

RENDERED: AUGUST 23, 2024; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2024-CA-0081-ME

C.P.S.

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE W. KENT VARNEY, JUDGE  
ACTION NO. 22-AD-00085

C.C.J.; CABINET FOR HEALTH AND  
FAMILY SERVICES; J.S.J.; AND N.J.,  
A MINOR CHILD

APPELLEES

AND

NO. 2024-CA-0082-ME

C.P.S.

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE W. KENT VARNEY, JUDGE  
ACTION NO. 22-AD-00086

C.C.J.; CABINET FOR HEALTH AND  
FAMILY SERVICES; J.S.J.; AND L.J.,  
A MINOR CHILD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, EASTON, AND McNEILL, JUDGES.

ACREE, JUDGE: Appellant, C.P.S. (Mother), appeals the Pike Circuit Court Order granting two adoption petitions for minor children N.J. and L.J. (Children) in favor of C.C.J. (Adoptive Parent). We affirm.

**BACKGROUND**

Appellant is the biological mother of Children. On December 26, 2020, the Cabinet for Health and Family Services (the Cabinet) removed Children from Mother’s custody, and three days later the Cabinet placed them in the temporary custody to Adoptive Parent. A dependency, neglect, and abuse (DNA) action commenced regarding the Children. At its conclusion, the court awarded permanent custody to Adoptive Parent.

Both Mother and Children’s biological father were given case plans by the Cabinet, but both failed to complete their plans. Mother failed to comply with drug screens and home visits, and shortly after completing inpatient rehabilitation for drug use, she relapsed. Children’s biological father was incarcerated when the Cabinet removed Children and the circuit court noted that he showed little to no interest in this action or the DNA action. Adoptive Parent filed

adoption petitions for Children pursuant to KRS<sup>1</sup> 199.502, which governs adoptions without the consent of the biological parents.

The court held a hearing on these petitions on November 29, 2023. At the hearing, the court heard testimony concerning Mother's drug use, incarceration, and failure to complete her Cabinet case plan. The court also heard testimony that neither Mother, nor Children's father, had provided essential parental care or protection since Children's removal in December 2020. *See* KRS 199.502(1)(e). This included the biological parent's failure to provide food, clothing, shelter, medical care, or education pursuant to KRS 199.502(1)(g). Since the Cabinet placed Children with Adoptive Parent, Adoptive Parent had custody of Children and provided all essential care for Children.

Adoptive Parent and Mother were very close friends and the court treated Adoptive Parent as fictive kin because of their close relationship and Adoptive Parent's relationship to Children. Adoptive Parent made efforts to include Mother in Children's lives and had the discretion to allow supervised visits. Adoptive Parent indicated that visits ceased in August 2022, though prior to this, Adoptive Parent's testimony indicated Mother's visits with Children were not positive experiences for Children. Mother disagreed with this characterization. Ultimately, the relationship between Adoptive Parent and Mother deteriorated,

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<sup>1</sup> Kentucky Revised Statutes.

leading Adoptive Parent to file harassing communication charges against Mother. The record further indicates that, from December 2020 until the hearing, Mother purchased and abused illegal drugs.

After the hearing, the Pike Circuit Court granted both petitions for adoption. This appeal follows.

### **ANALYSIS**

We have, and will repeat, “This Court is acutely aware of what is at stake during actions for adoptions without the consent of a biological parent.” *I.L.D. v. B.C.R.*, No. 2023-CA-0129-ME, 2023 WL 6323156, at \*2 (Ky. App. Sep. 29, 2023). “[P]arental rights are a ‘fundamental liberty interest protected by the Fourteenth Amendment’ of the United States Constitution.” *R.P., Jr. v. T.A.C.*, 469 S.W.3d 425, 426 (Ky. App. 2015) (quoting *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S. Ct. 1388, 1394, 71 L. Ed. 2d 599 (1982)). “An adoption without the consent of a living biological parent is, in effect, a proceeding to terminate that parent’s parental rights.” *B.L. v. J.S.*, 434 S.W.3d 61, 65 (Ky. App. 2014) (citing *Moore v. Asente*, 110 S.W.3d 336 (Ky. 2003)).

