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Commonwealth of Kentucky

Court of Appeals

NO. 2023-CA-0979-ME

J.E.B.[1] APPELLANT

v. APPEAL FROM MEADE CIRCUIT COURT
HONORABLE BRUCE T. BUTLER, JUDGE
ACTION NO. 22-AD-00011

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; L.Y.B., A
CHILD; AND O.L.B. APPELLEES

AND

NO. 2023-CA-0981-ME

J.E.B. APPELLANT

v. APPEAL FROM MEADE CIRCUIT COURT
HONORABLE BRUCE T. BUTLER, JUDGE
ACTION NO. 22-AD-00012

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND

[1] Pursuant to Court policy, to protect the privacy of minors, we refer to parties in termination of parental rights cases by initials only.

FAMILY SERVICES; L.D.B., A CHILD; AND O.L.B. APPELLEES

OPINION
AFFIRMING IN PART,
REVERSING IN PART,
AND REMANDING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; A. JONES AND LAMBERT, JUDGES.

LAMBERT, JUDGE: J.E.B. (Mother) appeals from the Meade Circuit Court's Judgments terminating her parental rights to her minor children, Jane[2] and Sue. Having reviewed the briefs, record, and law, we affirm in part, reverse in part, and remand for the court to reconsider its analysis of the children's best interest.

BACKGROUND FACTS AND PROCEDURAL HISTORY

Mother and O.L.B.[3] (Father) were previously married, and they have three daughters, Alice,[4] born in 2003, Jane, born in 2009, and Sue, born in 2017.

[2] Because we must refer to the children individually, for ease of reference we have opted to use pseudonyms.

[3] O.L.B.'s parental rights were also terminated in the underlying proceedings, but he did not appeal the judgments. Any reference to him in this Opinion is intended solely for the purposes of clarity and completeness.

[4] Alice, having reached the age of majority, was not a subject of the underlying termination of parental rights (TPR) actions. Again, we refer to her in this Opinion solely for the sake of clarity and completeness.

The latter two are the subject of the underlying TPR actions. In approximately 2018, the parents separated, and Mother and the children moved from Ohio to Kentucky. Mother claimed she fled for the children's safety as Father had repeatedly physically, sexually, and mentally abused them.

Two dependency, neglect, and abuse (DNA) actions were filed relating to the children. In the first, filed in December 2019, Mother alleged that Father was trying to make contact, and the children were scared. Mother was initially granted emergency custody. However, after hearing testimony at the temporary removal hearing, the district court found that there was a reasonable basis to believe that the children may be dependent, neglected, or abused in Mother's care. Accordingly, custody was transferred to the Cabinet for Health and Family Services (the Cabinet), and the children were placed in foster care on January 2, 2020. The Cabinet then filed the second DNA action on January 27, 2020, against both parents.

The social worker assigned to the family testified that Mother made statements during the course of the DNA proceedings admitting that she knew that Father was physically and sexually abusing Alice and Jane, but, as a Mennonite, it was against her religion to contact the authorities. Per the social worker, Mother reported that Father had wanted to be in the bathroom with Alice and Jane while they were changing, that she had seen Jane on top of Father touching his penis and

Father rubbing their chests while grabbing his own penis, and that she had instructed them not to wear jeans or give Father a hug because it gave him an erection.[5] Ultimately, after a contested hearing, the district court found that Jane was abused because Mother knew Father was sexually abusing her and took no protective action, and Sue was found to be abused due to a risk of harm.

On February 28, 2022, over two years after the children entered foster care, the Cabinet filed petitions to terminate the parents' rights to Jane and Sue. A final hearing was held in December 2022, wherein the court heard testimony from the social worker assigned to the family, Mother, Mother's therapist, Mother's friend, and Father.

The social worker reported that Jane and Sue continued to be placed together in their initial foster home and that they were doing well. Due to deficient homeschooling, Jane was two grades behind when she entered foster care, but she had since caught up and was making top marks. Jane was still attending therapy and was making progress in addressing her extensive history of trauma. Sue had some minor behavioral problems at school, but she was otherwise doing well in kindergarten. The children were very bonded with their foster parents and siblings.

