

Commonwealth of Kentucky
Court of Appeals

NO. 2025-CA-1073-ME

J.M.M.

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE TIFFANY YAHR, JUDGE
ACTION NO. 24-AD-00024

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES;
COMMONWEALTH OF KENTUCKY;
AND D.G.B., A MINOR CHILD

APPELLEES

AND

NO. 2025-CA-1075-ME

J.M.M.

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE TIFFANY YAHR, JUDGE
ACTION NO. 24-AD-00023

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES;
COMMONWEALTH OF KENTUCKY;

J.L.M.M.; AND J.W.M., A MINOR
CHILD

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: THOMPSON, CHIEF JUDGE; McNEILL AND MOYNAHAN,
JUDGES.

McNEILL, JUDGE: J.M.M. (“Mother”), *pro se*, appeals from the Fayette Family Court’s judgment terminating her parental rights to her minor children, D.G.B. and J.W.M. Finding no error, we affirm.

BACKGROUND

In September 2021, the Cabinet for Health and Family Services (“Cabinet”) filed a dependency, neglect, and abuse (“DNA”) petition in Fayette Family Court against Mother and J.L.M. (the putative father of J.W.M.) (“Father”) based upon allegations it had received from New Hampshire child protective services. According to the petition, the family had fled from New Hampshire to Kentucky after child protective services substantiated claims of ongoing domestic violence and filed for emergency custody. The petition alleged that Mother and children were living with Father in Lexington, Kentucky, and that the children were at risk of harm for neglect due to exposure to domestic violence. The Fayette

Family Court granted the Cabinet emergency custody of the children. Mother later stipulated to neglect, and the children were committed to the Cabinet.

Almost six months later, a second DNA petition was filed against Mother and Father after S.B., Mother's eldest child, made startling allegations of years of sexual, physical, and psychological abuse at the hands of Father. Specifically, S.B. claimed that Father made her clean the house all night, physically assaulted her with objects, leaving marks and bruises, withheld food, abused her cat and caused its death in front of the children, made her try alcohol, marijuana, and on at least one occasion methamphetamine, and raped her repeatedly. The abuse began in New Hampshire when S.B. was approximately nine years old and continued until the children were removed from the home in Kentucky. S.B. reported the abuse to Mother in 2018, but Mother continued her relationship with Father. When questioned about the abuse, Mother said S.B. might have made it up to get attention. However, she later admitted knowledge of one incident where she and S.B. were raped in the same room.

At the adjudication hearing, Mother and Father stipulated to neglect. The children remained committed to the Cabinet and the permanency goal was changed to adoption. On February 2, 2024, the Cabinet filed a petition to terminate Mother and Father's parental rights. Following a hearing, the family court entered

findings of fact, conclusions of law, and a judgment terminating Mother and Father’s parental rights to D.G.B. and J.W.M. This appeal followed.

STANDARD OF REVIEW

We begin by noting that a “trial court has wide discretion in terminating parental rights.” *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014). As such, “our review is limited to a clearly erroneous standard which focuses on whether the family court’s order of termination was based on clear and convincing evidence.” *Id.* (citing CR¹ 52.01). “Clear and convincing proof does not necessarily mean uncontradicted proof. 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.” *M.S.S. v. J.E.B.*, 638 S.W.3d 354, 360 (Ky. 2022) (citation omitted). “Pursuant to this standard, an appellate court is obligated to give a great deal of deference to the family court’s findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them.” *Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). “Because termination decisions are so factually sensitive, appellate courts are generally loath[] to reverse them, regardless of the outcome.” *D.G.R. v. Commonwealth, Cabinet for Health and Family Services*, 364 S.W.3d 106, 113 (Ky. 2012).

¹ Kentucky Rules of Civil Procedure.

ANALYSIS

Mother raises a myriad of arguments on appeal, including that the family court lacked subject matter jurisdiction, that Mother was denied counsel at critical stages of the proceeding, that investigators seized her phone without a warrant, that she was denied access to the record, and that she received ineffective assistance of counsel. Most of her claims are unpreserved, improper, or conclusory. However, due to the serious nature of TPR proceedings, we will briefly address several of her contentions below.

