

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

NO. 2019-CA-000901-ME

D.B.K.

APPELLANT

v. APPEAL FROM GRANT CIRCUIT COURT  
HONORABLE R. LESLIE KNIGHT, JUDGE  
ACTION NO. 18-AD-00020

M.W.; R.W.; AND A.R.K., A MINOR CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; K. THOMPSON AND L. THOMPSON,  
JUDGES.

THOMPSON, K., JUDGE: D.B.K. (father) appeals from the Grant Circuit Court's judgment granting adoption without consent which terminated father's parental rights to A.R.K. (child) and allowed child to be adopted by M.W., child's maternal grandmother (grandmother), and R.W., child's maternal step-grandfather (grandfather) (collectively grandparents). Father argues there is insufficient

evidence to support the termination, and the circuit court erred in failing to find that child will not be abused in the future.

Child was born in May 2010 to father and J.A.S. (mother) (collectively parents), when father was twenty-nine years old. In June 2010, grandparents married.

Beginning in 2013, the Cabinet for Health and Family Services began receiving reports that child's parents were using drugs. In April 2014, child began residing with grandparents; parents were using heroin and homeless. Grandparents reported the situation and the Cabinet instituted a dependency, neglect, and abuse (DNA) case. On April 14, 2014, pursuant to an emergency removal petition, child was found dependent and continued in grandmother's care. On May 13, 2014, grandmother was granted temporary custody of child. Father and mother were ordered to submit to drug screens and, if negative, were permitted supervised visitation.

In the disposition hearing in June 2014, child was continued in grandparents' care; father and mother were ordered to cooperate with the Cabinet and ordered to pay child support.

In November 2015, mother died of a drug overdose. In December 2015, grandparents were granted permanent custody of child in the DNA case. The district court found that mother was deceased, and father was incarcerated.

In April 2018, grandparents instituted an action for involuntary adoption of child. At the trial, held on May 3, 2019, the circuit court heard testimony from grandmother, grandfather, Jenny McComas (a Cabinet supervisor), and father. Father was present from the Pickaway Correctional Institute in Ohio via video conferencing and was represented by counsel in the courtroom.

Grandmother testified mother tried to battle drug addiction and would do well for a while before using again. Grandmother testified mother went back to using drugs when father was released from jail in 2014 and, shortly thereafter, child began residing with them when mother was evicted from her home.

Grandmother explained she offered to keep child and help mother and father while they got their lives on track, but it was quickly evident that they were not going to be able to do that, so she contacted the Cabinet hoping they could give parents guidelines for what they needed to do.

Grandmother testified she was granted custody in April 2014. To her knowledge, father and mother never completed the Cabinet's plan.

While father was not on child's birth certificate, grandmother stated there was never any doubt that father was child's parent. However, despite father acknowledging he was child's father, father's last physical contact with child was in 2014.

In the five years since then, grandmother testified that father only called her on the phone twice. He called her in 2015 when child was in kindergarten and father was incarcerated locally and in a treatment program. She encouraged father to get his life together and permitted him to speak to child.

Father next contacted grandmother on Thanksgiving Day 2017, having been released from prison the day before. Father told her that he intended to be a part of child's life, thanked her for what she had done for child, and said he wanted her to continue to be a part of child's life. Grandmother learned father was arrested the following Monday.

Grandmother testified father has been incarcerated the majority of child's life. She stated that even during his last two calls father never asked about child. Grandmother also testified that father never provided anything to child since child was in her care and had never sent child a letter or card.

Grandmother testified child was in third grade and had special needs. When grandparents first received child, child would physically threaten people. Grandmother explained child required an individual education plan, but his behavior had improved with interventions at school, counseling, and medication. Grandmother opined she is able to care for child, has the means to support him because she and grandfather work for Toyota, has good moral character, has

successfully raised her daughters and all had turned out well other than mother, and she desired to adopt child and believed he should be adopted by them.

Grandfather testified he successfully raised his children to adulthood. He testified he was the paternal figure in child's life and wanted to adopt child. Grandfather opined it would be best for child to be adopted by them.

McComas testified the Cabinet became involved with child in April 2014, when they received a report that parents were homeless and using heroin and child was living with grandparents. As a result, the Cabinet filed a petition based on risk of harm. While mother admitted to dependency, McComas did not know of any adjudication relative to father. McComas testified grandparents were granted permanent custody on December 22, 2015, while father was in jail on fleeing and evading charges.

