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

NO. 2020-CA-0225-ME

T.R.F.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE DERWIN L. WEBB, JUDGE  
ACTION NO. 18-AD-500050A

D.A.H.; A.L.H.; A.P.F., a child; AND  
K.N.F., a child

APPELLEES

AND

NO. 2020-CA-0226-ME

T.R.F.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE DERWIN L. WEBB, JUDGE  
ACTION NO. 18-AD-500051A

D.A.H.; A.L.H.; A.P.F., a child; AND  
K.N.F., a child

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; COMBS AND JONES, JUDGES.

JONES, JUDGE: These consolidated cases arise out of petitions for adoption filed by the Appellee, D.A.H. (“Stepfather”), seeking to adopt the two biological children of his wife, A.L.H. (“Mother”), over the objection of the children’s biological father, T.R.F. (“Biological Father”). Following a hearing below, the family court granted the petitions. On appeal, Biological Father argues that the family court lacked jurisdiction to adjudicate the petitions under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”). Alternatively, Biological Father argues that the family court abused its discretion in finding that all of the prerequisites to adoption were satisfied in this case. Having reviewed the record and being otherwise sufficiently advised, we affirm.<sup>1</sup>

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<sup>1</sup> The family court cited to and applied KRS (Kentucky Revised Statutes) 625.090, the parental termination statute. However, these are adoption cases governed by KRS Chapter 199. As explained in more detail below, the family court’s reliance on certain sections of the parental termination statute was in error. Nevertheless, having reviewed the record, in conjunction with the family court’s findings and conclusions, we are confident that this error did not prejudice Biological Father. Even though the family court cited to the wrong statute, the family court made the required findings and conclusions necessary to support these adoptions. And, having reviewed the record, we are confident the family court’s factual findings are supported by substantial evidence.

## I. BACKGROUND

Biological Father and Mother never married but were in a relationship for approximately ten years. Two daughters were born to the couple during their relationship, K.F. and A.F (“the children”). The relationship between Mother and Biological Father was tumultuous. Biological Father had problems controlling his alcohol use and was frequently intoxicated. When intoxicated, Biological Father was often abusive towards Mother. The children witnessed Biological Father’s intoxicated and violent behavior.

After Mother and Biological Father ended their relationship, Mother filed an action against Biological Father in Clark County, Indiana, for custody and child support. The Indiana court granted sole custody to Mother and supervised visitation to Biological Father. However, by order entered December 12, 2016, the Indiana court suspended Father’s supervised visitation because he failed to comply with the court’s directive for him to obtain an agency or certified individual to supervise the visitation. The Indiana court further noted that visitation had been suspended for over a year on the recommendation of the children’s guardian *ad litem*, and any attempt to resume visitation at that time would not be in the best interests of the children.

Mother met Stepfather in 2014; she was living with the children in Indiana at that time. In 2016, Mother and the children moved to Kentucky to live

with Stepfather. Mother and Stepfather were married in October of 2017. On February 6, 2018, Stepfather filed petitions in the Jefferson Family Court seeking to adopt the children. Biological Father did not consent to adoption of the children. However, before answering on the merits, Biological Father moved to dismiss the petitions for lack of subject matter jurisdiction on the basis that the Indiana court had not relinquished exclusive, continuing jurisdiction after awarding Mother sole custody of the children. Ultimately, the family court denied Biological Father's motions to dismiss and set Stepfather's petitions for a hearing. The family court conducted the hearing over the course of two days on May 8, 2019, and October 23, 2019. Mother, Stepfather, Biological Father, and Biological Father's mother testified. The children were present and testified in chambers.

Stepfather testified that he has been a vital part of the children's lives since 2014 when he began dating Mother, is involved in the children's schooling and extracurricular activities, pays for the children's health insurance and private school, and desires to adopt the children as his own and to accept parental responsibility for them.

Mother testified that prior to her separation from Biological Father, Biological Father was intoxicated practically every night, and the children frequently witnessed him in an intoxicated state. She further testified that Biological Father frequently abused her in front of the children. At the time of the

hearing, Biological Father had not seen the children since Mother gained sole custody in December of 2015, a period of over three years.

