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Commonwealth of Kentucky

Court of Appeals

NO. 2021-CA-0585-ME

L.G.A. APPELLANT

APPEAL FROM MASON CIRCUIT COURT
v. HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 20-AD-00011

W.R.O.; K.N.R., A CHILD; AND
KENTUCKY CABINET FOR
HEALTH AND FAMILY SERVICES APPELLEES

AND

NO. 2021-CA-0586-ME

L.G.A. APPELLANT

APPEAL FROM MASON CIRCUIT COURT
v. HONORABLE STOCKTON B. WOOD, JUDGE
ACTION NO. 20-AD-00012

J.W.G.L.; K.A.M.R., A CHILD; AND
KENTUCKY CABINET FOR
HEALTH AND FAMILY SERVICES APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CALDWELL, CETRULO, AND JONES, JUDGES.

CALDWELL, JUDGE: L.G.A. ("Mother") appeals from the Mason Circuit Court's dismissal of her petitions for the involuntary termination of the parental rights of her children's fathers. We affirm.

FACTS

Mother filed petitions to involuntarily terminate the parental rights of her children's fathers. According to her petitions, Mother has two children: K.A.M.R. ("older child"), born in December 2005, and K.N.R. ("younger child"), born in November 2012. Mother was never married to either child's father.

Mother alleged that she and J.G.W.L. were together for eighteen months after older child's birth, but that he had not seen or had a relationship with older child for nine years. She further alleged that J.G.W.L. had been adjudicated the father of older child for child support purposes, but that he was not paying child support and was serving a forty-year sentence in prison.

Mother alleged that W.R.O. left Kentucky for Alaska while she was pregnant with younger child. She further alleged that W.R.O. was adjudicated the father of younger child for child support purposes and indicated he was paying

child support. But she alleged that W.R.O. had never seen or had a relationship with younger child.

Mother named the Cabinet for Health and Family Services ("the Cabinet") as a party to her actions for involuntary termination of both fathers' parental rights pursuant to KRS[1] 625.060(1)(b). The Cabinet stated in its responsive pleadings that it had no objection to the relief sought by Mother and there appears to be no dispute that the Cabinet had no prior history with any of these parents. J.G.W.L. (older child's father) filed a responsive pleading requesting that the petition to terminate his parental rights be dismissed.

Guardians *ad litem* were appointed for the children and for J.G.W.L. (older child's father). A warning order attorney was appointed for W.R.O. (younger child's father). Despite the warning order attorney's report indicating that he sent notice of the nature and pendency of the action to W.R.O., W.R.O. never participated in the proceedings from our review of the record.

The trial court ordered all parties to file briefs about whether the trial court had jurisdiction "where a parent petitions to terminate the parental right of another parent when the child was never placed with the Cabinet and when a DNA [Dependency, Neglect and Abuse] action was never opened."

[1] Kentucky Revised Statutes.

The Cabinet's brief to the trial court notes that a parent is among specified types of parties permitted to file an involuntary termination of parental rights petition under KRS 625.050(3). But it pointed out that the court could not grant the petition to involuntarily terminate parental rights under KRS 625.090(1) unless it made three required findings by clear and convincing evidence, including a finding that the Cabinet "has filed a petition with the court pursuant to KRS 620.180[.]" KRS 625.090(1)(b).[2]

The Cabinet again noted its lack of prior involvement with the family. And while it stated no objection to Mother's requested relief in principle, it further stated it had never filed any petition against any of the parents. The Cabinet indicated its view was that the court could not issue a valid judgment involuntarily terminating parental rights when one requirement for obtaining that judgment could not be met. It also noted the lack of a similar requirement that the Cabinet file a petition for adoption without a parent's consent under KRS 199.502.

[2] Under KRS 625.090(1), another required finding for granting termination is termination being in the child's best interest. KRS 625.090(1)(c). Additionally, the trial court must also find either: 1) a court having found or adjudicated the child to be dependent, neglected, or abused; or 2) the child being diagnosed with neonatal abstinence syndrome subject to certain exceptions; or 3) the parent having been convicted of a criminal offense involving abuse or neglect of any child under circumstances indicating risk of abuse or neglect to the child at issue. KRS 625.090(1)(a). The three findings required by KRS 625.090(1) must all be made by clear and convincing evidence.

