RENDERED: AUGUST 1, 2025; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2024-CA-0581-ME

B.F. AND S.F. APPELLANTS

v. APPEAL FROM ROBERTSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE HEATHER FRYMAN, JUDGE
ACTION NO. 24-J-00001-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; A.P., A MINOR
CHILD; AND J.P. APPELLEES

AND

NO. 2024-CA-0582-ME

B.F. AND S.F. APPELLANTS

v. APPEAL FROM ROBERTSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE HEATHER FRYMAN, JUDGE
ACTION NO. 24-J-00002-001

COMMONWEALTH OF
KENTUCKY, CABINET FOR
HEALTH AND FAMILY SERVICES;
C.F., A MINOR CHILD; C.T.F.; D.F.;
AND J.F. APPELLEES

AND

NO. 2024-CA-0583-ME

B.F. AND S.F. APPELLANTS

v. APPEAL FROM ROBERTSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE HEATHER FRYMAN, JUDGE
ACTION NO. 24-J-00003-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; J.F., A MINOR
CHILD; D.F.; AND J.F. APPELLEES

AND

NO. 2024-CA-0584-ME

B.F. AND S.F. APPELLANTS

v. APPEAL FROM ROBERTSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE HEATHER FRYMAN, JUDGE
ACTION NO. 24-J-00004-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; L.D., A MINOR CHILD;
AND J.D. APPELLEES

AND

NO. 2024-CA-0585-ME

B.F. AND S.F. APPELLANTS

v. APPEAL FROM ROBERTSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE HEATHER FRYMAN, JUDGE
ACTION NO. 24-J-00005-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; D.F., A MINOR CHILD;
D.F.; AND J.F. APPELLEES

AND

NO. 2024-CA-1354-ME

B.F. AND S.F. APPELLANTS

v. APPEAL FROM ROBERTSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE HEATHER FRYMAN, JUDGE
ACTION NO. 24-J-00001-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; A.P., A MINOR CHILD;
AND J.P. APPELLEES

AND

NO. 2024-CA-1352-ME

B.F. AND S.F. APPELLANTS

v. APPEAL FROM ROBERTSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE HEATHER FRYMAN, JUDGE
ACTION NO. 24-J-00002-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; C.F., A MINOR CHILD;
C.T.F.; D.F.; AND J.F. APPELLEES

AND

NO. 2024-CA-1353-ME

B.F. AND S.F. APPELLANTS

v. APPEAL FROM ROBERTSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE HEATHER FRYMAN, JUDGE
ACTION NO. 24-J-00003-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; J.F., A MINOR CHILD;
D.F.; AND J.F. APPELLEES

AND

NO. 2024-CA-1350-ME

B.F. AND S.F. APPELLANTS

v. APPEAL FROM ROBERTSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE HEATHER FRYMAN, JUDGE
ACTION NO. 24-J-00004-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; L.D., A MINOR CHILD;
AND J.D. APPELLEES

AND

NO. 2024-CA-1349-ME

B.F. AND S.F. APPELLANTS

v. APPEAL FROM ROBERTSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE HEATHER FRYMAN, JUDGE
ACTION NO. 24-J-00005-001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; D.F., A MINOR CHILD;
D.F.; AND J.F. APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, EASTON, AND L. JONES, JUDGES.

EASTON, JUDGE: The Appellants, B.F. ("Father") and S.F. ("Mother") (collectively "Parents") are the parents or stepparents of five children (collectively "Children"). Parents have filed two sets of appeals from orders entered by the Clark and Robertson family courts in Dependency, Neglect, and Abuse ("DNA") cases involving the Children. In the first appeal (Case Nos. 2024-CA-0581-ME; 2024-CA-0582-ME; 2024-CA-0583-ME; 2024-CA-0584-ME; and 2024-CA-0585-ME), Parents argue both the Clark and Robertson family courts failed to properly address their motions pursuant to CR[1] 60.02 and CR 61.02. They also claim the Clark Family Court abused its discretion in transferring the venue to the Robertson Family Court. In their second set of appeals (Case Nos. 2024-CA-1354-ME; 2024-CA-1352-ME; 2024-CA-1353-ME; 2024-CA-1350-ME; and 2024-CA-1349-ME), Parents challenge the Robertson Family Court's order of permanent custody of the Children to relatives.

[1] Kentucky Rules of Civil Procedure.

We have consolidated these appeals, and we address both family courts' orders regarding all the Children in this Opinion. After a thorough review of the record, we affirm the orders of the Clark and Robertson family courts.

FACTUAL AND PROCEDURAL HISTORY

There are five children involved in these cases. Mother is the biological mother of A.P. and L.D. Father is the biological father of C.F. Both Parents are the biological parents of J.F. and D.F. When these cases began, Parents had custody of C.F., J.F., and D.F. They had primary custody of A.P., who had visitation time with her biological father. L.D. was in the primary custody of her biological father, but she had visitation time with Mother.

The Cabinet for Health and Family Services ("Cabinet") began an investigation in September 2022 when C.F. (then age six) presented at school with significant bruising. He disclosed that his stepmother hit him in the face with her fist. On September 22, 2022, the parents signed an agreed safety plan, which allowed three of the children to be placed with Father's parents ("Grandparents") "until further notice." L.D. was to remain with her father.

