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NOT TO BE PUBLISHED

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

NO. 2023-CA-0924-ME

R.M.G.

APPELLANT

v. APPEAL FROM TODD CIRCUIT COURT  
HONORABLE JOE W. HENDRICKS, JR., JUDGE  
ACTION NO. 23-AD-00001

COMMONWEALTH OF KENTUCKY,  
CABINET FOR HEALTH AND FAMILY  
SERVICES; D.A.G., FATHER; AND  
C.M.G., A CHILD

APPELLEES

AND

NO. 2023-CA-0927-ME

R.M.G.

APPELLANT

v. APPEAL FROM TODD CIRCUIT COURT  
HONORABLE JOE W. HENDRICKS, JR., JUDGE  
ACTION NO. 23-AD-00002

COMMONWEALTH OF KENTUCKY,

CABINET FOR HEALTH AND FAMILY  
SERVICES; D.A.G., FATHER; AND  
M.L.G., A CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CHIEF JUDGE, THOMPSON; EASTON AND GOODWINE,  
JUDGES.

EASTON, JUDGE: The Appellant, R.M.G. (“Mother”), appeals from the Todd Circuit Court’s Orders terminating her parental rights to her minor children, C.M.G., and M.L.G. (hereafter collectively “Children”). These appeals have been consolidated, and we address both terminations in this Opinion. We affirm the Orders of the Todd Circuit Court.

**FACTUAL AND PROCEDURAL HISTORY**

Mother is the biological mother of the Children. The family has been involved with the Cabinet for Health and Family Services (“Cabinet”) on several occasions since 2017. The petition which led to the termination actions at issue was the third DNA<sup>1</sup> petition filed in district court.<sup>2</sup> The father of the Children did

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<sup>1</sup> Acronym for Dependency, Neglect, and Abuse.

<sup>2</sup> The 7th Judicial Circuit (Logan and Todd counties) does not have family court. DNA cases are heard in district court, while termination of parental rights cases are heard in circuit court.

not participate in the termination actions, and he has not appealed the termination of his parental rights.

The first petition was filed in October 2017, alleging sexual abuse of the Children's older sibling, B.G. B.G. is now an adult and was not involved in these termination proceedings. B.G. and the other Children were removed and placed in the custody of the Cabinet. Mother engaged in services, and custody was returned to her in June 2018.

A second DNA petition was filed in April 2019 due to allegations of Mother exposing B.G. to adult sexual activity and lack of supervision. This time, only B.G. was removed from Mother's custody. Custody was again returned, and the district court and the Cabinet ceased involvement with the family in October 2020.

The third and final petition was filed in March 2021, which contained allegations of sexual abuse to both B.G. and C.M.G. (approximately 12 years old when abuse started) by Mother's paramour. M.L.G. was only four years old at the time. There was no allegation of abuse committed against M.L.G. in this petition; the concern was the risk of future abuse. The Cabinet alleged Mother was aware of the sexual abuse. B.G. and the younger Children were removed and placed in the custody of the Cabinet. Mother was also criminally charged, and she subsequently pled guilty to two counts of endangering the welfare of a minor.

Mother negotiated a case plan with the Cabinet. The tasks Mother was instructed to complete included mental health counseling, parenting classes, supervised visitation, maintaining appropriate boundaries in her relationships, and cooperating with the Cabinet. In November 2021, Mother stipulated to a finding of neglect, admitting the Children had been left in the care of an inappropriate caretaker which led to the Children being victims of sexual abuse. The Children have remained in the custody of the Cabinet since their removal from Mother in March 2021.

The Cabinet filed the termination of parental rights (“TPR”) petitions in January 2023. The final hearing was held on June 26, 2023. The Cabinet called several witnesses at the hearing, including C.M.G.’s former therapist, a nurse practitioner who regularly saw the Children at their medical clinic, the ongoing Cabinet caseworker, and M.L.G.’s foster father. Mother testified on her own behalf, but she did not call any additional witnesses.

Through the testimony of the witnesses, the circuit court learned C.M.G. had been admitted to the Willows Program<sup>3</sup> at Lincoln Trail Behavioral Health for suicidal ideation in early April 2023, where she remained at the time of the hearing. Prior to her admission, she had been in a therapeutic foster home. It

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<sup>3</sup> This program is specifically for adolescent girls who have been victims of trauma, including sexual abuse.

is uncertain if she will be able to return to the same foster home upon discharge. She had been previously diagnosed with depressive disorder and adjustment disorder. C.M.G.'s therapist testified that she only mentioned Mother once during her therapy sessions, and she stated C.M.G. said she had very mixed feelings about Mother. The therapist had never met or spoken with Mother.