In Mother's brief, she argued that there was a conflict between KRS 625.050(3) and KRS 625.090(1)(b). She contended that KRS 625.090(1)(b)'s requirement that the Cabinet have filed a petition under KRS 620.180 made no sense because KRS 620.180 concerns administrative regulations that the Cabinet must promulgate. She argued it made no sense to allow a parent to file a petition for the involuntary termination of the other parent's parental rights if the petitioning parent could not obtain the requested relief without the Cabinet's becoming involved through filing some petition of its own.

Mother expressed her wish to terminate the parental rights of her children's fathers, who were alive but allegedly not involved in the children's lives. She explained that she wanted to be able to control, through her last will and testament, what would happen to her children if she died. She noted that she had named the Cabinet as a party to the termination action as required by KRS 625.060, but the Cabinet was not the party actively seeking termination.

Mother also noted precedent recognizing a parent's superior right to determine how to raise his/her children, including *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000). She argued in her briefs to the trial court:

> If the statutory construction in this instance is found to be that the Cabinet is superior and can block a custodial parent's right to seek to terminate the parental rights of an uninvolved parent, that may be an unconstitutional

> restraint on a parent's right to decide what is best for their child.

Despite ostensibly challenging the constitutionality of applying KRS 625.090(1)(b) to block her attempt to obtain involuntary termination of the parental rights of her children's fathers, there is no indication in the written record in either child's case that the Attorney General was notified of any constitutional challenge to a statute. *See* KRS 418.075(1).

Mother concluded her briefs to the trial court by suggesting that the trial court could harmonize the conflicting statutes. She suggested this could occur by recognizing her right to file a petition for involuntary termination of the fathers' rights, yet also require the Cabinet to file a report or response stating its position on her request for relief.

Older child's father (J.G.W.L.), by counsel, filed a brief indicating his agreement with the Cabinet's brief. He again requested that the petition to involuntarily terminate his parental rights to older child be dismissed. Younger child's father did not file anything with the trial court from our review of the written record.

Following a hearing, the trial court issued orders–or perhaps more accurately opinions and orders–interpreting the relevant statutes and dismissing the petitions for involuntary termination of the fathers' parental rights. The trial court determined that due to the lack of DNA petition or other petition filed by the

Cabinet, it could not terminate the fathers' parental rights unless someone else sought to adopt the children. So, it dismissed the petitions, stating that its orders were final and appealable and that there was no just cause for delay.

Mother filed timely appeals. Despite again challenging the constitutionality of applying KRS 625.090(1)(b) in her appellate briefs, she did not notify the Attorney General of this constitutional challenge. *See* KRS 418.075(2). Further facts will be set forth as necessary.

ANALYSIS

Due to Lack of Compliance with KRS 418.075, this Court Cannot Reach the Constitutional Challenge to Applying Relevant Statutes to Case

KRS 418.075 provides in pertinent part that the Attorney General shall receive notice of any constitutional challenges to statutes:

> (1) In any proceeding which involves the validity of a statute, the Attorney General of the state shall, before judgment is entered, be served with a copy of the petition, and shall be entitled to be heard, and if the ordinance or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the petition and be entitled to be heard.
>
> (2) In any appeal to the Kentucky Court of Appeals or Supreme Court or the federal appellate courts in any forum which involves the constitutional validity of a statute, the Attorney General shall, before the filing of the appellant's brief, be served with a copy of the pleading, paper, or other documents which initiate the appeal in the appellate forum. This notice shall specify the challenged statute and the nature of the alleged constitutional defect.

Furthermore, our Supreme Court has made clear that strict compliance with KRS 418.075 is necessary and that courts cannot review constitutional challenges to statutes–including challenges to statutes "as applied" to particular cases or circumstances–when the Attorney General has not been notified of such challenges. *See Benet v. Commonwealth*, 253 S.W.3d 528, 532-33 (Ky. 2008). Thus, we must decline to opine on Mother's constitutional challenge. Instead, we confine our review to whether the trial court properly construed KRS 625.050 and KRS 625.090 together as making it impossible for Mother to prevail on her termination petitions under the facts here.

Without passing judgment on any constitutional issues, we are aware of Mother's argument that the trial court failed to discuss her constitutional challenge to the application of KRS 625.090(1)(b). But given the requirements of KRS 418.075(1) and holding of *Benet*, we cannot fault the trial court for not opining on constitutional challenges for which the Attorney General did not receive notice.