In October 2022, the Cabinet filed a DNA petition in the Clark Family Court, which was the county in which the family resided at the time. The petition alleged Mother regularly hit C.F., that C.F. disclosed to Grandmother that Parents had locked him in the garage in the dark as punishment, and that the oldest three

children were hit with a belt and made to stand in the corner for long periods of time. An amended petition was filed in November 2022, describing additional physical abuse and neglect, particularly to the oldest three children. The youngest child, D.F., had not yet been born when these allegations arose; however, he was born prior to the adjudication hearing. The Grandparents were officially given temporary custody of C.F. and J.F. by the Clark Family Court on February 2, 2023. At this point, A.P. was residing with her father, and L.D. was with her father.

The Adjudication Hearing occurred on April 12, 2023, in which the Clark Family Court found by a preponderance of the evidence that Children were abused and neglected. It found Mother was abusive and caused harm and risk of harm, and Father created a risk of harm by failing to protect the Children. The Disposition Hearing took place on May 18, 2023. At this hearing, Mother was ordered to have no contact with C.F. All other Children were to have supervised visits only. At the Disposition Hearing, the Guardian *ad Litem* ("GAL") moved the Clark Family Court to transfer the venue, as none of the Children or Parents resided in Clark County any longer. The Clark Family Court declined to do so at that time. On May 24, 2023, temporary custody of D.F. was granted to Grandparents. Neither the Adjudication Orders nor the Disposition Orders were appealed.

On July 13, 2023, Parents filed a motion to transfer venue to Fayette County, as that was where they were residing at that time. This motion was again denied. The Clark Family Court then ordered the family to undergo a CATS[2] assessment.

In December 2023, the GAL filed a motion to review and to grant permanent custody of the Children to the relative placements. The GAL had become aware that Parents had both been charged with Criminal Abuse-First Degree, based upon an admission made by Mother during the CATS assessment. She made statements to the evaluator that Father had locked C.F. in a dog cage as punishment.

On January 8, 2024, Parents filed a Motion for Relief Pursuant to CR 60.02 and CR 61.02. They argued they should either be relieved from the Adjudication and Disposition Orders, or that they should receive a new hearing, because the Children were removed from their custody without a court order. They claimed the actions of the Cabinet violated multiple sections of the Kentucky and United States Constitutions, as well as KRS[3] 620.060 and FCRPP[4] 18. Parents

[2] Comprehensive Assessment and Training Services Program, performed by the University of Kentucky Center on Trauma and Children.

[3] Kentucky Revised Statutes.

[4] Family Court Rules of Procedure and Practice.

claim, "this Court should grant relief to the Respondents [Parents], pursuant to CR 60.02(d) as this action proceeded as a result of fraud, perpetrated by and upon this Court."[5]

Parents stated the testimony of the Children, relied upon by the family court for its findings, was false and coerced. Parents further allege that C.F. has had bruising on multiple occasions from being in Grandparents' custody, and the Cabinet has failed to investigate those claims. Parents also allege the Cabinet has allowed Children to visit unsupervised with maternal grandmother and step-grandfather, the latter being a convicted sex offender. Parents also argue they should be relieved of the judgment because A.P. is in the sole custody of her father, who is also a registered sex offender.

In an order issued on February 1, 2024, the Clark Family Court transferred the matter to the Robertson Family Court. The Clark Family Court's order indicated this transfer was based on several factors; first, it reconsidered the GAL's previous motion to transfer. The family court determined that transfer was appropriate because none of the parties lived in Clark County. Additionally, transfer avoided any issue of recusal, if one was presented by the amorphous allegation of fraud *by* the court made in Parents' motion.

[5] Motion for Relief Pursuant to CR 60.02; And Motion for Relief from Judgment Pursuant to 61.02, filed May 6, 2024.

A hearing was held on April 2, 2024, in the Robertson Family Court to address Parents' motion. At this hearing, Parents claimed it was not their intent to relitigate the adjudication of this case, but they instead argued that the case should not have proceeded because Parents' constitutional rights, as well as the rules governing DNA cases, were violated at the outset. They argued the procedural issues that took place in this action were so egregious that everything occurring after October 2022 should be deemed "fruit of the poisonous tree" and should be undone. The Robertson Family Court denied the motion in a written order dated April 8, 2024. This order is the basis for the first set of appeals.

The Robertson Circuit Court conducted the permanency hearing on September 12 and 13, 2024. The Cabinet called several witnesses, the first being Andrea Sanders ("Sanders"), the ongoing Cabinet worker in this case. Sanders testified that Parents were uncooperative with her throughout their case plan; they advised her she needed to obtain updates from their attorney. She stated Parents have lived in seven different residences, including several extended-stay hotels and family members' homes, throughout the life of this case. Parents were then residing in a two-bedroom apartment in Lexington, where they had resided for about three months. They had also had multiple jobs. Both were still employed; Mother was then employed by the drug testing company owned by Parents'

attorney. Sanders confirmed that both Parents had completed multiple items on their case plans and have always been negative on their drug screens.