M.L.G. is in a different foster home than C.M.G. She has resided with the same foster family since she was placed in the Cabinet's custody. It is an adoptive foster home. Her foster father testified she was very dirty and had head lice when she first came to live with them. He also stated she needed significant dental work and glasses. She does not speak about her parents to them. She does see a mental health specialist, and he believes it has helped her work through everything she's been through. He additionally testified that she is able to speak with her older sister, and she had a facetime call with her the week prior.

The nurse practitioner, Shannon Kohl ("Kohl") has been involved in the medical care of both Children as well as their older sibling, B.G., for many years. She testified to her concerns about the family, dating back to before the youngest child was born. Kohl testified M.L.G. was always dirty and unkempt for her well-child visits, and she was very sullen and wouldn't engage with anyone there. Kohl has also seen M.L.G. since she has been in foster care, and she stated M.L.G. has done "a total 180" in terms of behavior and appearance. She testified

M.L.G. is thriving in her current environment. Kohl stated M.L.G. has become engaging and outgoing, silly, and happy “like a six-year-old should be.” She testified that when asked how she liked her new home, M.L.G. responded “I feel safe.”

The social worker, Dominic Stewart (“Stewart”) testified how the current case began. The Cabinet was contacted by KSP<sup>4</sup> regarding sexual abuse of two minor children, B.G. and C.M.G. She testified to the very disturbing allegations against mother’s paramour, who Mother allowed to spend the night in the home the day she met him by way of a website called “Plenty of Fish.” Both he and Mother were charged criminally, and Mother was incarcerated for several weeks from March to April 2021. Mother pled guilty in November 2021 to two counts of endangering the welfare of a minor, with a deferred dismissal for two counts of facilitation of rape in the third degree. The paramour’s criminal case is still pending.

One of the primary tasks Mother needed to complete on her case plan was mental health counseling. During her initial counseling, it was recommended that Mother have intensive one-on-one trauma-based therapy. A referral was made to a specific counselor for this. While Mother did attend a few classes, she was not

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<sup>4</sup> Kentucky State Police.

consistent. Mother claimed she did not have the time due to her work schedule, or that she did not have the financial means to pay for this counseling.

Stewart testified that this counseling was very important to Mother's case plan, because Mother seemed to lack the ability to recognize and create appropriate boundaries in relationships. Mother has a history of being exploited by men and allowing those men around her Children. Stewart testified that one of the concerns raised by Mother's therapist was that she did not appear to retain information from one session to the next. Stewart had multiple conversations with Mother about how to recognize and avoid unhealthy and exploitive relationships, but Mother repeatedly had difficulty implementing this. Mother also repeatedly had conversations with her children about her relationships, even after it was explained how inappropriate and damaging this was to the Children, given the trauma they had experienced.

Mother testified on her own behalf. She claims she did not know the sexual abuse was occurring until the day before she was arrested. She said she did not tell anyone about it, because she did not want the Cabinet to get involved with her family again.

Mother is employed. She works second shift, from 4:00 p.m. to 4:00 a.m., six to seven days a week. She has a wage garnishment for child support. She does not currently have her own residence; she is staying with a friend.

Mother acknowledged her history of relationships with men who exploited her. She was a victim of abuse and has experienced trauma in her past similar to that of her daughters. She explained she believes the Children should be returned to her, because she is not the same person she used to be. She claims she does not go anywhere or do anything other than work. She states she is now willing to attend the intensive counseling. When asked about her progress in establishing proper boundaries, Mother's response was "I'm working on it."

The circuit court entered its Findings of Fact and Conclusions of Law, and Orders Terminating Parental Rights on July 13, 2023. The circuit court found the requirements of KRS<sup>5</sup> 625.090 had been met in order to terminate Mother's parental rights. Mother now appeals and claims the circuit court made several errors. She claims the court erred in its best interest finding. She argues the circuit court also erred in its findings under KRS 625.090(2)(e) and (g). She claims the court should not have considered KRS 625.090(2)(j) because reasonable efforts had not been made by the Cabinet. She finally argues the court abused its discretion in denying the relief permitted by KRS 625.090(4) and (5).

### **STANDARD OF REVIEW**

This Court's standard of review of a termination of parental rights

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<sup>5</sup> Kentucky Revised Statutes.



case is the clearly erroneous standard in CR<sup>6</sup> 52.01. The factual findings must be supported by clear and convincing evidence. *M.E.C. v. Commonwealth, Cabinet for Health and Family Services*, 254 S.W.3d 846, 850 (Ky. App. 2008). The findings of the trial court should not be disturbed unless there exists no substantial evidence in the record to support its findings. *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky. App. 1986). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair or unsupported by sound legal principles.” *Woodard v. Commonwealth*, 147 S.W.3d 63, 67 (Ky. 2004).