We Review the Trial Court's Interpretation of Relevant Statutes *De Novo*

The trial court's dismissal of the termination petitions was based solely on its interpretation of statutes and application of law to certain undisputed facts. We review such issues of statutory application and application of the law to undisputed facts under a non-deferential *de novo* standard of review. *See Jefferson*

County Bd. of Educ. v. Fell, 391 S.W.3d 713, 718 (Ky. 2012) (statutory construction is an issue of law subject to *de novo* review on appeal); *Heltsley v. Frogge*, 350 S.W.3d 807, 808 (Ky. App. 2011) (conclusion of law based on uncontested facts is subject to *de novo* review).

No Error in Trial Court Determining that Mother Could Not Prevail on Her Termination Petitions, Applying KRS 625.090(1)(b) to Undisputed Facts

Although we question the need for the trial court to expound on what would happen in adoption proceedings which were not before it in these actions, we agree with the trial court that it could not grant the petitions for involuntary termination of parental rights under the undisputed facts here. Mother could not show that the Cabinet had filed a petition as required by KRS 625.090(1)(b)–there is no dispute that the Cabinet had never filed any petitions in regard to this family.

The trial court took note that KRS 625.050(3), which allows for parents among other specified parties to file petitions for involuntary termination of parental rights, had been enacted in 1986. And it further took note that KRS 625.090(1) had been amended in 2018 to include a new requirement that the Cabinet had filed a petition "pursuant to KRS 620.180" for a court to properly grant a petition for involuntary termination of parental rights. It regarded KRS 625.090(1) as the more recent and more specific statute. So, to the extent that KRS 625.090(1) conflicted with KRS 625.050(3), the trial court viewed KRS 625.090 as controlling. Thus, despite any conflict with KRS 625.050(3), the trial court knew

it could not ignore KRS 625.090(1)(b)'s requirement that the Cabinet have filed a petition pursuant to KRS 620.180.

As KRS 620.180 is entitled as referring to administrative regulations and much of its text addresses the Cabinet's obligation to promulgate administrative regulations, the trial court admitted that it seemed somewhat unclear why KRS 625.090(1)(b) refers to KRS 620.180 instead of KRS 620.070. (KRS 620.070's title and text directly address the initiation of dependency, neglect, and abuse actions through the filing of petitions by interested parties.) The trial court interpreted KRS 625.090(1)(b)'s reference to the Cabinet's filing petitions pursuant to KRS 620.180 as meaning a DNA petition filed under KRS Chapter 620–since DNA proceedings must conform to administrative regulations adopted under KRS 620.180. And it noted that DNA actions were subject to various procedural requirements including certain time deadlines under KRS 620.180(2)(a)-(d).[3]

The trial court rejected Mother's argument that KRS 625.090(1)(b) frustrated the purpose of KRS 625.050. Noting its prior holding that the reference to a petition filed by the Cabinet under KRS 620.180 meant a DNA petition, it

[3] The trial court noted in a footnote that KRS 620.180(2)(c)3.'s requirement that the Cabinet must file a petition for termination of parental rights within a certain time period after a child was committed to the Cabinet was not applicable to the instant case since the children were never committed to the Cabinet's custody.

concluded that a parent could only succeed in petitioning for the involuntary termination of the other parent's parental rights if the Cabinet had previously filed a DNA petition against the other parent.

The trial court further held that the meaning of KRS 625.090(1)(b) was clear and that there was no legislative history indicating that the language of the 2018 amendment was adopted by mistake. So, it was constrained to assume that the legislature intentionally added the new requirement for a Cabinet petition and it deferred to the legislature's prerogative to clarify or change the requirement.

As the Cabinet never filed either a petition for termination of parental rights nor a DNA petition, the trial court held that Mother could not presently fulfill all requirements to succeed on her termination petitions set forth in KRS 625.090. Thus, it dismissed her petitions to involuntarily terminate the fathers' parental rights.[4]