Sanders recounted issues that arose during Parents' supervised visits with Children at the Cabinet office. She stated most of her interactions with Parents were negative. Parents would complain about Grandparents and the Cabinet workers in front of the Children. Parents would inspect the Children "head to toe" to see if there were any scratches or bruises and take pictures if they found anything. She also testified that, early on, when Parents were still receiving visitation with C.F., Parents would bring food for the Children. Parents required C.F. to sit at the table until he ate everything they brought him, even if that meant he had very little time to interact or play. Sanders stated the Cabinet workers supervising visits only intervene during the visits if there is a risk of physical harm to the Children; otherwise, they simply observe.

Despite the classes Parents had completed and counseling they had been involved with, Sanders did not believe Parents had addressed most of their high-risk behaviors. Part of their parenting classes included training on co-parenting, but Parents had not reached out to any of the caregivers who had custody of Children. They had made no inquiries of Children's well-being or offered any assistance. Because Parents will not communicate with her, Sanders is

unable to determine if any meaningful progress or changes to their behavior had occurred.

The Cabinet's next witness was Corey Birch ("Birch"), who is a licensed professional clinical counselor for U.K. Center on Trauma and Children. He was part of the team of evaluators that performed the CATS assessment for the family. He was asked to assess the Parents' ability to safely parent the three youngest Children.

Birch spoke of his interview with C.F. C.F. exhibited several symptoms of trauma and PTSD,[6] such as nightmares, intrusive thoughts, hyper-awareness, and low self-worth. He perceived himself as being "bad." He also illustrated a "freeze" response when recounting some of the abuse he suffered. C.F. indicated he did not feel safe with Parents. Yet C.F. spoke positively of his relationship with Grandparents, and he indicated he did feel safe living with them.

Birch was troubled by his evaluation of Mother. Her responses regarding C.F. and the abuse to which he was subjected illustrated a lack of empathy for a young child. Mother expressed that she felt it was unfair that she was regarded as the main perpetrator of C.F.'s abuse when Father was abusive as well. Mother expressed concern about Father's drinking and that he used harsh corporal punishment on C.F. Birch was concerned that Mother did not seem to

[6] Post-Traumatic Stress Disorder.

connect their treatment of C.F. to his perceived behavioral problems. While Mother stated Father sometimes hit C.F. too hard, she also said C.F. was making up allegations about them.

Mother also talked about a time when Father locked C.F. in a dog cage as punishment, and she let him out. This incident was reported to the Cabinet and to law enforcement, which led to the criminal abuse charges being filed. Mother agreed C.F. should stay with Grandparents, and she stated she wanted nothing to do with him. As for the younger Children, Birch stated that one positive was that Mother was very knowledgeable about D.F.'s medical issues and what those issues would require of a caregiver.

Birch testified that Father's statements about C.F.'s abuse were inconsistent. Birch again expressed concern that Father minimized the effect the abuse had on C.F., and that Father did not take responsibility for the physical abuse. Father appeared to have no insight whatsoever as to how his behavior affected C.F. and his well-being. Birch's recommendation was that all three of the Children remain in their current placement with Grandparents.

The Cabinet's next witness was a social service aid. She assisted with the supervised visitation. While she did not have any personal negative interactions with Parents, she did observe that Parents were very tense with Grandparents. She testified Parents didn't really interact with anyone but the

Children at the visits. She heard Parents speak disparagingly about Grandparents and their social worker in front of the Children.

The next witness called was J.P., A.P.'s biological father. A.P. now lives solely with him. He testified they had a good relationship and that A.P. was doing very well. She is a happy child. J.P. testified Mother has not reached out to either visit with A.P. or inquire about her since this case began in 2022. He stated he has not prevented Mother from seeing or having communication with A.P. J.P. acknowledged he is a registered sex offender.[7] He testified that he immediately took responsibility for his actions, he attended and completed the sex offender treatment program, and completed all requirements of him. J.P. was exercising visitation with A.P. while his criminal case was ongoing, with Mother's consent. Mother was aware of J.P.'s criminal charges when she allowed him to continue visits with A.P. The family court judge who oversaw his and Mother's custody action was also aware of the criminal case.

J.D. testified next. He is L.D.'s biological father. L.D. has primarily lived with him since 2019, and she has lived solely with him since this case began in September 2022. He sought a Domestic Violence Order ("DVO") on L.D.'s

[7] While the details of the case leading to J.P.'s conviction and subsequent registration were discussed in the hearing, to maintain anonymity of the parties, we will refrain from going into more detail. The family court determined that J.P. did not likely pose a risk to A.P.

behalf when the abuse allegations arose, which was granted. While the DVO was still in place at the time of this hearing, it had been amended so that Mother could receive supervised visits with L.D. at Greenhouse 17.[8] J.D. testified he had filled out the necessary paperwork for those visits to occur, but Mother would not agree to the location for the visits. He stated Mother has not communicated with him to either ask about L.D. or to request that he do anything to facilitate visits. J.D. testified L.D. was in therapy, and he enrolled her at the advice of the Cabinet. He said the therapy has helped L.D. tremendously.

Grandmother was the final witness called by the Cabinet. She and her husband have custody of the three youngest Children. When the Children were initially placed with her, it was only C.F. and J.F., as D.F. had not yet been born. D.F. was placed with Grandparents when he was seventeen days old. C.F. and J.F. were both very thin when they first came to live with Grandparents. They worked with a nutritionist for J.F., but C.F. slowly gained weight on his own.