The children testified that they considered Stepfather to be a parent to them and that he has been involved in their lives for some time. Both children desired to be adopted by Stepfather. The children had negative memories of their time with Biological Father. They recounted Biological Father's intoxicated behavior and explained that they frequently spent time at a neighbor's home to avoid being around Biological Father when he was intoxicated. K.F. specifically recounted an occasion when she and Mother locked themselves in a bathroom in an attempt to escape Biological Father. The children participated in counseling after Mother left Biological Father. Neither child had a desire to visit with Biological Father.

Biological Father denied he had an alcohol problem, but he subsequently admitted to having numerous DUI arrests. Biological Father conceded that he had not seen the children since 2015; however, he maintained that despite his physical absence from the children's lives, he provided for the children through child support. He testified that he was able to support the children as his annual salary was \$110,000 per year. However, when cross-examined Biological Father clarified that he did not directly make child support payments to Mother; rather, he gave his mother access to his bank account so that she could use his

money to assist the children. Biological Father admitted that his absence from the children's lives was occasioned by his failure to comply with the Indiana court's directives. However, he failed to supply the family court with any justifiable excuse for his noncompliance.

Biological Father's mother testified that Biological Father did not provide money to her to pay child support as he testified. Rather, she made payments to Mother from her own funds on Biological Father's behalf. She expected Biological Father to repay her.

After summarizing the testimony and other evidence of record, the family court made the following conclusions of law:

The Kentucky termination statute, Kentucky Revised Statutes (hereinafter KRS) 625.090, provides that the Court may involuntarily terminate parental rights if the court finds by clear and convincing evidence that a three-pronged test has been met: (1) the child/ren must be abused or neglected, as defined in KRS 600.020; (2) termination of parental rights must be in the child/ren's best interest; and (3) the Court must find that any of the enumerated grounds per KRS 625.090(2) exists supporting termination.

When considering the best interests of the child/ren, the termination statute establishes different standards of proof for the Cabinet and the parents whose rights are to be terminated. While the Cabinet must prove the mandatory statutory allegations by clear and convincing evidence for this Court to terminate parental rights, parents must demonstrate by a preponderance of the evidence that the child/ren will not be abused or

neglected in the future to permit this Court to exercise its discretion in this termination proceeding.

. . . .

In this case, [Biological Father] has abandoned the children. [Biological Father] has not seen or cared for the children in several years, which led to sole custody being given to [Mother]. [Biological Father] is also found to be unjustifiably non-compliant with the Visitation Order from the Indiana Court. Additionally, [Biological Father] failed to provide food, shelter, medical, and educational necessities for the welfare of the children.

In addition, the Court was persuaded by the testimony of [Mother] and the children that the children experienced emotional harm as a result of observing physical abuse of [Mother] committed by [Biological Father].

The Court considered all evidence in light of the statutory factors. The Court finds that [Stepfather and Mother] are of good, moral character, have reputable standing in the community, and have the ability to properly maintain and educate the children to be adopted. The testimony was that the children are well-adjusted in their current placement and this is the most stable home the children have known. They are doing well in school. There were no allegations of mental or physical abuse from [Stepfather]. There was testimony of emotional harm and its effects on the minor children from observing [Biological Father's] repeated intoxicated-episodes and physical abuse towards [Mother]. [Stepfather] testified that resources were obtained to help the children on their journey to emotional recovery. It is the wishes of [Mother], [the minor children], as well as [Stepfather] that [Stepfather] be named their father through adoption. The adoption of [the children] would allow for their

continuous care, and the Court finds this to be in the children's best interests.

Record (R.) at 161-65.

This appeal followed.