[4] Though not directly at issue given the lack of indication in the record of any other person seeking to adopt the children, the trial court further stated in dicta that its decision did not require that the Cabinet have filed a DNA petition in order for a prospective parent to potentially succeed in adopting a child. We recently discussed the different standards for granting relief in proceedings for adoption without parental consent under KRS 199.502 versus proceedings for termination of parental rights under KRS 625.090 in *A.K.H. v. J.D.C.*, 619 S.W.3d 425, 427 (Ky. App. 2021) (holding that trial court erred in applying KRS Chapter 625 standards to petition for adoption without a parent's consent instead of KRS Chapter 199 standards and explaining "one of the fundamental differences between termination of parental rights cases and adoption without consent cases is the absence of an abuse or neglect requirement in the adoption without consent statute."). *See also id*. at 431 ("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."). Although the trial court here did not need to opine on whether the same requirement applied to adoption proceedings not presently before it, the trial court was not incorrect in recognizing that termination of parental

Despite Mother's arguments on appeal that the trial court's attempt to harmonize any conflicts in KRS 625.050 and KRS 625.090 are in error and that KRS 625.090(1)(b)'s reference to petitions under KRS 620.180 makes no sense, we discern no error in the trial court's conclusion that Mother could not prevail on her termination petitions. Regardless of exactly what type of petition the legislature intended to refer to with its admittedly confusing reference to KRS 620.180, one of the three requirements for involuntarily terminating parental rights under KRS 625.090(1) is clearly that the Cabinet have filed some sort of petition–which it indisputably had not.

We do not discount Mother's concerns that, despite both fathers' alleged lack of involvement in the children's lives for the past several years, she would be unable to fully control–through her last will and testament–what would happen to her children upon her death if the fathers' parental rights are not terminated. However, Mother does not address the potential downsides to her children of terminating their fathers' parental rights–such as their losing any child support which their natural fathers would otherwise be obligated to pay.

Perhaps because a child risks losing financial support upon the termination of one parent's rights unless another party steps forward to adopt the

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rights cases are governed by different statutory requirements than adoption without parental consent cases.

child, the Cabinet points out in its appellee's brief that KRS 199.502 (adoption without a parent's consent) has different requirements than KRS 625.090 (involuntary termination of parental rights). In essence, it construes these statutes together to suggests that a parent can directly or indirectly obtain involuntary termination of the other parent's parental rights without the Cabinet filing any sort of petition only if a third party seeks to adopt the child–perhaps to promote the objective of having two parents providing care and support for a child whenever reasonably possible. Although this argument may not lack appeal, it was unnecessary for the trial court or Cabinet to address the differences in an adoption proceeding since there is no indication of any party seeking to adopt either child in these proceedings. Nonetheless, the Cabinet and the trial court correctly concluded that involuntary termination of parental rights could not be granted here in light of the undisputed lack of any petition regarding this family filed by the Cabinet.

Focusing solely on issues of involuntary termination of parental rights under KRS Chapter 625, KRS 625.090(1)(b) presumably reflects a legislative intent that a parent's attempt to involuntarily terminate the other parent's parental rights pursuant to KRS 625.090 should not succeed in the absence of reasons for the Cabinet to intervene in the family's affairs–such as allegations of dependency, neglect, or abuse. As eloquently stated in the Cabinet's appellee briefs:

> Bearing in mind the purpose of KRS 620.180, i.e. to expeditiously achieve permanency for children in foster

> care, and the general intent of KRS 620, which enumerates rights of children including "the right to a secure, stable family[,]" it stands to reason that the legislature intended to allow a TPR [termination of parental rights] judgment only when the Cabinet has filed a petition pursuant to either KRS 625 or KRS 620 seeking to provide a child with a secure, stable family.

If we have misread the intent of the General Assembly or if the General Assembly should conclude that the policy reasons articulated by Mother merit changes in KRS 625.090 to allow for the granting of involuntary termination of parental rights in certain circumstances in the absence of Cabinet petitions, the remedy is for the General Assembly to address these concerns through appropriate legislation. This Court cannot amend the clear statutory requirement set forth in KRS 625.090(1)(b). *See Lewis v. Jackson Energy Co-op Corp*., 189 S.W.3d 87, 94 (Ky. 2005) (reviewing court lacks authority to effectively amend a statute by interpreting it contrary to its plain meaning).

Thus, though we apply the non-deferential *de novo* standard of review, we need not disturb the trial court's judgments dismissing Mother's petitions for involuntary termination of the parental rights of her children's fathers. Further issues or arguments raised in the briefs which we do not discuss herein have been determined to lack merit or relevancy to our resolving this appeal.

CONCLUSION

For the foregoing reasons, we AFFIRM the judgments of the Mason Circuit Court.