McComas testified the Cabinet's last involvement with child was before grandparents were granted permanent custody. Prior to that time grandparents actively worked with the Cabinet, there were no concerns, child was doing well in grandparents' care, and adoption was appropriate.

McComas testified that while mother was actively involved with the Cabinet and trying to work her case plan, father had very little contact with the Cabinet mostly due to his repeated incarcerations. While father never denied paternity he never indicated any desire to reunite with child.

Father testified he was incarcerated at Pickaway Correctional Institute in Orient, Ohio, based upon a five-year sentence for burglary, and anticipated being released on November 22, 2022. Father admitted he had prior convictions in Kentucky for drug charges, DUIs, and a burglary charge but emphasized he had no prior crimes against a child and was never adjudicated to have abused or neglected child.

Father acknowledged paternity and said he was not an active addict when child was born. He explained that he attended child's birth at the hospital, having just graduated a drug rehabilitation program while he was being overseen by the Kenton County Drug Court for possession of heroin in 2009.

Father testified he last saw child on child's birthday in 2015. He attempted to see child on Father's Day 2017 by going to grandparents' house, but they were not at home. He testified he called a handful of times, but only reached them once or twice. He stated he spoke to grandmother in 2017 about wanting to see child. He assumed grandparents would not let him speak to child and he did not want to cause trouble by asking.

Father testified that he did not talk to grandparents about child because he could get information through his family. He explained that grandmother lets his mother see child about once a month for a weekend visit and his brother and brother's wife were friends with grandmother's daughter. Through

his family, he receives pictures and updates. When father was asked if he had talked to child on the phone when child was with his mother, he stated that he had not because his family would not let him for fear that grandmother would stop their visits.

Father admitted he does not pay child support other than through tax intercept, but claimed he used to pay child support to mother. He testified he was concerned that perhaps grandparents did not want child because previously they wanted grandmother's daughter to take custody.

Father asked for a chance to be in child's life and better himself. He testified he had his GED, and when he was released he wanted to get a job and there were programs to help him when he gets out. He hoped to have contact with child when he is released, explaining he did not want to lose child forever like had happened to him with his own father.

The written evidence included the Cabinet's report recommending adoption, child's guardian *ad litem* report which also recommended adoption, certified copies of father's criminal records, the DNA case records, and the Cabinet's records.

The certified copies of father's criminal records consisted of records from Boone, Carroll, Campbell, and Kenton Counties in Kentucky, along with Hamilton County in Ohio. Father had an extensive criminal record both before and

after child's birth. In 2000, father pled guilty to second-degree burglary and was sentenced to ten years of incarceration, probated for five, and was also separately convicted of DUI twice and charged with wanton endangerment, which was conditionally discharged for two years. In 2003, father's probation on the burglary conviction was revoked after he was found guilty of possession of marijuana.

Following father's release, in 2009, father was again found guilty of possession of marijuana. Later that year, pursuant to a plea agreement, father pled guilty to first-degree possession of a controlled substance, first offense (heroin), and possessing drug paraphernalia in exchange for the Commonwealth's dismissal of a second-degree persistent felony offender charge. Father was sentenced to five years of incarceration, probated for five years. In 2010, father pled guilty to DUI, which resulted in father's probation being revoked and him having to serve his remaining sentence on his felony.

Father was released in 2014, and in 2015, father pled guilty to first-degree fleeing/evading police, first-degree wanton endangerment, and possession of drug paraphernalia and was sentenced to a total of three years of incarceration.

In 2017, father was charged with receiving stolen property, a truck, and was conditionally discharged for two years. Later in 2017, father was indicted in Ohio for burglary. In 2018, he pled guilty pursuant to a plea agreement in



exchange for a five-year sentence to be followed by three years of supervision.

This is the sentence father is currently serving.

The circuit court granted grandparents' petition. The circuit court found that father was offered services by the Cabinet but failed to engage in services or participate in any case planning, and there were no other available services likely to bring about a lasting parental adjustment enabling return of child to father's custody. The circuit court found that father failed to protect and preserve child's fundamental right to a safe and nurturing home and made a finding that father neglected child.

The court found that father engaged in a pattern of criminal conduct rendering him incapable of caring for the immediate and ongoing needs of child. This included findings that father had numerous felony convictions and incarcerations both prior to and after child's birth, including trafficking in controlled substances, burglary, and theft, and would remain incarcerated until November 2022.