The social worker acknowledged that Mother had completed all of the tasks on her case plans, including participating in a Parental Capacity Evaluation,

[5] Mother denied that she made these statements.

that she had visited with Jane and Sue as permitted by court orders, and that she had made changes in her circumstances since the Cabinet became involved. Despite this, the social worker opined that Mother had not shown that she could be protective and, therefore, the children would continue to be at a significant risk of harm if returned to her custody. Accordingly, the social worker recommended that the TPR be granted so that Jane and Sue could obtain permanency and stability through adoption. She stated that her opinion was based largely on Mother's admitted history of inaction for twelve years while knowing that first Alice and then Jane were subjected to sexual abuse. Other factors identified were the recommendations of the Parental Capacity Evaluation and the relationships and bonds of the children.

During her testimony, Mother admitted that Father physically abused Alice on two occasions, once by almost pushing her down the stairs and another time by whipping her with a belt. Mother stopped the whipping, but she and the children continued to live with Father. Mother conceded that she had suspected Father was sexually abusive, but she disputed that she had actual knowledge until approximately 2019. Contrary to the Cabinet's claims of inaction, Mother explained that she went to her church leaders for assistance, as required by her religion, but she was dismissed. In approximately 2017, Mother told her concerns to Ohio Child Protective Services, but the agency did not substantiate the claims.

Mother asserted that when she eventually became aware of the abuse, she fled with the children from Ohio to Kentucky, leaving both Father and the Mennonite faith.

Mother insisted that she had diligently worked to complete her case plan and to otherwise improve herself. She divorced Father, maintained employment for two years, obtained independent housing, participated in family and individual therapies, paid child support except an arrearage of $42.00, and continued to visit with the children when allowed. Mother stated that therapy helped her overcome the brainwashing, spiritual abuse, and subjugation that she had been subjected to as a victim of her own father's sexual abuse, Father's physical and sexual abuse of her, and the strictures of the Mennonite faith. She claimed that she now understood her responsibilities to the children, and she insisted that she could be protective if the children were returned to her custody.

Her therapist testified that Mother initially had issues with anxiety and "just getting through life." But, through spiritual and trauma counseling, Mother had improved greatly by learning coping skills, gaining an understanding of what trauma is and how to identify it, working on her parenting skills, decreasing her anxiety, increasing her engagement in the community, and getting through "a day's work or a week without major breakdowns." The therapist expressed no concerns with Mother's capacity to understand or appreciate risks from others as it relates to herself or those in her care. Mother's friend testified that she was one of the

approved supervisors for Mother's parenting time with Sue. She opined that the interactions had always been positive, Sue was excited to see Mother, and they were both very loving towards each other.

Father denied all allegations of sexual abuse, and he speculated that the claims against him were the result of Mother projecting her own childhood abuse onto the children. Contrary to Mother's recounting of events, Father maintained that the family left the Mennonite Church and community in 2014.

At the close of evidence, the children's guardian *ad litem* (GAL) expressed a desire to hear from the psychologist who had conducted the Parental Capacity Evaluation, Dr. Feinberg. The court agreed and inquired how it could be accomplished. After a discussion about logistics and whether Dr. Feinberg's report should be refreshed, Mother's counsel stated, "as long as the court is not ordering anything additional, then Dr. Feinberg can come in and testify as to what he did three years ago and that can be the basis for any findings that this court makes as it relates to termination, and I am fine with that."

Court reconvened on March 13, 2023, to hear Dr. Feinberg's testimony. At the start of the proceedings, Mother objected because, in her view, the testimony could only benefit the Cabinet, and the Cabinet had already closed its case. The Cabinet and the GAL disputed that Dr. Feinberg was the Cabinet's witness. Alternatively, the Cabinet argued that Dr. Feinberg was an appropriate

rebuttal witness given Mother's testimony denying the veracity of her admissions contained in his report. Mother's objection was overruled.