C.F. initially had nightmares and would cry a lot at night. He also expressed concern to Grandparents about safety issues. He would frequently worry about things like storms, tornadoes, and car wrecks. Grandparents had to constantly reassure him that he was safe. Grandmother testified that C.F. asked

[8] A nonprofit organization with a goal to end domestic violence and abuse. A service they offer is supervising visitation between parents and children. They have locations for supervised visits in Lexington, Georgetown, and Danville. https://greenhouse17.org.

questions about death and heaven, and she spoke of a time when he once asked her if it would hurt if he killed himself. Grandmother also discussed pictures that C.F. would draw that were dark and scary, such as pictures involving monsters or people inside burning buildings.

Grandmother testified that C.F. has improved dramatically since he initially came to live with them. He's much calmer. Since C.F.'s visits with Parents have stopped, he no longer wets the bed. The scary drawings have stopped, and the pictures C.F. draws now are happy and sweet pictures. Grandmother confirmed her relationship with Parents is very strained. Parents have not attempted to communicate with her in any way. At the visits Parents have with J.F. and D.F., Parents do not speak with Grandparents.

For the Parents, Mother testified next. She spoke of all the classes she had completed, including a healthy relationships and positive parenting class, anger management, and a victims' intimate partner program. Mother also testified she was doing individual counseling. She and Father were both employed and had an apartment in Lexington. Mother confirmed she was employed by the company her attorney owns, and she does drug-testing in her position.

Mother testified she does not agree with the findings of abuse and neglect by the Clark Family Court in the adjudication hearing. She does believe the family had some issues, but "every family has issues." She also stated that she

does not believe she or Father were at fault. Mother believed that C.F. was "not entirely" at fault for the issues that arose, suggesting the child somehow bore much of the blame.

Mother denies making many of the statements attributed to her during the CATS assessment. She denies claiming that Father has a drinking problem. She clarified that she did not say that C.F. made false accusations, but instead stated he "made some statements that were concerning." Mother also disputes claiming that Father physically abused C.F. She repeatedly rebutted that she ever made any statements about C.F. being locked in a dog cage. She claimed she never saw C.F. in a dog cage at all; according to her, this was just an allegation someone else made.

Mother did acknowledge that both she and Father spanked C.F. and made him stand in the corner with his knees bent. She claimed the only belt C.F. was spanked with was a cloth belt that did not have a buckle, and he did not have to stand in the corner for more than a few minutes. She stated both A.P. and L.D. were also spanked with that cloth belt. She denies withholding food as punishment. She claims she never hit C.F. in the face or hit his head into a wall and is "shocked" he would say that. Mother did state there were times she believed Father spanked C.F. too hard, although he used his hand, not any object.

Mother claims she did not cooperate with the Cabinet on the advice of counsel. She also stated she did not reach out to L.D.'s father because she was told it would be a violation of the DVO for her to do so, ignoring the amendment of that DVO. Mother also said she did fill out the paperwork to have the Greenhouse 17 visits, but she was told J.D. had not completed his side of the paperwork to begin visits. She alleges she asked the Cabinet for assistance in setting up these visits on several occasions.

Mother testified she wants all the Children returned to her and Father. She stated they have the option of moving into a bigger apartment in their complex if that were to occur. She believes she is a nurturing caregiver to all the Children. Yet she does not want a parenting role with C.F., although she denies saying she wants no relationship with him. She testified she has learned a lot from her parenting classes.

At the conclusion of the hearing, the family court indicated it was granting permanent custody of all the Children to their current placements. The family court ruled Parents should have no contact with C.F. The supervised visits with J.F. and D.F. would continue, although a new location would have to be determined, as the Cabinet would now be relieved of its duties. The family court ruled Mother could have supervised contact with A.P. and L.D., if the Children so desire and their therapists agree. A written order was issued on September 30,

2024, which was the basis of the second appeal. Further testimony and evidence will be discussed as it becomes relevant to our analysis.

Nos. 2024-CA-0581-ME; 2024-CA-0582-ME; 2024-CA-0583-ME; 2024-CA-0584-ME; and 2024-CA-0585-ME

STANDARD OF REVIEW

In the first set of appeals, Parents allege error in the family court's denial of their motions pursuant to CR 60.02 and CR 61.02 and in the Clark Family Court's change of venue.

"Our standard of review for a trial court's denial of a CR 60.02 motion is abuse of discretion." *Lawson v. Lawson*, 290 S.W.3d 691, 693 (Ky. App. 2009). CR 61.02 deals with palpable error. "A palpable error which affects the substantial rights of a party may be considered by the appellate court even though insufficiently raised or preserve for appellate review. Such relief is available only if a manifest injustice has resulted from the error. In applying this rule, the palpable error must result from action taken by the court rather than an act or omission by the attorneys or the litigants." *Cobb v. Hoskins*, 554 S.W.2d 886, 888 (Ky. App. 1977).

Regarding a change in venue, that is likewise reviewed for abuse of discretion. *Gill v. Commonwealth*, 7 S.W.3d 365, 369 (Ky. 1999). "The test for abuse of discretion is whether the trial judge's decision was arbitrary,

unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citations omitted).