Mother argues the family court lacked subject matter jurisdiction “[a]t the moment CHFS seized the children[.]” She asserts “Neither New Hampshire nor [Kentucky] qualified as the children’s home state under the [Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”)], and [the Cabinet] failed to establish lawful temporary emergency jurisdiction supported by imminent danger.” It appears from these allegations that Mother is challenging the family court’s jurisdiction in the DNA case. We would note that Mother never raised this argument in the DNA proceeding and did not appeal the disposition orders. Regardless, it is clear from the record that the family court had subject matter jurisdiction over the DNA proceeding and the TPR action.

“Whether a trial court acts within its jurisdiction is a question of law; therefore, our review is *de novo*.” *Biggs v. Biggs*, 301 S.W.3d 32, 33 (Ky. App.

2009). The UCCJEA is codified in KRS² 403.800 through 403.880, and applies to child custody proceedings including proceedings for “divorce, separation, **neglect, abuse, dependency**, guardianship, paternity, **termination of parental rights**, and protection from domestic violence[.]” KRS 403.800(4) (emphasis added). KRS 403.828 provides, in relevant part,

(1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(2) If there is no previous child custody determination that is entitled to be enforced under KRS 403.800 to 403.880 and a child custody proceeding has not been commenced in a court of a state having jurisdiction under KRS 403.822, 403.824, and 403.826, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under KRS 403.822, 403.824, and 403.826. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under KRS 403.822, 403.824, and 403.826, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

At a minimum, the family court had temporary emergency jurisdiction under KRS 403.828(1) when the DNA petition was filed. The Cabinet received allegations from New Hampshire about risk of neglect due to ongoing domestic

² Kentucky Revised Statutes.

violence in the home and then verified that Father was living with Mother and the children in Kentucky. “Although described as temporary, jurisdiction under this section is not subject to a fixed period of expiration, or even to a more subjective reasonable period of time standard.” *Aldava v. Johnson*, 686 S.W.3d 205, 213–14 (Ky. 2024). “Rather, jurisdiction obtained through KRS 403.828 continues until an order is received from a court of a state having a basis for jurisdiction under another provision of the UCCJEA.” *Id.* at 214 (citing KRS 403.828(2)).

If no other state can assert another basis for jurisdiction, “a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.” KRS 403.828(2). While the record is unclear, Mother has not alleged that a prior child-custody determination exists. Therefore, it would appear the family court also had jurisdiction under KRS 403.828(2). “[B]ecause no other state has jurisdiction, the determination of the [Fayette] Circuit Court can be made final and Kentucky can properly be considered the home state of [the children].” *Aldava*, 686 S.W.3d at 214.

Finally, the family court had subject matter jurisdiction over the TPR action, either under KRS 403.824 or 403.822.

Mother next argues she received ineffective assistance from counsel. She claims counsel “failed to challenge jurisdictional defects, failed to introduce

critical exculpatory evidence, failed to object to procedural irregularities, and failed to ensure a complete and accurate record.” In *Z.T. v. M.T.*, 258 S.W.3d 31, 37 (Ky. App. 2008), this Court recognized that ineffective assistance of counsel claims can be raised on direct appeal of TPR determinations. However, we held that we would consider ineffective assistance of counsel claims in such cases only “if counsel’s errors were so serious that it is apparent from the record that the parent was denied a fair and meaningful opportunity to be heard so that due process was denied[.]” *Id.* at 36. We cautioned litigants that “the burden is onerous.” *Id.* at 37. Here, Mother’s allegations are conclusory and insufficient to support an ineffective assistance of counsel claim. We find no error.

Finally, Mother challenges several of the family court’s findings supporting its termination of parental rights. Specifically, she contests the family court’s consideration of KRS 625.090(3)’s best interest factors and its assessment of parental fitness under KRS 625.090(2).³ KRS 625.090 governs the termination of parental rights in Kentucky. Before terminating parental rights, a court must find by clear and convincing evidence the following: (1) the child is or has been adjudged abused or neglected as defined in KRS 600.020; (2) termination is in the

³ For instance, she argues the family court’s best interest analysis impermissibly “relied on conditions created by [the Cabinet’s] prolonged foster placement, suspended visitation, and trauma from separation without examining whether those conditions resulted from unlawful removal, delayed services, and repeated due process violations.” Similarly, she contends the family court’s assessment of parental fitness misinterpreted “[s]urvivor behavior . . . as parental endangerment while evidence supporting protective capacity was suppressed or ignored.”

child's best interest; and (3) at least one of the conditions in KRS 625.090(2)(a)-(j) exists.