Dr. Feinberg, a licensed clinical psychologist with 40 years of experience, testified that in February 2020, he evaluated the parental capacity of Mother and Father to assess whether they could adequately support, nurture, and care for these children with their unique difficulties. The evaluation itself encompassed many hours of interviewing the family members and collateral witnesses, a battery of psychological tests, observation of Mother's interactions with Sue, and the review of volumes of collateral data. Dr. Feinberg maintained that any of Mother's statements cited in the report – for example, her belief that Father seemed sexually attracted to their two-year-old in 2006, that Father was forcing the children to let him look at them in the bathroom and fondling them, and that Father had erections while interacting with the children – accurately reflected the disclosures she made during her interviews.

Discussing his findings, Dr. Feinberg noted that Mother had endorsed a "world record" setting 106 of 288 common problems related to emotional wellbeing, health, finances, and relationships during testing, and these difficulties detracted from her ability to take care of herself and the children. Additionally, as a result of her own history of chronic physical, educational, spiritual, and sexual abuse experienced during her childhood, he opined that Mother's understanding of

normal parental behavior was "really askew" and that, while she loved her children, her parenting was very egocentric and failed to meet their medical and educational needs. He acknowledged that the sexual abuse allegations were not supported by "very good data[,]" but that there was data that the children had observed the parents physically and verbally fighting, that Mother had used corporal punishment on Alice, which Jane observed, and that Mother had odd ideas about limit setting and reinforcement. As an example, Dr. Feinberg cited Mother's assertions that she was told to make Alice run to relieve her anger issues and that she could use a rubber spatula to hit the children.

Ultimately, Dr. Feinberg concluded in his capacity evaluation that:

> [Mother] has serious, chronic emotional problems. She has a long history of instability in her life and an inability to provide adequately for her own needs. She lacks protective capacity for her daughters; has not demonstrated an ability to place their needs above her own; has engaged in abuse against them; and demonstrates an inappropriately low level of empathy for the girls. As a result of these factors, her relationships with [Alice and Jane] have been irrevocably fractured. Though she has been cooperative with [the Cabinet], she has made relatively little progress toward attenuating the multitude of risks that her maladaptive parenting practices present.
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> . . .
>
> [Alice and Jane] (and [Sue] to some extent) have suffered significant psychological and educational damage as the result of the decisions and behaviors of their parents. It will take years of intensive mental health and educational

> intervention coupled with caregivers with extraordinary parenting skills to help them heal and function successfully as adults. There is little evidence to suggest that either of their biological parents have the capacity to appropriately and adequately provide for their special needs, created by the abuse and neglect perpetrated against them. It is believed that the only path for recovery for these children is for permanence to be sought by termination of parental rights and adoption.

Dr. Feinberg stated that, assuming Mother's ability to advocate for herself or the children had not changed much, his conclusions remained the same. He explained that the children's special needs resulting from their trauma, the duration of their removal from their parents, and the fact that they viewed the foster parents as their psychological or primary parents were important factors to his analysis. His initial conclusions factored in Mother's separation from Father and her leaving the Mennonite faith, and he denied that her maintaining employment for two years, while laudable, would change his recommendation. Finally, Dr. Feinberg acknowledged that he had not been involved with the family since his 2020 evaluation, so he could not speak to whether Mother had made improvements or to the current status of her relationship with the children, but he reiterated that his assessment was that improvement was not foreseeable despite any classes or therapy Mother undertook.

On May 10, 2023, the court entered findings of fact, conclusions of law, and judgments terminating Mother's parental rights to Jane and Sue.[6] This appeal followed.

STANDARD OF REVIEW

Involuntary TPR actions are governed by Kentucky Revised Statutes (KRS) 625.090. TPR may be granted only if the trial court finds that a three-pronged test has been met by clear and convincing evidence. *Id*. First, the children must be found to be abused or neglected as defined by KRS 600.020(1). KRS 625.090(1)(a). Second, the trial court must find the existence of at least one statutory ground for termination listed in KRS 625.090(2). Third, termination must be found to be in the best interest of the children after consideration of the factors listed in KRS 625.090(3).