ANALYSIS

Parents filed their Motion for Relief Pursuant to CR 60.02 and Motion for Relief from Judgment Pursuant to 61.02 when the case was still in the Clark Family Court. Rather than ruling on this motion, the Clark Family Court transferred the case to the Robertson Family Court. Ultimately, the Robertson Family Court denied Parents' motion.

We will briefly address the insinuation of disqualification of the Clark Family Court judge. That judge did not recuse. The issue was circumvented by the transfer of the case to the Robertson Family Court.

We do not believe that disqualification was required. If every general and carelessly stated complaint about a prior decision could bring about the disqualification of a judge asked to revisit that decision, the incentive for forum shopping would be given free rein. The unexplained statement of fraud *by* the court is insufficient to compel application of KRS 26A.015(2)(e) when we examine the entire record. Such a question of an appearance of impropriety "is an objective one, made from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances." *Dean v. Bondurant*, 193 S.W.3d 744, 746 (Ky. 2006) (internal quotation marks and citation omitted). It should also

be noted that the result of disqualification would have been a transfer to another judge for a decision, precisely what happened here. *See* KRS 26A.020.

In any event, Parents argue both family courts erred by not properly addressing their motion. They argue they are entitled to relief from judgment under CR 60.02(d), (e), and (f). These rules state:

> On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: . . . (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief.

CR 61.02 states "[a] palpable error which affects the substantial rights of a party may be considered by the court on motion for a new trial or by an appellate court on appeal, even though insufficiently raised or preserved for review, and appropriate relief may be granted upon a determination that manifest injustice has resulted from the error."

Parents allege that the Cabinet and the courts violated their constitutional rights because the Children were removed from the home without a temporary custody order, in contravention of KRS 620.060 and FCRPP 18.

KRS 620.060 states in full:

(1) The court for the county where the child ordinarily resides or will reside or the county where the child is present may issue an ex parte emergency custody order when it appears to the court that removal is in the best interest of the child and that there are reasonable grounds to believe, as supported by affidavit or by recorded sworn testimony, that one (1) or more of the following conditions exist and that the parents or other person exercising custodial control or supervision are unable or unwilling to protect the child:

> (a) The child is in danger of imminent death or serious physical injury or is being sexually abused;
>
> (b) The parent has repeatedly inflicted or allowed to be inflicted by other than accidental means physical injury or emotional injury. This condition shall not include reasonable and ordinary discipline recognized in the community where the child lives, as long as reasonable and ordinary discipline does not result in abuse or neglect as defined in KRS 600.020(1); or
>
> (c) The child is in immediate danger due to the parent's failure or refusal to provide for the safety or needs of the child.

(2) Custody may be placed with a relative taking into account the wishes of the custodial parent and child or any other appropriate person or agency including the cabinet.

(3) An emergency custody order shall be effective no longer than seventy-two (72) hours, exclusive of weekends and holidays, unless there is a temporary removal hearing with oral or other notice to the county attorney and the parent or other person exercising custodial control or supervision of the child, to determine if the child should be held for a longer period. The seventy-two (72) hour period also may be extended or

delayed upon the waiver or request of the child's parent or other person exercising custodial control or supervision.

(4) Any person authorized to serve process shall serve the parent or other person exercising custodial control or supervision with a copy of the emergency custody order. If such person cannot be found, the sheriff shall make a good faith effort to notify the nearest known relative, neighbor, or other person familiar with the child.

(5) Within seventy-two (72) hours of the taking of a child into custody without the consent of his parent or other person exercising custodial control or supervision, a petition shall be filed pursuant to this chapter.

(6) Nothing herein shall preclude the issuance of arrest warrants pursuant to the Rules of Criminal Procedure.

FCRPP 18 states:

(1) Any request for an emergency custody order in a dependency, neglect or abuse case shall be in writing and shall be accompanied by an affidavit for emergency custody order which contains the contents of the official AOC form, AOC-DNA-2.1 (Affidavit for Emergency Custody Order), and which alleges dependency, or abuse or neglect. The affidavit shall be presented to the judge with any other documentation presented at the time of the filing of the request. The official AOC form may be utilized for compliance with this rule.

(2) An affidavit for an emergency custody order may be sworn, either in the presence of or through reliable electronic means, before an official authorized to administer oaths. The presentation of the affidavit to the Court and the administration of the oath may be made in person or by reliable electronic means.

(3) When a reliable electronic means is being used in lieu of actual presence before an official authorized to administer oaths, the official administering the oath must be in communication with the person completing the affidavit, so that the official administering the oath may comply with the requirements for administering oaths. The official administering the oath shall certify on the affidavit or an accompanying document that the oath was taken while in communication with the affiant and shall state the name and title of the official administering the oath and the time the affidavit was sworn.

(4) The person seeking the emergency custody order shall indicate on the affidavit whether there are other proceedings pending, or any orders of custody, related to the child in the Commonwealth or any other state.

(5) The emergency custody order shall be entered using the official AOC form, AOC-DNA-2 (Emergency Custody Order). In no event shall a child be removed pursuant to KRS 620.060 only on a verbal order.