The family court found the children had been adjudged neglected by Mother on two previous occasions. The court also found that Mother had abused or neglected the children in the current proceeding under KRS 600.020(1)(a)4. and 9. Our review of the record shows Mother twice stipulated to neglect in the underlying DNA case. This is sufficient to satisfy the first prong of KRS 625.090.

As to the second prong, the family court found that termination of parental rights was in the children's best interest. The family court made detailed findings showing that it considered all relevant factors in KRS 625.090(3). Specifically, it found Mother had neglected the children (KRS 625.090(3)(b)), the Cabinet had rendered all reasonable reunification services to Mother (KRS 625.090(3)(c)), Mother's efforts were insufficient to make it in the children's best interest to return to her home within a reasonable time, considering the children's ages (KRS 625.090(3)(d)), and that the children's physical, mental, and emotional health would improve if parental rights were terminated (KRS 625.090(3)(e)).

The family court recognized Mother's efforts toward reunification but ultimately determined that she had not made the meaningful changes necessary to allow a safe reunification. It pointed to Mother's testimony at the TPR hearing, where, despite undergoing therapy, Mother continued to demonstrate the same

“lack of insight, diminished empathy for her children, and an unwillingness to accept responsibility for her role in the children’s maltreatment” identified in her parental capacity assessment performed in the DNA case. We quote from the court’s findings:

Even under questioning by the Court, Mother still expressed doubt as to the degree of abuse suffered by [S.B.] Asked on the stand if [S.B.] had been sexually assaulted by [Father], she responded “that’s my understanding”—showing some level of doubt even though she admitted witnessing one incident of rape. She admitted that in recent months, she expressed doubt to the worker, questioning why [S.B.] never screamed, or why she never saw [S.B.] “walk funny.” When asked about [Father] killing the family cat, she denied that he had done so. Only when pressed on this point, did she agree that the cat had to be euthanized because [Father] beat the cat in front of the kids. Overall, Mother’s testimony demonstrates a profound level of continued minimization of the atrocities faced by her children at the hands of [Father].

Similarly, her testimony shows a continued inability to accept responsibility for her role in the abuse and neglect of the children. She still seeks to blame just about anybody and everybody—from the New Hampshire system that she alleges wouldn’t help, to claiming that she returned home to [Father] in 2018 instead of a domestic violence shelter because he had sought assistance from a nearby homeless shelter, to claiming she had no choice but to allow him in the Kentucky home because she needed childcare. Simply put, even now, she continues to have one excuse after another for everything that’s happened.

While the court sympathized with Mother as a victim of domestic violence, it found that “does not absolve her of responsibility for her role in the trauma suffered by her children.” We cannot say the family court’s findings were clearly erroneous; therefore, the second prong is also met.

The third prong requires the family court to find that at least one of the grounds of parental unfitness set forth in KRS 625.090(2). Here, the court found that the children had been in foster care under the Cabinet’s responsibility for 15 cumulative months out of the 48 months preceding the filing of the TPR petition. *See* KRS 625.090(2)(j). The court found additional justification for terminating parental rights under KRS 625.090(2)(e). It is clear from the record that the children were in foster care under the responsibility of the Cabinet for twenty-eight months prior to the filing of the TPR action. Only one ground for termination needs to be proven by clear and convincing evidence under this section. *T.N.H.*, 302 S.W.3d at 663. Therefore, we need not examine the family court’s findings as to the other ground.

In sum, having reviewed the record, we discern no reversible error in the family court’s judgment terminating Mother’s parental rights. The family court made the requisite statutory findings by clear and convincing evidence, and its factual findings were supported by substantial evidence. Mother’s challenges to the family court’s findings are either conclusory or without merit.

CONCLUSION

Based upon the foregoing, the Fayette Family Court's judgment terminating Mother's parental rights to D.G.B. and J.W.M. is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

J.M.M., *pro se*

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