## II. ANALYSIS

### A. *Subject Matter Jurisdiction*

Biological Father's first argument is that the family court lacked jurisdiction over the adoption petitions based on the UCCJEA. "The UCCJEA is a uniform law designed to deal with the problems of competing jurisdictions entering conflicting interstate child custody orders, forum shopping, and the drawn out and complex child custody legal proceedings often encountered by parties where multiple states are involved." *Officer v. Blankenship*, 555 S.W.3d 449, 453 (Ky. App. 2018) (internal quotation marks and citation omitted). The UCCJEA, codified in KRS 403.800 through 403.880, regulates child custody determinations, which are defined as orders relating to the "legal custody, physical custody, or visitation with respect to a child[.]" KRS 403.800(3). The UCCJEA expressly states that it does not apply in adoption cases. KRS 403.802 ("KRS 403.800 to 403.880 shall not govern an adoption proceeding or a proceeding pertaining to the



authorization of emergency medical care for a child.”); *Mauldin v. Bearden*, 293 S.W.3d 392, 401 (Ky. 2009).<sup>2</sup>

Biological Father asserts that the adoptions will terminate his parental rights and notes that termination of parental rights actions are covered by UCCJEA. While Biological Father’s argument has some logical appeal, we cannot ignore the express language in the UCCJEA. The fact that the adoptions will terminate Biological Father’s parental rights does not transform them into parental termination proceedings. “[T]he right of adoption exists only by statute; and, . . . there must be strict compliance with the adoption statutes.” *S.B.P. v. R.L.*, 567 S.W.3d 142, 147 (Ky. App. 2018) (citation omitted). The fact that an adoption works to terminate parental rights does not convert the action into one for parental termination. Since the UCCJEA expressly states that it excludes adoption proceedings, we cannot conclude that the family court erred when it found that it had jurisdiction over these adoptions notwithstanding the prior custody action in Indiana.<sup>3</sup>

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<sup>2</sup> The Uniform Child Custody Jurisdiction Act (UCCJA), the prior statute, did not expressly exempt adoptions, and our Supreme Court previously held that adoptions were subject to the UCCJA’s jurisdictional requirements because they involved custodial determinations. *Moore v. Asente*, 110 S.W.3d 336 (Ky. 2003). However, when the General Assembly adopted the UCCJEA in 2004, it specifically exempted adoptions.

<sup>3</sup> While the family court was correct in its ultimate determination, its statement that the issue of subject matter jurisdiction had been conclusively established by the time of the hearing because Biological Father did not seek interlocutory review of the denial of his motion to dismiss was in error. An interlocutory appeal would not have been appropriate. While Biological Father could

## ***B. Adoption***

Even though the family court characterized the action as one to terminate Biological Father's parental rights in various portions of its opinion, we must review the family court's findings and conclusions for compliance with the adoption statutes. *C.J. v. M.S.*, 572 S.W.3d 492, 497 (Ky. App. 2019). Kentucky has codified adoption in KRS Chapter 199. KRS 199.520(1) provides:

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.

“Upon granting an adoption, all legal relationship between the adopted child and the biological parents shall be terminated except the relationship of a biological parent who is the spouse of an adoptive parent.” KRS 199.520(2). Adoptions can be granted with or without the consent of the biological parents. KRS 199.500.

Here, we are dealing with an adoption without consent of Biological Father. When broken down, an adoption without consent involves four distinct

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have filed a petition for a writ with our Court, he did not waive his right to challenge subject matter jurisdiction at a later date by his failure to do so. “Defects in subject-matter jurisdiction may be raised by the parties or the court at any time and cannot be waived.” *Privett v. Clendenin*, 52 S.W.3d 530, 532 (Ky. 2001) (citing *Commonwealth Health Corp. v. Croslin*, 920 S.W.2d 46, 47 (Ky. 1996)).

considerations: (1) did the petitioner comply with the jurisdictional requirements for adoption; (2) have any of the conditions outlined in KRS 199.502(1) been established; (3) is the petitioner of good moral character, of reputable standing in the community, and of ability to properly maintain and educate the child as required by the first portion of KRS 199.520(1); and (4) finally, will the best interest of the child be promoted by the adoption, and is the child suitable for adoption as required by the final portion of KRS 199.520(1).

We begin with KRS 199.470. This statute contains the basic requirements that must be satisfied to petition for adoption in this Commonwealth. To petition for adoption, a person must be eighteen and “a resident of this state or [have] resided in this state for twelve (12) months next before filing[.]” KRS 199.470(1). The petition should be filed in the county where the petitioner resides. *Id.* Stepfather pleaded that he is a resident of Kentucky; he filed the petition in Jefferson County where he resides with Mother and the children. He verified these assertions under oath during the hearing, and nothing in the record disputes them.