A trial court's findings of fact are subject to the clearly erroneous standard of review. Kentucky Rule of Civil Procedure (CR) 52.01. Accordingly, we give great deference to the trial court's findings of fact and will only set them aside if the record is devoid of substantial evidence to support them. *D.G.R. v. Commonwealth, Cabinet for Health & Family Servs.*, 364 S.W.3d 106, 113 (Ky. 2012). We review the application of the law to the facts *de novo*. *Id*.

[6] The court entered an amended judgment on May 24, 2023, to remedy a clerical error.

LEGAL ANALYSIS

We begin with Mother's claim that reversal is required, pursuant to *Retherford v. Monday*, 500 S.W.3d 229 (Ky. App. 2016), due to the court's adoption of the Cabinet's proposed findings of fact and conclusions of law. Although the order on appeal is not strictly identical to the Cabinet's proposed order, there being some variance in formatting and in how it identifies the Cabinet (the former using an acronym), the Court can discern no meaningful differences between the two documents. Unquestionably, this practice has long been frowned upon by Kentucky's appellate courts. *See Callahan v. Callahan*, 579 S.W.2d 385, 387 (Ky. App. 1979). However, "it is only error if the trial court abdicates 'its fact-finding and decision-making responsibility under [CR] 52.01.'" *T.R.W. v. Cabinet for Health & Family Servs.*, 599 S.W.3d 455, 459 (Ky. App. 2019) (quoting *Bingham v. Bingham*, 628 S.W.2d 628, 629 (Ky. 1982)). This Court has found no error when the trial court solicited proposed findings from all parties and actively engaged in the proceedings. *Id.*; *see also Prater v. Cabinet for Human Res., Commonwealth of Kentucky*, 954 S.W.2d 954, 956 (Ky. 1997). Here, the Cabinet, Mother, and Father all provided proposed findings and conclusions. We presume that the trial court reviewed these, a presumption supported by the albeit minor changes made by the court, and used its discretion in rendering its final order. Consequently, we find no reversible error.

Next, Mother claims that the Cabinet's failure to comply with Family Court Rule of Practice and Procedure (FCRPP) 7 requires that the judgment be reversed or, at minimum, that Dr. Feinberg's testimony be excluded as evidence. FCRPP 7(1) provides that, unless ordered otherwise, each party shall identify their intended witnesses and the subject of their respective testimonies 14 days in advance of a hearing. The rule serves to "drastically reduce[] unfair surprises[,]" and is applicable to TPR actions. *Commonwealth, Cabinet for Health & Family Servs. v. S.H.*, 476 S.W.3d 254, 258-59 (Ky. 2015).

It is uncontested that neither the Cabinet nor the children's GAL provided the requisite notice herein; however, we agree with the Cabinet that reversal is not merited. "Almost all issues are subject to waiver, whether from inaction or consent, . . . and [a] new theory of error cannot be raised for the first time on appeal." *Commonwealth v. Steadman*, 411 S.W.3d 717, 724 (Ky. 2013) (internal quotation marks omitted); *see also Fischer v. Fischer*, 348 S.W.3d 582, 588 (Ky. 2011), *overruled on other grounds by Nami Res. Co., L.L.C. v. Asher Land & Mineral, Ltd.*, 554 S.W.3d 323 (Ky. 2018) (reiterating that specific grounds raised for the first time on appeal will not support a favorable ruling). Here, Mother failed to raise this claim of error before the trial court. Thus, she is precluded from raising this issue on appeal.

Mother also contends that Dr. Feinberg's testimony regarding his Parental Capacity Evaluation, dated February 7, 2021, should have been excluded as stale and irrelevant evidence. We again agree with the Cabinet that the claim is waived when, at the initial hearing, Mother's counsel stated his agreement both to having Dr. Feinberg testify and to the court relying on it in making its judgment on the TPR. Accordingly, we find no error in the court's decision to permit the evidence.

We turn now to the crux of Mother's appeal that several of the court's findings are not supported by substantial evidence and that the court erred as a matter of law in granting the TPR.

First, Mother asserts that the court made erroneous findings regarding how the Cabinet became involved with the family, the date that the children were committed to the Cabinet, that Mother had stipulated to abuse or neglect in the DNA proceedings, and that Sue was sexually abused by Father. We note that the complained-of statements are found in the court's narrative of the testimony presented, not its findings of fact.