(a) Upon issuance of an emergency custody order by the judge, the person seeking the emergency custody order shall file the emergency custody order and the affidavit with the clerk no later than the close of the next work day and the clerk shall assign a case number.

(b) If not filed with the emergency custody order, a petition shall be filed with the clerk within 72 hours of taking the child into custody in the same case file as the emergency custody order and affidavit.

(c) The court may, after issuing an emergency custody order, transfer the case for forum non conveniens to the county where the dependency, abuse or neglect is alleged to have occurred and shall notify the court to which the case is being transferred, upon issuance of the transfer order.

Parents complain about the process that occurred in their cases. Children were removed from Parents' home on September 22, 2022. A temporary custody order was not entered by the family court until February 2, 2023. While difficult to fully discern what Parents are requesting, they are arguing, essentially, that this entire case should be thrown out, because of the procedural errors they believe occurred during the initial removal process. We cannot agree with this assessment.

It is accurate that Children were removed from Parents' home on September 22, 2022. But they were removed pursuant to an *agreed* safety plan. At this juncture, the family court was not involved. The parents agreed to temporarily placing the Children with Grandparents during the investigation. On page 2 of the agreed safety plan, it is prominently noted: "This voluntary agreement may be revoked at any time." Further on the same page, it reads: "The undersigned understand[s] this document is not a court order. It is a voluntary agreement between the signed parties." Both Parents' signatures appear on the document. At no point have Parents made the claim that they did not sign this document or agree to its terms. Nothing in KRS 620.060 or FCRPP 18 prohibit these voluntary agreements to achieve temporary placement of children.

It is true that KRS 620.048 now requires the Cabinet to file a DNA petition within 72 hours if a child remains outside of his/her home for more than

fourteen consecutive days under an agreed safety plan. However, this statute did not become effective until July 15, 2024, well after this case was initiated. Parents point to no authority that the Cabinet was not allowed to voluntarily remove Children under an agreed safety plan when this case began.

Parents filed a Petition for Immediate Entitlement on October 7, 2022, presumably pursuant to KRS 620.110, and this was scheduled to be heard on October 18, 2022. While not provided to this Court in the record, we were able to discern that a petition was filed. The Robertson Family Court was apparently also not provided with a copy of this petition, as its order denying relief under CR 60.02 and CR 61.02 references that this particular course of action is what Parents should have done if they were unhappy with the Cabinet's removal. While this may have been an appropriate action, it is debatable whether this was necessary, as the Children had been removed from the home voluntarily, and there was no court order at the time stating that Parents did not have custody of Children. There was no court order preventing Parents from simply taking back possession of their Children when their petition was filed.

KRS 620.110 states: "[a]ny person aggrieved by the issuance of a temporary removal order may file a petition in Circuit Court for immediate entitlement to custody and a hearing shall be expeditiously held according to the Rules of Civil Procedure. During the pendency of the petition for immediate

entitlement the orders of the District Court shall remain in effect." A Petition for Immediate Entitlement "concerns relief from a temporary order of the district court." *Anderson v. Cabinet for Health & Fam. Servs.*, 643 S.W.3d 109, 112 (Ky. App. 2022).

The Cabinet then filed its DNA Petitions regarding the four oldest Children on October 17, 2022. Parents were arraigned on the petition on October 21, 2022. On that date, it appears the family court continued placement of the Children with their current placements. There is no mention of the Parents' Petition for Immediate Entitlement on the docket sheet. It is unknown why the official AOC form was not utilized, granting temporary custody of Children to Grandparents. None of the Clark Family Court proceedings were included for our review. There is no indication in the written record that Parents lodged any objection to Children continuing to be placed with Grandparents. On the Cabinet's petition, however, it lists the Grandparents' address as the "current residence" of C.F. and J.F., and A.P.'s and L.D.'s current residences are listed as their fathers' addresses. On February 2, 2023, a temporary custody order was entered, granting Grandparents temporary custody of C.F. and J.F.

The Adjudication Hearing occurred on April 12, 2023, as discussed above. The Disposition Hearing took place on May 18, 2023. After the Disposition Order was entered, the family court's orders became final and

appealable. *Id.* at 113. Notably, Parents did not appeal. The time for challenging the findings of the family court in the adjudication hearing is long past.

Even if, for the sake of argument, we believe some procedural errors occurred during the removal phase of this case, we cannot subscribe to Parents' arguments that these errors entitle them to relief from a judgment they did not properly appeal. The temporary orders are just that, temporary, and they are superseded by a final and appealable order. It is this later final order that must be appealed, which did not occur in this case. If any irregularities did occur during the removal phase of this case, they were effectively cured by a proper adjudication and disposition hearing. *See Gladish v. Gladish*, 741 S.W.2d 658, 661-62 (Ky. App. 1987). Parents' Petition for Immediate Entitlement was rendered moot by the family court's disposition order. *See Anderson, supra*, at 113-14.

