living in a homeless shelter in Indiana. They had been evicted from the shelter after they had attempted to cheat on a drug test using their children's urine. Mother then tested positive for methadone that was not prescribed to her, and several other substances including cocaine, benzodiazepines, and phencyclidine. Father denied being prescribed methadone, but subsequently tested positive for marijuana and methadone. The Cabinet filed an Emergency Custody Order (ECO), and L.M.B., A.L.B., and G.E.B. were placed in foster care on December 14, 2012, and have since remained. Mother was pregnant with her fourth child, C.D.B. She gave birth in January 2013. The child was born addicted to methadone, and also had breathing and feeding issues. The child remained in the hospital to go through withdrawal from methadone, and was eventually discharged in February 2013 into foster care. The child's discharge diagnoses were neonatal abstinence syndrome, prenatal hepatitis C exposure, and prematurity.

After the ECO was filed, dependency, neglect, and abuse petitions were filed on behalf of the children. In January 2014, the Grant District Court

found the children to be neglected by Mother and Father. Specifically, the following findings of the dependency action were presented at the termination trial:

2. That for the past 7 to 8 years the parents have used illegal drugs[,] including heroin[,] and have continuously been on methadone. The father uses marijuana on a regular basis. Mother has tested positive for other drugs, including cocaine.
3. For the last few years[,] the parents of the children have not been able to provide a stable home. The parents, due to finances and the loss of employment, have been forced to relocate several times. These relocations have been with friends, homeless shelters and motels. These relocations are not in the best interests of the children.
4. The grandmother of the Mother continuously provides the family with \$800 per month. The parents use all of this money for methadone and not for anything else. The methadone use has continued for seven (7) years and counting.
5. Due to the relocations by the family, the children have been forced to change schools.
6. While at a homeless shelter one of the parents attempted to cheat on a drug test and both parents failed to disclose their methadone use. Due to these actions[,] the parents were evicted.
7. The Mother has some issues with her mental health. She is bi-polar and has depression. The Mother has been hospitalized for suicide threats. She takes no medicine for these conditions. The Mother has had some children while she was regularly taking drugs. This has affected the children at birth. The effect on the children later in life is unknown. The Mother has lied about her drug use on several occasions.
8. The Father has a criminal history with drugs and bad checks. In the past there have been outstanding warrants

for the Father. The Father has lied about his drug use in the past. The Father has allowed the children to be in the constant care of the Mother with knowledge of her illnesses, her drug use and her care of the children.

9. The Cabinet for Health and Family Services (CHFS) has investigated this family for some time. They have offered numerous services for the family. They have found places for the family to live. They have tried to help with the family's expenses. They tried to get Family Preservation Services involved. They have recommended mental health services. Without exceptions these attempts to help have been rebuffed by parents.

10. The children were removed from the parents by Court Order. When the children were delivered to foster care the following problems existed:

- a. Children behind in all medical services
- b. Children behind in all dental services
- c. Children behind in all eye services
- d. Children had lice
- e. Children had no property with them when delivered to foster parents
- f. [L.M.B.], the eldest child, has some mental and behavioral issues which were not full[y] treated.

11. While in foster care, the children's needs have been met and their performance has upgraded.

12. The parents, by their intentional actions, have continuously failed to put their children first. Instead, their drug use has been paramount. The parent's drug use has subjected their children to homelessness, has exposed the children to physical harm, has caused the children's needs to be subverted and has prevented the children from benefiting from the help the Commonwealth of Kentucky could provide.

(Commonwealth's Exhibit 7).

Beverly Roland was the first social worker from the Cabinet assigned to this case. She worked with the family from December 2012 through September 2014. Ms. Roland testified at the termination trial that Mother's and Father's issues initially identified by the Cabinet were a history of substance abuse, unemployment, homelessness, poor parenting, and untreated mental health issues. The Cabinet offered services to address these problems.

In their case plan, Mother and Father were asked to actively seek out housing and employment, and were provided subsidized housing information. Father was encouraged to get his GED in order to expand his employment opportunities. Mother and Father were encouraged to take and participate in parenting classes as well as asked to complete a substance abuse assessment and a mental health assessment. Also, regarding their substance abuse issues, Mother and Father were advised to begin reducing their daily methadone dosages. And finally, Mother and Father were asked to participate in random drug screens. Mother's and Father's case plans did not change throughout the proceedings because little to no progress was made on the plans, and their goals remained the same.