Regardless, excepting the first, we agree that these statements are neither an accurate recounting of the testimony presented nor are they supported by evidence. The order on appeal incorrectly states that the children were committed[7]

[7] A term of law defined at KRS 600.020(13).

to the Cabinet on December 27, 2022, when this was the date that the Cabinet received temporary custody; that Mother had stipulated during the DNA proceedings that the children were abused or neglected, when the findings were made after a contested hearing; and that Sue was abused by father, when there were no allegations this occurred. However, as we will discuss in further detail below, under the facts of this case, the errors are harmless. CR 61.01.

Second, Mother challenges the sufficiency of the evidence that she abused or neglected the children as defined in KRS 600.020(1). The court found that Mother had abused or neglected the children by: (1) continuously or repeatedly failing or refusing to provide essential parental care and protection, considering the age of the children; (2) abandoning the children; (3) failing to provide the children with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for their well-being when financially able to do so, and (4) refusing to engage in services and thereby failing to make sufficient progress towards her court-approved case plan goals to allow for the children's safe return, resulting in their placement in foster care for 15 cumulative months out of 48 months. KRS 600.020(1)(a)4. and 7.-9.

The Cabinet's primary allegation was that, prior to 2017, Mother had long been aware that Father was abusive, and she took no protective action to safeguard the children. Mother admitted at the final hearing that she knew Alice

had been physically abused and that she had suspected that she and Jane were being sexually abused. Her prior admissions, introduced through the social worker and Dr. Feinberg, demonstrate more than mere suspicion, as she detailed specific instances of sexual misconduct by the Father towards Alice and Jane spanning several years. While Mother asserts that she did take protective actions by going to her church leaders, her testimony shows that she knew the church's response was not sufficient. Despite this, Mother did not contact the authorities until 2017, and she did not remove her children from the danger until approximately 2018 or 2019.

Although there were no allegations that Sue was physically or sexually abused, it is well-settled law that the risk of harm alone is enough to support a finding of abuse or neglect. *Cabinet for Health & Family Servs. ex. rel. C.R. v. C.B.*, 556 S.W.3d 568, 576 (Ky. 2018); *see also Cabinet for Health & Family Servs. v. R.S.*, 570 S.W.3d 538, 547 (Ky. 2018), and *Cabinet for Health & Family Servs. v. P.W.*, 582 S.W.3d 887 (Ky. 2019). Accordingly, the court's finding that Mother abused or neglected Jane and Sue by repeatedly failing or refusing to provide essential parental care and protection is supported by the evidence, satisfying the first prong of KRS 625.090, and we need not address the sufficiency of the court's remaining findings on this issue.

Third, Mother argues that the court's various findings under KRS 625.090(2) are erroneous. Consistent with its findings that the children were

abused or neglected, the court determined that four grounds for TPR existed, KRS 625.090(2)(a), (e), (g), and (j). We need not go into the specifics because, again, only one ground is required, and, contrary to Mother's contention otherwise, the evidence is clear that the children have "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 [TPR] petition[s.]" KRS 625.090(2)(j).

In a related argument, Mother maintains that this ground is inapplicable pursuant to KRS 600.020(1)(a)9. since she completed her case plan; however, she is mistaken. KRS 600.020(1)(a)9. provides that a parent's failure to make progress on their case plan that results in their child remaining in the Cabinet's custody for a requisite period of time renders the child abused or neglected. The statute is irrelevant to the wholly separate determination under KRS 625.090(2) that, by its plain language, does not contemplate a parent's progress, or lack thereof, on their case plan but merely the time the children have been in care. Thus, the second prong of KRS 625.090 has been satisfied, and we need not consider the sufficiency of the court's remaining findings.