The circuit court found that father abandoned child for not less than ninety days. The circuit court found father did so by not seeing child since 2014, not providing a home to child prior to that, only talking to the child one time by telephone since child was placed with grandparents, and never sending anything to child.

The circuit court found that father, for a period of not less than six months, continuously or repeatedly failed or refused to provide or has 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. The circuit court found that father provided no parental care since child began being cared for by grandparents in 2013, never provided food, clothing, or shelter for child since that time, and even then it was sporadic, never took child to the doctor, never reached out to grandparents to ask about child's school progress, and never reached out to grandparents or child around birthdays or holidays. The circuit court stated, "the child simply does not exist in [father's] life."

The circuit court found that it was in child's best interest that grandparents adopt him and that father's parental rights be terminated because child made improvements in grandparents' care, they were his only caregivers, and he bonded well with them. The circuit court found that grandparents have appropriate housing, can care for child, are the best qualified persons to be his parents, have sufficient ability to nurture, protect, and educate him, they both have longstanding employment with Toyota manufacturing, and they are of good moral character. It noted that the Cabinet recommended the adoption.

The circuit court made conclusions of law that child was abandoned for not less than ninety days, and for a period of not less than six months father has continuously engaged in criminal conduct rendering him 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 child, and that these grounds yielded a finding that child is neglected. The circuit court concluded that “[father] has a criminal and substance abuse history that poses a risk to any child in his care.” The circuit court terminated father’s parental rights and granted grandparents’ adoption petition.

“[A] petition seeking adoption of a child against the child’s biological parent’s wishes is a discrete subset of involuntary termination of parental rights cases,” which is governed by Kentucky Revised Statutes (KRS) Chapter 199. *C.M.C. v. A.L.W.*, 180 S.W.3d 485, 490 (Ky.App. 2005). Accordingly, “[p]rovisions of KRS Chapter 625 are applicable only as permitted by KRS 199.500(4), and as specifically enumerated in KRS 199.502.” *R.M. v. R.B.*, 281 S.W.3d 293, 297 (Ky.App. 2009).

While KRS 199.500(1) provides that “[a]n adoption shall not be granted without the voluntary and informed consent” of the parents, KRS 199.500(4) states:

Notwithstanding the provisions of subsection (1) of this section, an adoption may be granted without the consent

of the biological living parents of a child if it is pleaded and proved as a part of the adoption proceedings that any of the provisions of KRS 625.090 exist with respect to the child.

KRS 199.502(1) states that “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 at least one enumerated condition which would establish abuse or neglect and a ground for termination exists.

KRS 625.090, which governs the grounds for involuntary termination of parental rights, provides that in order for such a termination to occur, the Court must find by clear and convincing evidence that the child either is an abused or neglected child or was previously adjudged to be an abused or neglected child and that termination of the biological parents’ parental rights is in the best interest of the child. That statute later sets forth the factors that the Court must consider in determining the best interest of the child.

*C.M.C.*, 180 S.W.3d at 491 (footnotes omitted).

After hearing the case, the court shall enter a judgment of adoption, if it finds that the facts stated in the petition were established; that all legal requirements, including jurisdiction, relating to the adoption have been complied with; that the petitioners are of good moral character, of reputable standing in the community and of ability to properly maintain and educate the child; and that the best interest of the child will be promoted by the adoption and that the child is suitable for adoption.

KRS 199.520(1).

Father argues there is insufficient evidence to support the termination. We disagree. There is overwhelming evidence to support all of the factors for an involuntary adoption. While certainly father being incarcerated alone is an insufficient basis for termination, father has done nothing to maintain any relationship with child. The circuit court properly found neglect as part of the involuntary adoption proceeding, found grounds for termination, found that termination was in child's best interest, and found that the criteria of KRS 199.520(1) were satisfied.

Father argues the circuit court erred in failing to find that child will not be abused in the future. We disagree. Father has been incarcerated much of this child's life but did not engage in any efforts to stay involved in child's life or make any effort to provide for child within his limited means. Even should father be released as scheduled, he currently has no employment or housing waiting for him and there is no evidence that he would be able to care for child upon his release. In contrast, grandparents have been caring for child's needs for years.

Accordingly, we affirm the Grant Circuit Court's judgment granting adoption without consent which terminated father's parental rights to child and allowed child to be adopted by grandparents.

ALL CONCUR.

BRIEF FOR APPELLANT:

Stephen Bates, II  
Dry Ridge, Kentucky

BRIEF FOR APPELLEES M.W.  
AND R.W.:

Steven N. Howe  
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