Next, KRS 199.470(3) requires that the children must have resided continuously with the petitioner “for at least ninety (90) days immediately prior to the filing of the adoption petition.” The record establishes that the children have lived continuously with Stepfather since 2016 when Mother and the children moved to Kentucky, a period well over ninety days.

Generally, a petition for adoption cannot be filed “unless prior to the filing of the petition the child sought to be adopted has been placed for adoption by a child-placing institution or agency, or by the cabinet, or the child has been placed with written approval of the secretary[.]” KRS 199.470(4). If approval is required, “a copy of the written approval of the secretary of the Cabinet for Health and Family Services or the secretary’s designee shall be filed with the petition.” KRS 199.490(3). However, approval and/or placement by the Cabinet is not required where, as in this case, the petition is being filed by a stepparent. KRS 199.470(4)(a).

The next step requires consideration of whether Stepfather proved any of the conditions outlined in KRS 199.502(1). This statute provides:

(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.

KRS 199.502(1).

While the family court did not explicitly cite to KRS 199.502(1), it did conclude that Biological Father had abandoned the children for a period well exceeding ninety days, which would satisfy KRS 199.502(1)(a). To this end, the family court noted that Biological Father had not seen or cared for the children in several years. It also concluded that Biological Father had not provided the children with food, shelter, medical care, or educational necessities. These findings are supported by the testimony of record. Biological Father admitted that he had not seen the children in several years and could not provide any justifiable explanation for his failure to comply with the Indiana court's visitation orders. Additionally, while Biological Father testified that he was paying child support, the family court determined that he was not credible in this regard where further

testimony revealed that any support provided to the children came from Biological Father's mother and not from him.

The family court further found that Biological Father emotionally harmed the children by abusing Mother in front of them. This finding satisfies KRS 199.502(1)(c), which requires a finding 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[.]" Again, this finding is supported by the testimony of record. Mother testified that Biological Father repeatedly abused her in front of the children. The children testified to being afraid of Biological Father due to abuse of Mother and being distressed by it. The children received counseling after Mother left Biological Father. This testimony was more than sufficient to show that Biological Father's abuse of Mother in front of the children caused them great emotional harm.

However, citing KRS 625.090, Biological Father asserts that there was no proof that he actually abused the children. KRS 625.090 is only applicable to the extent specified in the adoption statutes. As our prior case law makes clear, adoption without consent does not require that all the requirements of the termination statute be satisfied. Specifically, adoption without consent does not require a finding by the family court that the child had been neglected or abused or a consideration of whether additional services might be provided to bring about

reunification. *B.L. v. J.S.*, 434 S.W.3d 61, 67 (Ky. App. 2014). In fact, KRS 199.500(4) provides that adoption without consent may be granted if it is pleaded and proved as part of the adoption proceedings that any of the provisions of KRS 625.090 are met with respect to the child. Any does not mean all. *A.F. v. L.B.*, 572 S.W.3d 64, 70 n.8 (Ky. App. 2019).

The third requirement to support adoption is that the family court must find that the petitioner is of good moral character, of reputable standing in the community, and of ability to properly maintain and educate the child as required by the first portion of KRS 199.520(1). The family court made these findings on page five of its order, and they are supported by the testimony of record.

Lastly, the family court must determine that adoption is in the child's best interest. To this end, the family court noted that: (1) the children have been living with Mother and Stepfather for some time and are well adjusted; (2) their home with Mother and Stepfather is the most stable home they have ever known; (3) Stepfather is involved in the children's educations and extracurricular activities; (4) the children are doing well in school; (5) there is no evidence of abuse or mistreatment by Stepfather; and (6) both the children and Mother desire the adoptions. Having reviewed the record, we conclude that the family court appropriately considered whether adoption was in the children's best interest.



### III. CONCLUSION

For the foregoing reasons, we affirm the judgments of adoptions entered by the Jefferson Family Court.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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