CETRULO, JUDGE, CONCURS IN RESULT ONLY AND FILES SEPARATE OPINION.

JONES, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

CETRULO, JUDGE, CONCURRING IN RESULT ONLY:

Respectfully, I concur in result only. The amendment of KRS 625.090 in 2018 references KRS 620.180 which is an administrative regulation statute that has no applicability to the filing of an involuntary petition for termination of parental rights. KRS 625.050(3) specifically provides that a parent *can* file an involuntary petition as to another uninvolved parent. The amendment, as interpreted by the trial court, deprives a parent of the right to pursue termination of parental rights of an absent and uninvolved parent simply because that petitioning parent has raised the child without Cabinet involvement.

The reference in KRS 625.090(1)(b) seemingly requiring that the Cabinet must file a petition for dependency or neglect before a custodial parent can proceed to terminate rights under this Chapter conflicts with the separately granted rights under KRS 625.050 to a parent. I do not believe that the General Assembly intended to create this scenario where a parent who has cared for their child without Cabinet involvement is more restricted in protecting his/her child than a

parent who has been subject to Cabinet involvement and support. However, when interpreting a statute, "[o]ur main objective is to construe the statute in accordance with its plain language and in order to effectuate the legislative intent." *Cabinet for Families and Children v. Cummings*, 163 S.W.3d 425, 430 (Ky. 2005). I concur in the majority opinion, that we are bound by the plain language of the statute to uphold the trial court herein.

In its brief, the Cabinet for Health and Family Services notes that this issue is arising in several circuit courts and guidance is needed from the appellate courts or legislature regarding this statutory conflict. The Cabinet further noted no objection to the relief requested by this parent in this case.

The remedy is for the Supreme Court to address this conflict or for the General Assembly to address these concerns through appropriate legislation and all parties agree this needs to occur. However, I cannot fault the trial judge who attempted to follow the current statutory wording, nor do I believe this Court can reverse that opinion based upon the arguments presented to us.

JONES, JUDGE, DISSENTING: Admittedly, this is a difficult case. It requires this Court to interpret a relatively new statutory amendment, which neither this Court nor the Kentucky Supreme Court has previously addressed. Adding to the challenge, the amendment at issue, KRS 625.090(1)(b), is difficult to interpret and, at first glance, appears to be in conflict with KRS 625.050. While

the majority did a commendable job, on the balance, I cannot agree with its decision to affirm the circuit court. Therefore, for the following reasons, I most respectfully dissent.

"We liberally construe our reading of a statute with the goal of achieving the legislative intent of the General Assembly regarding the statute's purpose." *Maupin v. Tankersley*, 540 S.W.3d 357, 359 (Ky. 2018). The statute at issue, KRS 625.090, is part of the Kentucky Unified Juvenile Code. *See* KRS 600.010. The General Assembly has explicitly stated that the Juvenile Code must be interpreted to effectuate its primary purposes, including: (1) "protection of children"; (2) "strengthening and encouragement of family life for the protection and care of children"; (3) "strengthening and maintaining the biological family unit"; and (4) "offering all available resources to any family in need of them[.]" KRS 600.010(2)(a). Additionally,

> [i]t shall further be the policy of this Commonwealth to provide judicial procedures in which rights and interests of all parties, including the parents and victims, are recognized and all parties are assured prompt and fair hearings. Unless otherwise provided, such protections belong to the child individually and may not be waived by any other party.

KRS 600.010(2)(g).

With these broad purposes in mind, one must first consider the language of the statute itself. *Shawnee Telecom Res., Inc. v. Brown*, 354 S.W.3d

542, 551 (Ky. 2011) ("We derive [the General Assembly's] intent, if at all possible, from the language the General Assembly chose, either as defined by the General Assembly or as generally understood in the context of the matter under consideration."). KRS 625.090 provides in relevant part:

> (1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that:
>
> (a) 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;
>
> 2. The child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding;
>
> 3. The child is found to have been diagnosed with neonatal abstinence syndrome at the time of birth, unless his or her birth mother:
>
> a. Was prescribed and properly using medication for a legitimate medical condition as directed by a health care practitioner that may have led to the neonatal abstinence syndrome; or
>
> b. Is currently, or within ninety (90) days after the birth, enrolled in and maintaining substantial compliance with both a substance abuse treatment or recovery program and a regimen of prenatal care or postnatal care as recommended by her health care practitioner throughout the remaining term of her pregnancy or the appropriate time after her pregnancy; or

> 4. The parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that physical or sexual abuse, neglect, or emotional injury to the child named in the present termination action is likely to occur if the parental rights are not terminated;
>
> ***(b) The Cabinet for Health and Family Services has filed a petition with the court pursuant to KRS 620.180***; and
>
> (c) Termination would be in the best interest of the child.