Fourth, and finally, Mother contends that the court's determination that TPR was in the children's best interest was not supported by substantial evidence. The court found as follows:

> Pursuant to KRS 625.090(3), this Court finds the following factors weigh heavily in favor of termination:

> (a) Mother and Father's acts of neglect towards the children, which resulted in the court's finding of neglect in the underlying juvenile actions; their abandonment of the children (b) the Cabinet made reasonable efforts to reunite the children with the children's parents; the parents have refused to engaged in services (c) The parents have made no adjustments in their circumstances, conduct, or conditions to make it in the children's best interest to return the children to their care, nor will it be within a reasonable amount of time (d) it is clearly not in the children's best interest to wait for the parents to work a case plan and hope that they defy their own history of case plan noncompliance; and (e) the children are thriving in foster care where they have bonded to the foster parents which is where the children have been placed since the children's removal and placement on January 2, 2020. The children have no attachment to the natural mother or natural father.
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> . . . This child has made improvements since coming into foster care and those improvements are expected to continue. There is a high likelihood that this child will be adopted, and this child has formed an attachment to the prospective adoptive family.

(Alterations made to remove identifiers and for ease of reading.)

Mother asserts that the court's findings that she made insufficient changes to permit reunification, that the children had no attachment to her, that she abandoned the children, and that she refused to engage in services are refuted by the record. While there was conflicting proof as to the first two findings, we agree that the latter two were not supported by substantial evidence.

"[A]bandonment is demonstrated by facts or circumstances that evince a settled purpose to forego all parental duties and relinquish all parental

claims to the child." *J.H. v. Cabinet for Human Res.*, 704 S.W.2d 661, 663 (Ky. App. 1985) (quoting *O.S. v. C.F.*, 655 S.W.2d 32, 34 (Ky. App. 1983)). Abandonment is a matter of intent and, as such, a parent's absence from the child on its own is insufficient to justify termination of parental rights. *Id.* Here, no evidence was presented demonstrating the requisite intent. The social worker acknowledged that Mother had not abandoned her role as parent, that she worked her case plans to reunify with the children, that she paid child support, and that she visited with the children as permitted by court orders. Likewise, there was no evidence Mother ever refused to engage in services. Again, the social worker admitted that Mother had complied with her case plans.

The question for this Court, then, is whether the error is harmless. CR 61.01 instructs that "[t]he court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties." An error is harmless if "the result probably would have been the same absent the error." *T.R.W.*, 599 S.W.3d at 465 (quoting *CSX Transp., Inc. v. Begley*, 313 S.W.3d 52, 69 (Ky. 2010)).

We find it important 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,' KRS 625.090(1), and the trial court has substantial discretion in determining the best interest[] of the child[ren] under KRS

625.090[(3).]" *D.G.R.*, 364 S.W.3d at 112 (emphasis in original). An abuse of discretion occurs when the court's decision is arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

Here, the court rendered its best interest decision based on inaccurate findings that were wholly contrary to the evidence. Indeed, even where there was conflicting evidence regarding Mother's adjustments and the children's attachment with her, it is impossible to determine if the court made these findings as a result of its erroneous belief that Mother had refused to engage in services and that she had abandoned Jane and Sue. Because we cannot determine that the court exercised its discretion based on the evidence presented, the court's conclusion that TPR was in the child's best interest is arbitrary. We are mindful of the impact of our decision on the children's ability to obtain permanency, but, given the fundamental nature of the right[8] at issue, we are compelled to reverse and remand for the court to reconsider the issue of best interest. To clarify, this Opinion should not be construed as a determination that TPR is or is not in the children's best interest.

[8] Parents have a fundamental liberty interest in the care, custody, and control of their children. *Santosky v. Kramer*, 455 U.S. 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982); *see also R.M. v. Cabinet for Health & Family Servs.*, 620 S.W.3d 32, 38 (Ky. 2021) ("The right of every parent to raise his or her own child is a fundamental right of utmost constitutional concern.").

Because we are reversing, Mother's remaining claim that the court abused its discretion by granting TPR when, pursuant to KRS 625.090(5), she proved by clear and convincing evidence the children would not continue to be abused or neglect if returned to her care, is no longer ripe for our review.

CONCLUSION

Therefore, and for the forgoing reasons, the judgments of the Meade Circuit Court are affirmed in part, reversed in part, and remanded for reconsideration of the children's best interest consistent with this Opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Matthew Durham
Elizabethtown, Kentucky

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

Dilissa G. Milburn
Mayfield, Kentucky