When reviewing a circuit court’s decision to grant an adoption petition pursuant to KRS 199.502, appellate court’s review those orders under the clearly erroneous standard in CR<sup>2</sup> 52.01 applying the clear and convincing

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<sup>2</sup> Kentucky Rules of Civil Procedure.

evidence burden-of-proof standard. The circuit court’s findings will not be disturbed unless there exists no substantial evidence in the record to support its findings. *M.P.S. v. Cabinet for Hum. Res.*, 979 S.W.2d 114, 116 (Ky. App. 1998) (citing *V.S. v. Cabinet for Hum. Res.*, 706 S.W.2d 420, 423 (Ky. App. 1986)). “Clear and convincing proof does not necessarily mean uncontradicted proof.” *Rowland v. Holt*, 70 S.W.2d 5, 9 (Ky. 1934). “It is sufficient if there is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent minded people.” *Id.*

Relevant to this appeal, KRS 199.502 states:

Notwithstanding the provisions of KRS 199.500(1), an adoption may be granted without the consent of the biological living parents of a child if it is pleaded and proved as part of the adoption proceeding that any of the following conditions exist with respect to the child:

....

(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[.]

KRS 199.502(1)(e), (g). We have further noted that circuit courts shall take into consideration the following when ruling on adoption petitions:

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

*A.K.H. v. J.D.C.*, 619 S.W.3d 425, 431 (Ky. App. 2021) (footnote omitted).

On appeal, Mother challenges the sufficiency of the evidence for terminating her parental rights and Adoptive Parent's adoption of Children.

Mother first challenges the circuit court's conclusion that she did not meaningfully participate in Children's lives. In her brief, Mother states she participated in in-patient rehabilitation during the DNA action and would visit, in person or virtually, multiple times a week. Mother says she did complete parenting classes and bought her children gifts for holidays and birthdays. She also indicates she would participate in the care of her children, by bathing her children or helping them with schoolwork. She further states she did offer to buy things for Children, such as clothing or school supplies, but Adoptive Parent refused her offers.

Mother states her relationship with Adoptive Parent began to deteriorate in August 2022 after an incident in which she believed Adoptive Parent lied to her. As Mother alleges, she wanted to see Children, but Adoptive Parent declined the visit because he was not feeling well. However, he took Children to the lake anyway despite telling Mother he did not want to go anywhere that day. This change of plans, and the resulting communications between the two, led to Adoptive Parent filing charges for harassing communications. A month after this incident, Adoptive Parent filed the adoption petitions.

Taking Mother's testimony into account, we cannot say the circuit court lacked clear and convincing evidence to grant the adoption petitions. The circuit court had sufficient evidence to determine Mother failed to comply with her case plan the Cabinet gave her. Additionally, the court heard evidence of Mother's illicit drug use and her constant struggle with substance abuse. While Mother did participate in in-patient rehabilitation, the record supports the conclusion that she shortly thereafter relapsed and continued to abuse illicit drugs.

At the time of the hearing, Mother was incarcerated at the Pike County Detention Center and was enrolled in a substance abuse treatment program there. Her participation in this program came as part of a criminal plea agreement she reached with the Commonwealth over criminal charges. This latest episode of incarceration is what the court characterized as "an extensive history of criminal

conduct.” The testimony the court heard supported this conclusion, and the other conclusions the court reached about Mother’s drug abuse.

Further, it is without dispute that Adoptive Parent has had custody of Children since their removal from Mother. The court heard evidence that in the time since the removal, Adoptive Parent provided essential care and protection for Children. Adoptive Parent performed all the functions and duties of a parent, including feeding them and providing for the healthcare and educational needs. Adoptive Parents also included Mother in Children’s lives at his discretion in what Adoptive Parent believed to be in the Children’s best interest. A review of the record shows the circuit court had sufficient evidence to determine the level of parental care Adoptive Parent had given to Children since their removal.

Conversely, the court heard sufficient evidence that Mother had not provided practically any care for the Children, other than supervised visits. Taking Mother’s word as true, her supervised visits with Children do not constitute providing for Children’s needs. The circuit heard sufficient evidence to conclude the requirements of KRS 199.502(e) and (g) were met; Adoptive Parent provided for Children while Mother did not. At the time of the hearing, Adoptive Parent had provided for the children for nearly four years, while Mother had not.

The evidence of record is sufficient to satisfy the clear-and-convincing-evidence standard for terminating Mother’s parental rights and



granting Children's adoption by Adopting Parent. Accordingly, the statutory requirements found in KRS 199.502 were satisfied.

**CONCLUSION**

The Pike Circuit Court neither erred in making nor misapplied the law to its findings when it granted Adoptive Parent's petition to adopt N.J. and L.J.

We affirm.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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