Ms. Roland testified that Mother and Father were initially very angry that their children had been removed. She stated that they did not really seem to understand why the children were removed from their care. After the fourth child was removed in January 2013, Mother was very upset. Ms. Roland testified she

went over the plan again that was initially developed for them for reunification with the children.

Mother and Father had been granted supervised visitation with the children. Visitation was stopped and re-started several times for various reasons, including one that Mother appeared to be under the influence during a visit. In September 2014, the court ordered that visitation be stopped. There have been no visits with the children since that time.

Ms. Roland testified that following up with Mother and Father could be difficult as there were several instances she had trouble locating them. She recounted at least eight different places where they had resided during her time on the case. They were constantly staying in various hotels or with family friends all over the area.

When Ms. Roland would meet with them to go over their progress, they would be optimistic about finding employment, but would never follow through with opportunities. Mother would find sporadic and inconsistent jobs, but Father did not obtain his GED or employment during Ms. Roland's involvement. Eventually, Mother and Father completed the initial substance abuse and mental health assessments and evaluations, but they did not follow the recommendations. Ms. Roland had to confront Mother and Father regarding noncompliance with drug screens and reduction of the methadone use. Mother and Father were not participating in the drug screens consistently and had actually increased their methadone dosages. Mother and Father would state they intended to reduce their

dosages, but when they would actually attempt it, the Cabinet would see drug screens positive for other substances. Mother and Father told Ms. Roland they had been in treatment (using methadone) since 2004. They stated they had stopped treatment for a year, but began using heroin, so they started treatment again sometime in 2011. Mother tested positive for methadone and benzodiazepines in June 2013. Ms. Roland testified that Mother and Father were not truthful with her about their drug use at several instances throughout their case.

Ms. Roland further testified that Mother and Father made insufficient progress on their case plans. She stated Mother and Father failed to provide essential care and protection for their children. Ms. Roland testified that Father could have found work, but chose not to and therefore, was not able to provide food, clothing, shelter, medical care, or meet the educational needs of his children. She testified that the ongoing risk to children presented by Father was related to his long-term substance abuse issues, his enabling of Mother's untreated mental health and substance abuse problems, and instability regarding employment and housing. Ms. Roland was of the opinion that neither parent had made the necessary changes demonstrating the ability to care for or protect their children. When her involvement ended in September 2014, Mother and Father faced the same issues as in December 2012 with virtually no improvement. Ms. Roland testified that every available service the Cabinet could have offered to Mother and Father was offered to them.

While Mother and Father were involved with the Cabinet, they also approached Catholic Charities for help. They told Catholic Charities in November 2013 they were living out of their car and needed housing. Mother was pregnant with her fifth child³ at this time. Mother and Father told Catholic Charities that their other children were living with Mother's grandparents in Ohio. Additionally, they failed to disclose they were receiving methadone treatment at Northern Kentucky Medical Clinic. Mary Fleischman, a supervisor at Catholic Charities, testified that Mother and Father were eligible for their services and seemed to really want and need the help. Mother and Father entered Catholic Charities subsidized housing in December 2013. Mother gave birth later that same month. When the child had to remain in the hospital to go through the process of withdrawal from methadone addiction, Catholic Charities confronted Mother and Father about substance abuse and offered additional services. They were offered a substance abuse assessment and Catholic Charities paid for their methadone treatment during this time. Mother and Father decided to participate in Catholic Charities adoption services and placed their fifth child for adoption. Ms. Fleischman testified that Catholic Charities then learned that Mother's and Father's four other children were not staying with grandparents, but were in the custody of the Cabinet. Upon learning this, Catholic Charities offered additional services, including parent and child interactive therapy (PCIT) and parenting classes.

³ Mother's and Father's parental rights to their fifth child are not at issue in this action.

Mother and Father claimed they did not tell the truth to Catholic Charities about their situation out of fear and embarrassment.

As time went on, the relationship between Mother and Father and Catholic Charities deteriorated. Mother and Father were not making any progress on the goals in their case plans. As months went by, still no progress was being made. Ms. Fleischman testified that failing to work a case plan (as well as not paying rent) can become grounds for eviction. Mother initially had a job when she and Father entered the subsidized housing. Based on her income, their rent was set at approximately \$170 per month. However, Mother and Father never paid any rent. After Mother gave birth to her fifth child, she lost her job. Catholic Charities advised Mother she needed a letter from her former employer stating that she was no longer employed so they could set the rent to \$0. Mother failed to provide such documentation and the rent remained at \$170 per month.