While Parents made multiple arguments to the family court below in their CR 60.02 and CR 61.02 motion, their brief is rather vague, and focuses on their perceived injustices of the removal process. Parents state:

> The Appellants presented documentation, and would have presented arguments, that they should have [relief provided] pursuant to CR 60.02(d) as this action proceeded as a result of fraud, perpetrated by and upon this Court. Secondly, pursuant to CR 60.02(e) due to the judgment being void and no longer equitable. And lastly, pursuant to CR 60.02(f) as the nature of the Clark Circuit Court's actions, and those of the Cabinet for Health and

> Family Services, Department for Community Based Services were so extraordinarily out of line with the notions of equity and fundamental fairness that not reconsidering these Orders cannot be justified.[9]

Parents do not explain in their brief what "fraud" was perpetrated or how the judgment is void or no longer equitable. The only "fraud" we can determine Parents might be referencing is their argument to the family court that the Children's testimony at the adjudication hearing was false or coerced. This cannot be the basis for relief for several reasons. First, it is untimely, as the time to appeal findings from the adjudication hearing is immediately after the completion of the disposition hearing, as already discussed. Second, Parents provide no details as to what particular testimony was false, how it was false, or who coerced any of the Children to testify falsely. Again, we have not been provided with the adjudication or disposition hearings. We simply note the family court's orders that the Children's testimony was credible. When a record is incomplete, "the missing record is presumed to support the circuit court's decisions." *Haney v. Stykes*, 688 S.W.3d 561, 565 (Ky. App. 2023).

"The burden of proof falls squarely on the movant to affirmatively allege facts which, if true, justify vacating the judgment and further allege special

[9] Appellants' Brief, pages 15-16.

circumstances that justify CR 60.02 relief. To justify relief, the movant must specifically present facts which render the original trial tantamount to none at all." *Stoker v. Commonwealth*, 289 S.W.3d 592, 596 (Ky. App. 2009) (internal quotation marks and citations omitted). Parents have not alleged any facts in their brief that would justify the relief they seek. Nor have they shown "manifest injustice" that is required for relief under CR 61.02.

Parents next allege the Clark Family Court's order transferring venue to the Robertson Family Court, rather than ruling on their pending motion for relief, was an abuse of discretion. We disagree.

Both Parents and the GAL had previously made motions to change venue. Neither Parents, nor any of the Children, resided in Clark County at the time the Clark Family Court transferred the case to Robertson County, where some of the Children resided with their relative placements.

> *Forum non conveniens* presupposes proper venue, but posits that another county where venue would be proper also is a more convenient forum, and calls for a discretionary ruling by a trial court to that effect.
>
> The doctrine of *forum non conveniens* is an exception to the general rule that a court is duty bound to hear cases within its vested jurisdiction. It permits a court properly vested with jurisdiction and venue nevertheless to decline the exercise of its jurisdiction where an alternative forum exists and where the private interests of the parties or the public interests of the tribunal would be better served by proceeding in the alternative forum.

Stipp v. St. Charles, 291 S.W.3d 720, 725 (Ky. App. 2009) (internal quotation marks and citations omitted). Parents provide no case law stating it is inherently an abuse of discretion to transfer venue when a motion is not currently pending to do so. In fact, there is case law indicating the contrary. *See Patterson v. Winchester*, 482 S.W.3d 792 (Ky. App. 2016). Where the trial court determines that another forum would be a more convenient place for the litigation, venue should be transferred. *Dollar Gen. Stores, Ltd. v. Smith*, 237 S.W.3d 162, 167 (Ky. 2007). It should also be noted that the Robertson Family Court had in front of it the companion CI custody cases for Mother's two daughters, A.P. and L.D.

Additionally, Parents had improperly suggested fraud by the court itself. As we have explained, there was no shown disqualification. Transfer of the case avoided any issue raised by this allegation. The meritless allegation may have simply added to the reason for the transfer to an unarguably proper venue. The change of the venue was not an abuse of discretion.

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STANDARD OF REVIEW

Parents' second appeal challenges the family court's award of permanent custody of the Children to the relatives with whom they had been placed.

> This Court's standard of review of a family court's award of child custody in a dependency, abuse and neglect action is limited to whether the factual findings of the lower court are clearly erroneous. Kentucky Rules of Civil Procedure (CR) 52.01. Whether or not the findings are clearly erroneous depends on whether there is substantial evidence in the record to support them. CR 52.01; *Reichle v. Reichle*, 719 S.W.2d 442, 444 (Ky. 1986). If the findings are supported by substantial evidence, then appellate review is limited to whether the facts support the legal conclusions made by the finder of fact. The legal conclusions are reviewed de novo. *Brewick v. Brewick*, 121 S.W.3d 524, 526 (Ky. App. 2003). If the factual findings are not clearly erroneous and the legal conclusions are correct, the only remaining question on appeal is whether the trial court abused its discretion in applying the law to the facts. *B.C. v. B.T.*, 182 S.W.3d 213, 219 (Ky. App. 2005). Finally,
>
> > [s]ince the family court is in the best position to evaluate the testimony and to weigh the evidence, an appellate court should not substitute its own opinion for that of the family court. If the findings of fact are supported by substantial evidence and if the correct law is applied, a family court's ultimate decision regarding custody will not be disturbed absent an abuse of discretion.

L.D. v. J.H., 350 S.W.3d 828, 829-30 (Ky. App. 2011).

ANALYSIS

In their second set of appeals, Parents again argue they are entitled to relief from the final judgment due to their perceived errors in the removal process of the Children. As we have already discussed this contention of error in detail above, we will not address it again. Their next allegation of error is that the

Robertson Family Court failed to address the requirements of KRS 403.270(2) when making its permanent custody determination.