## **ANALYSIS**

KRS 625.090 is the controlling statute regarding the involuntary termination of parental rights. This statute allows parental rights to be involuntarily terminated only upon findings, based on clear and convincing evidence, that (1) the child has been found to be an abused or neglected child as defined in KRS 600.020(1) by a court of competent jurisdiction; (2) that the Cabinet has filed a petition seeking the termination of parental rights pursuant to KRS 620.180 or KRS 625.050; (3) that termination is in the child’s best interests; and (4) at least one of the grounds set out in KRS 625.090(2)(a)-(k) is present.

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<sup>6</sup> Kentucky Rules of Civil Procedure.

KRS 600.020 outlines what constitutes an “abused or neglected child.” KRS 600.020(1) defines an “abused or neglected child” as “a child whose health or welfare is harmed or threatened with harm” with a list provided of examples. Mother stipulated to abuse or neglect in the district court action and is not challenging this finding by the circuit court.

Next, the court must find that at least one of the grounds outlined in KRS 625.090(2) is present. The grounds relevant to this action include:

(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;

(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;

(j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) cumulative months out of forty-eight (48) months preceding the filing of the petition to terminate parental rights[.]

The family court found these factors applied in this case. Regarding

factor (g), Mother claims that because she was employed, had housing (although there is dispute as to whether the housing was appropriate for a child), and had paid child support and for health insurance, she was capable of providing food, shelter, medical care, and education necessary for the child's well-being. As for factor (e), Mother essentially argues that the circuit court's error in this finding was that there was no reasonable expectation of significant improvement from her. She claims she had successfully completed two prior case plans, so the court should have found a reasonable expectation of improvement.

While Mother had completed some of the tasks required by her case plan, she failed to complete the essential intensive therapy recommended to her. Mother did complete the trauma-based parenting classes required, but there was testimony that Mother was unable to retain the information on how to appropriately respond to trauma scenarios a child may experience. Mother's assessment indicated that her own mental health was interfering with her ability to parent. This was the reason for the recommendation for more intensive therapy.

There was also testimony that Mother was unable to set appropriate boundaries. She continued to have conversations with her Children about her relationships with men, even after being counseled that these discussions were harmful to the Children. Mother additionally was unable to set boundaries in her relationships with men in order to protect both herself and her Children from

abuse. Stewart testified that this was a major concern, as it was these circumstances that led to the Children being sexually abused.

Mother argues that she completed two prior case plans for the Cabinet, showing that she can make improvement. However, despite the completion of these plans, her Children were still yet again sexually abused while in her care and custody. This indicates that despite her ability to complete some tasks requested of her, she was not learning or understanding how to implement what she was taught in order to protect her Children. Because of this, it is not clearly erroneous for the circuit court to find that Mother was incapable of providing essential parental care and protection and that there was no reasonable expectation for improvement.

Mother also argues there was insufficient evidence for the court to determine it was in the best interest of the Children to terminate Mother's parental rights. She argues that because C.M.G. is not in a pre-adoptive home, she is at risk of "aging out" while in the custody of the Cabinet. She claims it would be better to allow Mother more time to make progress towards reunification. She also claims it would be in the best interest of M.L.G. to allow Mother more time to complete her case plan.

In determining the best interest of the Children and the existence of a ground for termination, the family court must consider the factors in KRS 625.090(3), which are:

(a) Mental illness as defined by KRS 202A.011(9), or an intellectual disability as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;

(b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;

(c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court;

(d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;

(e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and

(f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

The circuit court stated it had considered each factor of KRS 625.090(3) and found it was in the best interests of the Children to terminate Mother's rights. We do not believe the court's conclusion was clearly erroneous. While the court did not explicitly match each factual finding with a listed factor of the statute, there is enough detail given in the order to show the court did consider the relevant factors.

By the time of the termination hearing, both Children had been in the custody of the Cabinet for over two years. C.M.G. was in a therapeutic facility due to her high level of needs stemming from the trauma she experienced while in Mother's custody. C.M.G. had experienced sexual abuse, and there was sufficient evidence to find that Mother was aware of the abuse and did nothing to stop it. There was evidence presented that C.M.G. was not ready to even speak with Mother, let alone be reunited with her. The testimony presented indicated that Mother was still either unwilling or unable to set appropriate boundaries regarding men, causing legitimate concern that, if the Children were placed back in her care, they would again be subjected to abuse.