Mother and Father continued to fail to make any progress on their case plans, even with all of the assistance they were provided. Ms. Roland informed them that the Cabinet was moving forward with termination of their parental rights. Mother and Father were served with the termination petition in July 2014. In August 2014, Father received a \$35,000 settlement from an insurance company as a result of a car accident that occurred earlier that year. Despite the windfall, Mother and Father never paid any rent to Catholic Charities and were unable to make any changes to better their circumstances.

Ms. Fleischman testified that Mother's and Father's situation was much more complicated than it first appeared. Catholic Charities was forced to end the relationship with Mother and Father, and evicted them in September 2014. Catholic Charities had provided every opportunity to the parents to change their lives and reunite with their children. Mother and Father abused the limited resources of Catholic Charities as they are meant to be offered to people who would use such services to better themselves. Ms. Fleischman testified that Mother and Father were very angry about the eviction.

Brandilynn Medaugh is the case manager for supportive housing at Catholic Charities. She testified to specific daily interactions with Mother and Father while they lived in the Catholic Charities subsidized housing. She helped with all of Mother's and Father's basic needs and attempted to help them achieve progress on their case plans. She testified to several instances in which Mother and Father had been untruthful about their substance abuse and employment status. Ms. Medaugh observed Mother's unstable mental state on multiple occasions. After a disturbance in the home in March 2014 resulting in the arrest of Mother and Father, Ms. Medaugh served a warning letter on the parents about the incident. Ms. Medaugh testified that Mother became very upset and forcefully struck herself several times in the face. Father refused to take Mother to seek help. Ms. Medaugh also noticed bruising and needle marks on Mother's arm in June 2014. Mother stated the marks were from a doctor's appointment, but she never provided documentation as Ms. Medaugh had requested.

Overall, Ms. Medaugh testified to thirty home visits and fifty-eight other contacts with Mother and Father, either on the telephone or in person. Ms. Medaugh was forced to end a couple of sessions with Mother and Father early for her own safety. She testified that when Mother and Father were served with the eviction, Father was very angry, and he began yelling and using profanity. Ms. Medaugh testified that she found a large cup of urine in the refrigerator of Mother's and Father's living area after they had left the premises.

Anna Phillips, parenting educator at Catholic Charities, also testified. She provided the parent child interactive therapy (PCIT) and parenting classes to Mother and Father. Mother and Father did complete the parenting classes through Catholic Charities. Mother and Father participated in PCIT with A.L.M. and G.E.B. Their oldest child, L.M.B., refused to participate in the therapy. Mother and Father had separate PCIT sessions with C.D.B. Because C.D.B. was removed from their care immediately upon his birth in January 2013, the goal of the sessions was to build a bond with him. However, they were late for the sessions on several occasions, one time resulting in cancellation. Mother's behavior was problematic at times throughout the PCIT. There was concern by Ms. Phillips that Mother was under the influence as there were instances in which she was emotionally uncontrollable and behaviorally impaired. In sum, Mother was unstable and inconsistent with her interactions with the children and was not successful in PCIT.

Ms. Phillips testified that Father also participated in PCIT and made some progress. However, due to his relationship with Mother, Ms. Phillips stated

Father was placing the children at risk by enabling her instability. Ms. Phillips observed Father putting Mother's issues before the emotional safety of his children. Ms. Phillips testified that Father did not have the ability to keep his children safe because of his relationship with Mother and awareness of her unstable condition as well as the parents' lengthy and consistent substance abuse history. Ms. Phillips further testified that she experienced dishonesty and untruthfulness with Mother and Father as well as observed it with others involved in their case.

After Mother and Father were evicted from Catholic Charities housing in September 2014, Ms. Roland, the ongoing social worker from the Cabinet, retired. Also, supervised visitation between Mother and Father and the children was stopped. Mother and Father were assigned a new social worker from the Cabinet, Jessica Schneider. Ms. Schneider had the case for six months but never had any contact with Mother or Father despite attempting to contact them numerous times. Mother and Father made no progress on their case plans and did not complete any drug screens during this time.