> In order to grant permanent custody via a custody decree in a dependency action arising under KRS Chapter 620, the court must comply with the standards set out by the General Assembly in KRS 403.270(2):
>
> > (2) The court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. The court shall consider all relevant factors including:
> >
> > (a) The wishes of the child's parent or parents, and any de facto custodian, as to his custody;
> >
> > (b) The wishes of the child as to his custodian;
> >
> > (c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;
> >
> > (d) The child's adjustment to his home, school, and community;
> >
> > (e) The mental and physical health of all individuals involved;
> >
> > (f) Information, records, and evidence of domestic violence as defined in KRS 403.720;

> (g) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;
>
> (h) The intent of the parent or parents in placing the child with a de facto custodian; and
>
> (i) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school.

N.L. v. W.F., 368 S.W.3d 136, 148 (Ky. App. 2012).

In addition to those factors, as these are DNA cases, KRS 620.023 also applies. This statute, titled "Evidence to be considered in determining the best interest of a child," states:

> (1) Evidence of the following circumstances if relevant shall be considered by the court in all proceedings conducted pursuant to KRS Chapter 620 in which the court is required to render decisions in the best interest of the child:
>
> (a) Mental illness as defined in KRS 202A.011 or an intellectual disability as defined in KRS 202B.010 of the parent, as attested to by a qualified mental health professional, which renders the parent unable to care for the immediate and ongoing needs of the child;

> (b) Acts of abuse or neglect as defined in KRS 600.020 toward any child;
>
> (c) Substance use disorder, as defined in KRS 222.005, that results in an incapacity by the parent or caretaker to provide essential care and protection for the child;
>
> (d) A finding of domestic violence and abuse as defined in KRS 403.720, whether or not committed in the presence of the child;
>
> (e) Any other crime committed by a parent which results in the death or permanent physical or mental disability of a member of that parent's family or household; and
>
> (f) The existence of any guardianship or conservatorship of the parent pursuant to a determination of disability or partial disability as made under KRS 387.500 to 387.770 and 387.990.
>
> (2) In determining the best interest of the child, the court may consider the effectiveness of rehabilitative efforts made by the parent or caretaker intended to address circumstances in this section.

In this case, the Robertson Family Court granted permanent custody of A.P. and L.D. to their biological fathers; it granted permanent custody of C.F., J.F., and D.F. to Grandparents. Despite Parents' assertions to the contrary, the family court made adequate findings of fact to support its ruling. Although the family court did not link each finding of fact to specific statutory subsections, it clearly considered the relevant statutory factors.

Parents complain the family court ignored their progress with their case plans as well as the issues with the biological fathers of the two oldest Children. The family court acknowledged in its detailed order that Mother had completed several tasks on her case plan. But, despite the counseling and the completed programs, both Parents still deny the existence of any abuse. Mother denied making statements attributed to her by the CATS evaluator and others, such as the allegation that Father locked C.F. in a dog cage. At the permanency hearing, she denied ever seeing C.F. in a cage at all. Mother also testified that she disagreed with the CATS assessment and denied she or Father were to blame for the "issues" the family had. She did notably state that she believed C.F. was "not entirely" at fault, again insinuating that Mother believed C.F. to be largely to blame for his own abuse.

To put it simply, the family court did not find Mother to be credible. The family court found her statements inconsistent, such as acknowledging that Father sometimes spanked C.F. too hard, while also denying that any abuse occurred. She also testified that C.F. "made statements that were concerning," but denied outright accusing him of lying about the physical abuse. She then incredibly stated that she "isn't entirely sure" why this case started. This was the family court's main concern with reunifying Parents with the Children. Despite Mother's participation in therapy, she has not been able to identify, let alone

correct, the risks that led to C.F. being physically abused. The purpose of a case plan is not to simply check items off a list; a parent must show they have learned how to correct the actions and behaviors that caused the abuse or neglect to prevent it from occurring again.

Additionally, Parents had several residences and jobs throughout the lifespan of the cases, and they had only been at their most recent apartment for approximately three months. Parents refused to cooperate with the Cabinet. The caregivers of the Children all testified to the progress made by the Children while in their care. Those caregivers also testified as to Parents' lack of communication regarding the Children's well-being. Mother explicitly stated she did not want a parenting relationship with C.F. The CATS evaluator testified that both parents showed a shocking lack of empathy toward a young child. He described Parents as "physically abusive and emotionally cruel," and stated they lacked insight as to how their behavior and punishments could negatively affect a young child.

The family court succinctly stated in its order "[i]t is difficult to fix problems if you do not recognize the problems, and even harder if one denies that the problems ever existed."[10] We fully agree with this assessment.

[10] Robertson Family Court Order Granting Permanent Custody, Establishing Reasonable Visitation, Ending Reasonable Efforts, and Closing Case, issued September 30, 2024, page 12.

CONCLUSION

The findings of the family courts are not clearly erroneous, and they did not abuse their respective discretion. For the foregoing reasons, the orders of the Clark and Robertson Family Courts are AFFIRMED on all appeals.

ALL CONCUR.

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