(Emphasis added.) Subsection (1)(b) was added by the General Assembly as part of its 2018 House Bill 1, a rather extensive act relating to child welfare.

Divining the General Assembly's intent with respect to the first part of subsection (1)(b) is a relatively straightforward endeavor because the relevant term, "petition," is defined within the Juvenile Code. *See* KRS 600.020. Specifically, "'Petition' means a verified statement, setting forth allegations in regard to the child, which initiates formal court involvement in the child's case[.]" KRS 600.020(48). However, a more difficult issue arises when we examine the next part of subsection (1)(b). The required "petition" must have been filed by the Cabinet "pursuant to KRS 620.180[.]"

KRS 620.180 is codified within the dependency, neglect, and abuse ("DNA") section of the Juvenile Code. As noted by the circuit court, KRS 620.180(1) vests the Cabinet with the authority to "promulgate administrative regulations to implement the provisions of this chapter [Chapter 620, Dependency,

Neglect, and Abuse]." It is not immediately apparent from the text of either KRS 625.090 or KRS 620.180 the type of petition the General Assembly intended to require with the addition of subsection (1)(b). When, as in this case, "the statute is ambiguous or otherwise frustrates a plain reading," we may "resort to extrinsic aids such as the statute's legislative history [and] the canons of construction[.]" *Shawnee Telecom Res., Inc.*, 354 S.W.3d at 551.

I find the legislative history to be particularly insightful because KRS 620.180 was also amended as part of the 2018 House Bill 1. Most important to the present issue, the amendment included the addition of a new section of the statute, KRS 620.180(2)(c), *requiring* the Cabinet to promulgate certain regulations for children committed to it:

> (c) By January 1, 2019, the establishment and implementation of the processes, procedures, and requirements to ensure ***that children committed to the cabinet as dependent, neglected, or abused and placed in foster family homes*** are timely reunified with their biological family or identified for and placed in a new permanent home. These processes, procedures, and requirements shall include but not be limited to the following:
>
> . . . .
>
> 3. A ***petition*** to the court of appropriate jurisdiction ***seeking the termination of parental rights*** and authority to place the child for adoption in accordance with this chapter and ***KRS Chapter 625*** no later than after a child has been committed

> to the cabinet for a total of fifteen (15) cumulative months out of forty-eight (48) months[.]

2018 Ky. Laws ch. 159 (HB 1) (eff. Jun. 27, 2019) (emphasis added).[5]

Given the fact that these two subsections were added at the same time, and refer to one another, I believe they must be read in tandem to interpret the provision at issue. *Ballinger v. Commonwealth*, 459 S.W.3d 349, 355 (Ky. 2015) (internal quotation marks and citation omitted) (holding that when the General Assembly's intent is not "perfectly apparent from the statute alone, we have recourse to the statutory context; to the legislative history, if there is any; [and] to the historical settings and conditions out of which the legislation was enacted[.]").

Doing so convinces me that KRS 625.090(1)(b) requires that for "children committed to the cabinet as dependent, neglected, or abused and placed in foster family homes[,]" KRS 620.180(2)(c), the Cabinet must be the one to file the petition for termination of parental rights pursuant to Chapter 625. Because the child at issue was not committed to the Cabinet's custody, I do not believe KRS 625.090(1)(b) is applicable in this case as it goes without saying that the Cabinet does not have standing to seek to terminate parental rights of a child not committed to its custody.

[5] The General Assembly amended KRS 620.180 again in 2019 but left subsection (2)(c) undisturbed.

Unlike the circuit court, I do not believe that the General Assembly intended to require that the Cabinet must have filed a DNA petition before the circuit court can involuntary terminate any parent's rights. First, such an interpretation is entirely inconsistent with KRS 620.070(1), which explicitly states that "[a] dependency, neglect, or abuse action may be commenced by the filing of a petition by ***any interested person*** in the juvenile session of the District Court." (Emphasis added.) Requiring the Cabinet to file a DNA petition prior to termination would frustrate the overall purposes of both Chapter 620 and Chapter 625. Additionally, a successful DNA petition is not a prerequisite for a court to terminate parental rights. In fact, KRS 625.090(1)(a) makes clear that the abuse or neglect finding can be based on a prior finding ***or*** by the circuit court as part of the termination proceeding.