Additionally, after Mother's and Father's eviction from Catholic Charities in September 2014, they began residing with Sherri Singleton. Ms. Singleton testified she met Mother and Father after she placed an ad on Craigslist to sell a car. Mother and Father responded to her ad. Ms. Singleton testified that when Mother and Father purchased the car from her, Mother was clearly under the influence of something. Mother and Father asked Ms. Singleton to help them

move and put their things in storage because they had just gotten evicted. They explained to Ms. Singleton that they were in treatment at Northern Kentucky Medical Clinic, their children were in foster care, and they told her they wanted to get clean. Ms. Singleton took Mother and Father into her residence. She did not charge them anything to stay with her, but only asked that they get jobs and not bring drugs inside her home. Ms. Singleton was informed of their case plans and tried to assist them to complete their goals. At the end of September 2014, Mother informed Ms. Singleton that she was pregnant with her sixth child.⁴

Ms. Singleton testified that Father never obtained employment for the time she knew him, and he continued to smoke marijuana. Mother did find a job, however, it did not last long. Mother and Father asked Ms. Singleton to adopt their child, and she agreed to do so. Mother was in a car accident in November 2014. She totaled the vehicle and was incoherent at the hospital. Ms. Singleton testified that Mother was taking substances other than methadone during her stay and pregnancy. Because their car was totaled, Ms. Singleton drove them to Northern Kentucky Medical Clinic every day for their methadone dose. Ms. Singleton later purchased a car as a Christmas gift for Mother and Father.

Mother's sixth child was born prematurely in March 2015. The child had to stay in the hospital for over one month to withdraw from methadone. Mother and Father had to leave Ms. Singleton's residence; they were not permitted

⁴ Mother's and Father's parental rights to their sixth child are also not at issue in this action.

to be near the child because of neglect charges. Mother and Father were very upset. Ms. Singleton put them up in a hotel for a couple of months.

Ms. Singleton purchased a foreclosed home and permitted Mother and Father to live there. They moved there in May 2015. Ms. Singleton testified that Mother and Father told her they were reducing their methadone dosages and Father had obtained employment. Ms. Singleton visited the home at the end of May 2015 and found Mother slumped over the sink under the influence. The police were called and Mother and Father were ordered to leave the residence. Ms. Singleton took Mother to a drop-in center in Cincinnati, Ohio, with the goal of getting Mother into a treatment facility. When Ms. Singleton went to pick Mother up the next day to take her to get her methadone dose, Mother had left the drop-in center on a bus. Ms. Singleton went to Northern Kentucky Medical Clinic and picked up Mother. She instructed Father to take Mother to the treatment facility, but he did not do so. Ms. Singleton testified that the police had to physically remove Mother and Father from the home at the end of May 2015 and she has had no contact with them since that time. Ms. Singleton testified that she saw no improvement in Mother's and Father's ability to care for themselves while she was involved with them. She felt they were incapable of turning their lives around.

Ms. Singleton also mentioned in her testimony that Mother and Father had received certified mail from Jessica Schneider, their newly assigned social worker, and she encouraged them to reach out to her.

Jane Lyons is the current social worker assigned to Mother and Father. She took over their case in April 2015. Ms. Lyons testified that she gave Mother her card in person at the annual permanency review. Ms. Lyons asked Mother to call her to discuss her case and any progress on her case plan. Ms. Lyons tried to engage Mother and Father regarding their case, but never received any response. She testified that she sent letters to Mother's and Father's attorneys asking to have them contact her. Mother finally responded to a letter that Ms. Lyons had sent. Mother and Ms. Lyons had a telephone conversation around June 1, 2015. Ms. Lyons testified that Mother was very upset about the situation with Ms. Singleton so they did not get to discuss her case plan or her children in foster care. Mother told Ms. Lyons they were living in a motel. Ms. Lyons testified that she spoke with Mother the day before the termination trial. Mother stated they were living with a friend in Florence, Kentucky. Mother stated they were devastated when Ms. Roland left their case so they just gave up. Mother stated she was afraid of relapsing because of all of the stress with court. Ms. Lyons testified that Mother did not ask about her children. Also, Ms. Lyons stated that she had never met or spoken with Father despite attempts to contact him.

Julie Jernigen, attorney for the Grant County Child Support Office testified that Mother and Father have child support obligations for their three oldest children but were not current on them. The obligations were established in March 2013 and set at \$20 per month per child. Father's arrearage was approximately

\$700 and Mother's was approximately \$840. A few payments had been made from various wage garnishments and interception of income tax refunds.

