

RENDERED: August 13, 1999; 10:00 a.m.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**

**Court Of Appeals**

NO. 1998-CA-001160-MR

T.E.E.V. AND J.W.C.

APPELLANTS

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE DOUGLAS STEPHENS, JUDGE  
ACTION NO. 97-AD-00030

CABINET FOR FAMILIES AND CHILDREN  
AND CABINET FOR FAMILIES AND CHILDREN AS  
NEXT OF FRIEND FOR P.L.C.

APPELLEES

OPINION AFFIRMING AS TO J.W.C.

AND ORDER DISMISSING

AS TO T.E.E.V.

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BEFORE: BUCKINGHAM, HUDDLESTON and KNOPF, Judges.

HUDDLESTON, Judge. This is an appeal by J.W.C. from an order of the Kenton Circuit Court entered on April 8, 1998, which terminated his parental rights to P.L.C.<sup>1</sup>

J.W.C. and T.E.E.V. are the biological parents of P.L.C., born on May 17, 1984, and J.C., born on September 21, 1985. On April 22, 1997, the Cabinet for Families and Children filed a petition for involuntary termination of parental rights of J.W.C. and T.E.E.V. On December 9, 1997, the circuit court granted the Cabinet's motion for continuance and rescheduled the termination

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<sup>1</sup> T.E.E.V. filed a notice of appeal but has not filed a brief on appeal.

hearing for April 2, 1998. After being granted furlough from incarceration on March 1, 1998, J.W.C. requested a continuance in order to secure his attendance at the hearing. The circuit court denied the request and held the termination hearing on April 2, 1998. The court terminated T.E.E.V.'s and J.W.C.'s parental rights to P.L.C., but dismissed the petition for involuntary termination as to J.C. This appeal followed.

On appeal, J.W.C. argues that the circuit court erred (1) in denying him a continuance to secure his attendance at the hearing, (2) in terminating his parental rights when the Cabinet failed to meet its statutory burden, (3) in finding that it was in the best interest of the child to terminate parental rights, and (4) by interviewing the children in chambers in the absence of counsel.

"The decision whether to grant or to deny a motion for continuance lies within the sound discretion of the trial court." Kentucky Farm Bureau Mutual Ins. Co. v. Burton, Ky. App., 922 S.W.2d 385, 388 (1996). The record establishes that at the time of the hearing, the circuit court considered the fact that it was uncertain when J.W.C.'s transfer to a facility near Cincinnati would occur; and even if it did, whether he would have the necessary permission to enter Kentucky for the hearing. Considering the best interest of the children and the uncertainty surrounding J.W.C.'s release, the circuit court did not abuse its discretion by denying his motion for continuance.

J.W.C. also argues that he was denied the opportunity to confront and cross-examine witnesses and to respond to evidence

against him in violation of his due process rights. This argument is without merit. J.W.C. was adequately represented at the hearing by counsel, and the circuit court received into evidence and reviewed J.W.C.'s deposition taken on February 25, 1997. J.W.C.'s counsel also properly cross-examined all of the witnesses presented by the Cabinet.

Next, J.W.C. argues that the Cabinet failed to meet its statutory burden pursuant to Kentucky Revised Statute (KRS) 625.090. The parental rights termination statute, KRS 625.090, provides, in pertinent part, that:

(1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that:

\* \* \*

(a) 2. The child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding;

\* \* \*

(2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:

(a) That the parent has abandoned the child for a period of not less than ninety (90) days;

\* \* \*

(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;

In summary, the statute requires a finding by clear and convincing evidence that: (1) the child is an abused or neglected child; (2) one or more of the factors set out in KRS 625.090 (2)(a)-(j) are present; and (3) the termination would be in the best interest of the child.

The trial court has broad discretion in determining whether the child fits within the abused or neglected category and whether the abuse or neglect warrants termination. Department for Human Resources v. Moore, Ky. App., 552 S.W.2d 672, 675 (1977). This Court's standard of review in a termination of parental rights action is confined to the "clearly erroneous" standard set forth in

Kentucky Rules of Civil Procedure (CR) 52.01. The record reflects that the children were repeatedly left at home alone while T.E.E.V. went out to feed her alcohol and drug addiction. Consequently, the children were taken from the home. T.E.E.V. also testified that P.L.C. had suffered sexual abuse from a family acquaintance while the family lived in Ohio. The record and T.E.E.V.'s testimony convinces us that the trial court did not err in finding that P.L.C. was abused and neglected.

The second prong of KRS 625.090 requires a finding by clear and convincing evidence of one of the factors set forth in KRS 625.090(1)(a)-(j). In this case, the circuit court found that the grounds set forth in (a), (e) and (g) were present. There was ample evidence produced at the hearing regarding J.W.C.'s abuse of alcohol, drugs, and T.L.E.V. After separating from T.E.E.V., J.W.C. did attempt to take care of the children but each time he failed and returned them to T.E.E.V. knowing that they would be neglected by her. J.W.C.'s involvement with the children has always been determined by his own needs and not those of the children. There is substantial evidence to support the trial court's determinations, so that we cannot conclude that its findings are clearly erroneous.

The final prong of KRS 625.090 requires a determination that the termination of parental rights would be in the best interest of the child. In determining the best interest of the child and the existence of a ground for termination, the circuit court is required to consider the factors set forth in KRS 625.090(3). J.W.C. argues that the circuit court erred in finding

that termination was in P.L.C.'s best interest because termination could result in discontinued visitation between P.L.C. and J.C. It is clear that P.L.C. has made tremendous improvements in her physical and emotional well being since being placed in foster care by the Cabinet. Her continued progress relies, in part, on remaining in contact with J.C. With this concern in mind, the circuit court sought a commitment from the Cabinet to ensure continued visitation between the children regardless of their legal status. The circuit court's finding that termination was in P.L.C.'s best interest was not clearly erroneous. CR 52.01; Stafford v. Stafford, Ky. App., 618 S.W.2d 578 (1981).

Finally, J.W.C. argues that the circuit court erred by interviewing the children in chambers in the absence of counsel. KRS 625.080(2) provides that the circuit court, in its discretion, "may interview the child in private, but a record of the interview shall be made, which, in the discretion of the court, may be sealed to be used only by an appellate court[.]" The circuit court did not abuse its discretion by interviewing the children in the absence of counsel.

For the reasons stated above, the judgment terminating the rights of J.W.C. to P.L.C. is hereby affirmed. The appeal filed by T.E.E.V. is dismissed for failure to file a brief. CR76.12(8)(b).

ALL CONCUR.

Entered: August 13, 1999

/s/ Joseph R. Huddleston  
Judge, Court of Appeals

BRIEF FOR APPELLANT J.W.C.:

Laurie B. Dowell  
Newport, Kentucky

NO BRIEF FOR T.E.E.V.

BRIEF FOR APPELLEE:

Terry L. Morrison  
Frankfort, Kentucky