As to M.L.G., the evidence indicated she is thriving in her current foster home. Both Nurse Kohl and her foster father testified as to the immense progress M.L.G. has made since being removed from Mother's custody. The home she is in is an adoptive home, and foster father indicated they were willing to adopt

M.L.G. While Mother argues she is employed and able to provide for the Children, she currently does not have her own residence and was living at the mercy of a friend. M.L.G. is in a stable home, with caregivers she has bonded with.

Regarding factor (c), Mother argues the Cabinet did not make reasonable efforts to reunite the Children with Mother prior to filing the petition. “Reasonable efforts” is defined in KRS 620.020(13) as “the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community in accordance with the state plan for Public Law 96-272 which are necessary to enable the child to safely live at home[.]” “Preventive services” is defined in KRS 620.020(12) as “those services which are designed to help maintain and strengthen the family unit by preventing or eliminating the need for removal of children from the family[.]” Finally, “reunification services” is defined in KRS 620.020(14) as “remedial and preventive services which are designed to strengthen the family unit, to secure reunification of the family and child where appropriate, as quickly as practicable, and to prevent the future removal of the child from the family[.]”

We find Mother’s argument to have no merit. She identifies no further services the Cabinet could or should have provided to her. She argues that she was able to complete two prior case plans, and that her completion of therapy

was the primary issue remaining. This appears to be accurate; however, the fact of the matter is that the Children had been in the Cabinet's custody for over two years, and Mother still had not completed her therapy. Without this therapy, there is substantial concern that Mother's history of allowing exploitive men to take advantage of her and the Children will continue. She was unable to show that she has learned from her past mistakes.

Mother argues the circuit court should not have considered the time the Children spent in foster care under KRS 625.090(2)(j) because the Cabinet did not make reasonable efforts to reunify the family. There is no legal support for this argument. The language of the statute is clear, and it contains no qualifications and lists no requirements that must be met before the time frame applies. "We hold fast to the rule of construction that the plain meaning of the statutory language is presumed to be what the legislature intended, and if the meaning is plain, then the court cannot base its interpretation on any other method or source. In other words, we assume that the Legislature meant exactly what it said, and said exactly what it meant." *Commonwealth v. Moore*, 545 S.W.3d 848, 851 (Ky. 2018) (citation omitted). Furthermore, our Supreme Court has previously ruled there is no language or precedent that allows the timeframe outlined in KRS 625.090(2)(j) to be tolled. *Cabinet for Health and Family Services v. H.L.O.*, 621 S.W.3d 452, 463-64 (Ky. 2021).



Finally, Mother argues the circuit court abused its discretion in denying the relief outlined in KRS 625.090(4) and (5). These sections read:

(4) If the child has been placed with the cabinet, the parent may present testimony concerning the reunification services offered by the cabinet and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent.

(5) If the parent proves by a preponderance of the evidence that the child will not continue to be an abused or neglected child as defined in KRS 600.020(1) if returned to the parent the court in its discretion may determine not to terminate parental rights.

Mother is correct that “the trial court is never *required* to terminate under the statute as its authority to terminate is couched in the permissive ‘may’ rather than the mandatory ‘shall[.]’” *D.G.R. v. Commonwealth, Cabinet for Health & Fam. Servs.*, 364 S.W.3d 106, 112 (Ky. 2012) (emphasis in original). A court has the discretion to decline to terminate a parent’s rights if the parent is able to show by a preponderance of the evidence that the child will not continue to be abused or neglected. However, section (5) also uses the permissive “may.” The statute does not mandate that the court is unable to terminate in such situations. It is within the circuit court’s wide discretion. *Cabinet for Health & Fam. Servs. v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014).

In any event, the circuit court did not believe Mother made the requisite showing that the Children would not continue to be abused or neglected if

returned to her care, and we will not disturb its finding as it was not clearly erroneous. “[A]n appellate court is obligated to give a great deal of deference to the trial court’s findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them.” *D.G.R.*, 364 S.W.3d at 113. But again, even if the court had found Mother had put forth requisite proof, it still would not have been an abuse of discretion to terminate her rights, as all statutory requirements had been met.

### **CONCLUSION**

The findings of the circuit court pursuant to KRS 625.090 are not clearly erroneous, and it did not abuse its discretion. For the foregoing reasons, the orders of the Todd Circuit Court are **AFFIRMED** as to the Children herein.

**ALL CONCUR.**

**BRIEF FOR APPELLANT:**

Michael W. Cotthoff  
Hopkinsville, Kentucky

**BRIEF FOR APPELLEE**  
**COMMONWEALTH OF**  
**KENTUCKY, CABINET FOR**  
**HEALTH AND FAMILY**  
**SERVICES:**

Leslie M. Laupp  
Covington, Kentucky