Brian McComas, an employee with the Family Support division of the Cabinet, testified that Mother and Father had filed applications for eligibility for food stamps and medical assistance since 2003. Mother and Father had provided various employers for Mother, but Mr. McComas stated that the system had no reported employment for Father since they had been applying. Their most recent application was made in April 2015. It reported no income or employment for either Mother or Father. This information contradicted pleadings in the termination case filed by the parents just days before the April 2015 application. In the court filing, Father stated that he was employed.

Father testified that he started methadone treatment in 2004 after he began abusing pain pills for injuries he sustained in a four-wheeler accident. He was out of treatment for one year, but later resumed treatment. At the time of trial, he was still in treatment at Northern Kentucky Medical Clinic receiving a daily dose of methadone.

Father testified that after he dropped out of high school, he learned how to lay flooring. He also learned plumbing. Father testified that he worked flooring and plumbing jobs for several years prior to the Cabinet's involvement.

Father testified that he felt he has done everything the Cabinet has asked him to do. However, he also testified that at the time of the termination trial he did not have employment, had not obtained his GED, did not have stable

housing, was still on methadone, and did not complete the psychological evaluation he was asked to undergo. He claims he and his wife were victims of Ms. Singleton. He testified that he felt she wanted their baby and took their money. He claims he gave Ms. Singleton \$15,000 of his settlement. He also claims that he tried to pay Catholic Charities with the money, but they would not accept it. Father testified that he had approximately \$4,000 of the settlement remaining, however, he and Mother still had child support arrearages. Father stated that he has not gotten an apartment because he was trying to save money.

Father claimed that Mother has never used drugs because he has been with her every day. Father told the court that if he could just get his children back, it would help him complete everything else he needed to do. He assured the court he would find a job and get a place to live. He testified that he does not plan on taking methadone for the rest of his life, and felt the Cabinet held the methadone use against him.

Mother's Grandfather testified concerning how Mother and Father came to be in their current state. He stated when Mother was sixteen years old she became pregnant with Father's and her first child. He testified that Mother and Father lived with him and his wife in Ohio while Mother finished high school and Father worked installing carpet. Mother and Father then moved to Kentucky. Mother's Grandfather testified that he constantly had to help them out with money. He stated that Mother and Father lacked parenting skills, and they argued all the time. Grandfather testified that he bought them a trailer to live in, but that Father

failed to regularly maintain the trailer. Grandfather noticed that things were spiraling out of control when he and his wife came to visit and found Mother slumped over the sink. He stated he observed several instances where Mother appeared to be under the influence while caring for the children. Grandfather testified he told Father to take Mother to get help, but Father would not listen. Recalling that Mother's mother was bipolar, he suspected that Mother had mental health issues as well.

Grandfather stated that neither parent was ever a responsible spouse or a parent. They made contact with Grandfather only when they needed money. Grandfather testified that he did not really know what was going on until the Cabinet became involved.

The three oldest children are in a foster-to-adopt home together. They are bonded with their foster family. The children each have mental health issues that require specialized treatment. They have been in counseling and on medication, and their behaviors are improving. The youngest child involved in this action, C.D.B., was placed in a different foster home than his siblings. The child is developmentally on target.

After hearing all of the testimony at the termination trial, the Grant Circuit Court entered findings of facts, conclusions of law, and order of judgment terminating Mother's and Father's parental rights to L.M.B., A.L.B., G.E.B., and C.D.B. The family court found the children abused and neglected. KRS 625.090(1)(a). It also found that termination was in the children's best interests,

KRS 625.090(1)(b), and found that Mother and Father were unfit to parent the children because: (1) they continuously failed to provide the children essential parental care and protection; (2) they continuously failed to provide basic necessities for the children; and (3) the children have been in foster care for fifteen of the most recent twenty-two months preceding the filing of the termination petition. KRS 625.090(2)(e), (g), and (j). Father now appeals.

This Court's review in a termination of parental rights matter involves whether the family court's decision was clearly erroneous. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998). Kentucky Rule of Civil Procedure (CR) 52.01. Although the family court is required to base its findings on clear and convincing evidence, those findings will not be disturbed "unless there exists no substantial evidence in the record to support [the] findings." *Id.*

Termination of parental rights is governed by Kentucky Revised Statutes (KRS) 625.090. The statute requires satisfaction by clear and convincing proof of a three-prong test. First, the child must have been found to be an "abused or neglected" child, as defined by KRS 600.020. KRS 625.090(1)(a). Second, termination must be in the child's best interest. KRS 625.090(1)(b). Third, the family court must find at least one ground of parental unfitness. KRS 625.090(2). Consideration of the second and third parts require the family court to analyze several enumerated factors. Even upon satisfaction of all three prongs, the family court may exercise its discretion not to terminate if the parents prove by a preponderance of the evidence that the children will not be abused or neglected in

the future. KRS 625.090(5); *D.G.R. v. Commonwealth, Cabinet for Health and Family Services*, 364 S.W.3d 106, 111 (Ky. 2012).