Also, I cannot agree with the majority that the General Assembly's intent was to require the Cabinet to have "filed some sort of petition" in all parental rights termination cases. I believe looking at the legislative history in conjunction with the plain language of KRS 620.180(2)(c) makes it abundantly clear that the requirement applies only to "children committed to the cabinet as dependent, neglected, or abused and placed in foster family homes[.]" To me, this interpretation squares perfectly with the other provisions of Chapter 625. It vests the Cabinet with the sole authority to move for termination with respect to children

in foster care who have been committed to the Cabinet while other provision of KRS Chapter 625 allow the foster parents some involvement in the termination. *See* KRS 625.070(4) ("Within five (5) days of filing a petition for involuntary termination of parental rights, the petitioner shall send a courtesy copy of the petition to the foster parent, if the child is currently placed with a foster parent, by certified mail or hand delivery[,]") *and* KRS 625.060(3) ("A foster parent of a child who is currently placed with the foster parent for a minimum of six (6) months may intervene as a matter of right in any action for the involuntary termination of parental rights involving a child who is placed with the foster parent, provided the cabinet has no concerns related to maltreatment of the child while in the foster parent's care.").

I believe further support for the fact that the General Assembly did not mean to curtail a parent's ability to seek and obtain termination in a case, like the present, can be found in the context and sequence of the amendments to Chapter 625. KRS 625.050 was amended in 2018 as part of the same House Bill 1 as KRS 625.090, yet the General Assembly chose not to amend subsection (3), which provides: "Proceedings for involuntary termination of parental rights may be initiated upon petition by the cabinet, any child-placing agency licensed by the cabinet, any county or Commonwealth's attorney or parent." KRS 625.050(3). Likewise, KRS 625.060 has been amended three times (2019, 2020, and 2021)

since the addition of KRS 625.090(1)(b), yet the General Assembly has still seen fit to require that the Cabinet must be included as a party in involuntary termination actions in which it is not the petitioner. *See* KRS 625.060(1) ("In addition to the child, the following shall be the parties in an action for involuntary termination of parental rights . . . [t]he cabinet, if not the petitioner[.]"). There would be no need for this requirement if the Cabinet had to file the petition for termination.

Lastly, the overarching purpose of our Juvenile Code is the protection and well-being of children. I cannot sanction an interpretation that would frustrate that purpose. I believe a hypothetical best illustrates how the interpretation adopted by the majority and the circuit court could do so. Our hypothetical family is living outside of Kentucky when father commits horrible acts of domestic abuse against mother and child. Mother and child eventually flee to Kentucky and set up residence. Mother is an exemplary parent providing for all of child's needs without any assistance or support by father, even though he knows the family's current location. Eventually, mother decides that she is tired of living under the threat of father trying to come into their lives and assert his custodial rights. She files to have father's parental rights terminated based on his past abuse of the child and his failure to provide support. Obviously in such a case, termination would likely be warranted, but there would be no prior involvement by the Cabinet

because mother has provided child with an appropriate, supportive, and nurturing home life during their time in Kentucky. Under the interpretation adopted by the circuit court and the majority, mother would be unable to seek to terminate father's parental rights. I cannot fathom that the General Assembly intended to bar relief in such a case.

To the contrary, as stated above, I believe the proper interpretation is that the General Assembly intended the inclusion of KRS 625.090(1)(b) to require that the Cabinet file the petition for termination of parental rights in accordance with the requirements laid out in KRS 620.180(2)(c) in cases where "children [have been] committed to the cabinet as dependent, neglected, or abused and placed in foster family homes[.]" Because the child at issue was never committed to the Cabinet and is not currently in foster care, I do not believe this section warranted dismissal of the termination petition. Therefore, I would remand to the circuit court with directions to adjudicate the parental termination on its merits.

BRIEF FOR APPELLANT:

Jeffrey L. Schumacher
Maysville, Kentucky

BRIEF FOR APPELLEE KENTUCKY CABINET FOR HEALTH AND FAMILY SERVICES:

Matthew Perdue
Ashland, Kentucky