Father maintains that there is insufficient evidence to support the family court's decision to terminate his parental rights. He disagrees with the family court's findings relating to his parental unfitness. Only one ground is needed to satisfy this statutory parameter. *See* KRS 625.090(2) (termination shall only be ordered if the family court finds the existence of at least one of the statutory grounds enumerated in KRS 625.090(2)). In this case, the family court found three grounds of parental unfitness, including KRS 625.090(2)(e), (g), and (j).

Father claims he took the steps required of him by the Cabinet to have his children returned to his care. Specifically, Father contends first that he did not put Mother's interest before his children's safety; second, he was unable to find employment because he was injured in an automobile accident; and third, his methadone use is lawfully prescribed and he, on occasion, reduced his dosage as required by his case plan.

We are not persuaded by Father's representations as the record contains sufficient evidence to support the family court's decision to terminate Father's parental rights.

The court's finding that Father placed the children at risk because he enabled Mother's instability, substance abuse, and mental health issues is supported mainly by the testimony of Anna Phillips and her observations of the

family in PCIT. When Mother was having difficulty with her interactions with the children or showed up to a session under the influence, Father would tend to Mother's needs instead of putting the emotional safety of his children first. He was her caretaker, yet failed to get her in appropriate treatment despite encouragement from Mother's Grandfather, the Cabinet, Catholic Charities, and Ms. Singleton. Father denied Mother ever used drugs in his testimony despite the fact she was participating in methadone treatment and had numerous positive drug screens for various un-prescribed substances. Accordingly, there was substantial evidence of record supporting this finding of the family court.

Father further contends that he was unable to find employment because he was injured in an automobile accident. However, in review of the record, the children were removed from Mother's and Father's care in December 2012; Father's accident occurred in January 2014. Even prior to the accident, Father lacked steady and legitimate employment history. Father was consistently untruthful to Cabinet workers, Catholic Charities, and Ms. Singleton about his efforts to obtain employment. As of the termination trial, Father testified that he had just lost his job, so he was again unemployed.

Next, Father asserts that he is following a physician's order in taking his daily prescribed methadone and that he had made an effort to reduce his dosage as was called for in his case plan. Even so, the goal of methadone treatment, as was testified to at trial, and the goal of Father's case plan was to begin to reduce his dosage and ultimately become drug-free. On the occasions when Father

attempted to reduce his dosage, he would produce drug screens positive for marijuana. Furthermore, Father testified that he had been in methadone treatment since 2004 with a one-year hiatus. The court heard testimony that the time frame for becoming methadone-free varies significantly among individuals depending on various factors. Nevertheless, based on Father's history and the evidence presented at trial, it was not unreasonable for the court to conclude that there was no reasonable expectation of improvement in parental care and protection in the immediately foreseeable future.

Despite Father's representations that he did everything the Cabinet asked of him in his case plan, he admitted in his testimony at trial that he did not have a job, did not have stable housing, was still using methadone daily, and did not do all of the evaluations he was asked to complete. In sum, there is substantial, clear, and convincing evidence of record supporting the family court's parental-unfitness findings as they pertain to Father.

Lastly, Father contends that, in accordance with KRS 625.090(5), he met his burden of proof by a preponderance of the evidence that the children will not continue to be abused or neglected if returned to his care. The statute allows the court to exercise its discretion not to terminate upon such a showing. He claims he demonstrated this through his commitment to and completion of the tasks of his case plan. Certainly, Father has not met this burden considering the absence of any change in his circumstances. Based on the preceding discussion

and our review of the record, we cannot say the family court erred in its exercise of discretion under KRS 625.090(5) to terminate Father's parental rights.

This Court cannot overturn a family court decision which is grounded on the evidence presented and is the result of an exercise of sound discretion.

Therefore, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Steven N. Howe
Dry Ridge, Kentucky

BRIEF FOR APPELLEES:

Erika L. Saylor
Louisville, Kentucky