

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2006-CA-000597-ME

R.S.W.

APPELLANT

APPEAL FROM GALLATIN CIRCUIT COURT  
v. HONORABLE LINDA RAE BRAMLAGE, FAMILY COURT JUDGE  
ACTION NO. 04-AD-00004

CABINET FOR HEALTH AND  
FAMILY SERVICES; A.M.J.;  
J.S.W.; K.L.W.; and K.S.W.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BARBER<sup>1</sup> AND DIXON, JUDGES; PAISLEY,<sup>2</sup> SENIOR JUDGE.

DIXON, JUDGE: Appellant, R.S.W.<sup>3</sup>, appeals from an order of the Gallatin Family Court involuntarily terminating his parental rights to his three minor children. Because the findings of the

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<sup>1</sup> Judge David A. Barber concurred in this opinion prior to the expiration of his term of office on December 31, 2006. Release of the opinion was delayed by administrative handling.

<sup>2</sup> Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

<sup>3</sup> Because this opinion addresses allegations of parental unfitness and child abuse, we shall use initials in place of names to protect the identities of the parents and children involved.

Family Court are not clearly erroneous, we affirm its order terminating R.S.W.'s parental rights.

R.S.W. and S.L.P.W. were married in December 1999, approximately fourteen months after the birth of their first child, J.S.W. The twins, K.L.W. and K.S.W. were born on March 19, 2003. The family, along with another child belonging to S.L.P.W., resided in a trailer located in Gallatin County, Kentucky.

The Cabinet for Health and Family Services (hereinafter "the Cabinet") first became involved in this matter on December 17, 2003, following an incident at the family residence. R.S.W., impaired by drugs and alcohol, drove his car into the side of the trailer following an argument with S.L.P.W. S.L.P.W. and the children were inside the trailer at the time of the incident, and, in fact, J.S.W. was taken to the hospital with minor injuries. R.S.W. fled the scene before police arrived.

The following day, the children were placed in the custody of the Cabinet. On January 25, 2004, R.S.W. turned himself into authorities and was subsequently convicted of first-degree wanton endangerment and sentenced to three years' imprisonment. He was scheduled to be released in July 2006

On March 6, 2004, the Gallatin Family Court made a finding of abuse against R.S.W. and a finding of neglect against

S.L.P.W. Following the dispositional hearing on March 18, 2004, R.S.W. was ordered to follow the recommendations set forth in the Cabinet's report, as well as to have no contact with his children.

On October 21, 2004, the family court entered an order waiving reasonable efforts to reunite the children with either S.L.P.W. or R.S.W., and changed the permanency goal for the children to adoption. The Cabinet thereafter filed a petition for involuntary termination of parental rights and appointment of a guardian ad litem.<sup>4</sup> Following a trial in November 2005, the family court issued its findings of fact and conclusions of law terminating R.S.W. and S.L.P.W.'s parental rights. R.S.W. appealed to this Court as a matter of law.

The sole issue presented on appeal is whether the family court erred in finding that the Cabinet made reasonable efforts to reunify R.S.W with his children. R.S.W. claims that the Cabinet failed to make any efforts to reunite him with his family from the time that the children were removed from the household in December 2003 until the family court waived any further efforts at reunification in October 2004, and, in fact, intentionally thwarted any effort at such.

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<sup>4</sup> Although the involuntary termination action was filed against both parents, S.L.P.W. had previously executed a voluntary petition to terminate her parental rights with respect to all four of her children.

KRS 625.090, which governs in cases of involuntary termination of parental rights, provides that in order for such termination to occur, the court must find by clear and convincing evidence that the child either is an abused or neglected child, and that termination is in the child's best interest. In determining the best interest of the child and the existence of a ground for termination, the trial court considers a number of factors, including "whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents . . . ."

KRS 625.090(3)(c). The relevant provisions of KRS 620.020 are as follows:

"Reasonable efforts" are defined as: The exercise of ordinary diligence and care by the department to utilize all preventative and reunification services available to the community in accordance with the state plan for Public Law 96-272 which are necessary to enable the child to live safely at home.  
KRS 620.020(10)

"Reunification services" are defined as:[R]emedial and preventative services which are designated to strengthen the family unit, to secure reunification of the family and child where appropriate, as quickly as practicable, and to prevent the future removal of the child from the family.  
KRS 620.020(11).

At trial, the Cabinet's social worker assigned to the case, Mel Jones, testified as to the services the Cabinet offered R.S.W. Jones stated that she first met with R.S.W. on

January 9, 2004, when he checked himself into Eastern State Hospital. At that time, R.S.W.'s problems were identified as substance abuse, mental health, and anger management. The Cabinet offered R.S.W. a treatment plan including participation in individual and group counseling, medications, parenting classes, anger management, and completion of a psychological evaluation, as well as recommendations upon discharge.

Following R.S.W.'s discharge from Eastern State, he turned himself into police and was incarcerated. He was detained at the Carroll County Detention Center where the only available services were Alcoholics Anonymous and Narcotics Anonymous. Although those services were offered to R.S.W., he refused to sign a release to permit the Cabinet to determine whether he had participated in such.

Jones further testified that R.S.W. rejected a second treatment plan that was offered to him in July 2004. However, Jones stated that she nevertheless continued to visit him in jail and attempted treatment-planning conferences until the family court waived any additional reasonable efforts to reunite the family.

R.S.W. relies on *L.B.A. v. Cabinet*, 731 S.W.2d 834 (Ky. App. 1987) for the proposition:

The Court has frequently emphasized the importance of family. The rights to conceive and raise one's children have been

deemed "essential," . . . "basic civil rights of man," . . . and "[r]ights far more precious . . . than property rights." The integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment . . . and the Ninth Amendment. (*Quoting Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 1212, 31 L.Ed.2d 551 (1972).

R.S.W. believes that the Cabinet took an "all or nothing" approach with his parental rights, violating both a statutory mandate and his constitutional rights. We disagree.

To be clear, Jones admitted at the hearing that she did not like R.S.W., and that she would do anything in her power to make sure the children were not harmed again. Jones noted that the children were initially placed with R.S.W.'s parents, but were subsequently removed after the parents violated a court order prohibiting the children from having contact with R.S.W. Jones noted that no other family members offered to take the children.

While R.S.W. characterizes Jones' actions as an attempt to thwart any reunification, we are of the opinion that the Cabinet did, in fact, make all reasonable efforts in accordance with the statute. Even R.S.W. testified at trial that he did not know what else Jones or the Cabinet could have done to help him.

The standard of review in parental rights termination cases is set forth in *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116-117 (1998):

The trial court has a great deal of discretion in determining whether a child fits within the abused or neglected category and whether such 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 . . . is confined to the clearly erroneous standard in CR 52.01 based upon clear and convincing evidence, and the findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings.

See also *R.C.R. v. Commonwealth, Cabinet for Human Resources*, 988 S.W.2d 36 (Ky. App. 1999).

Contrary to R.S.W.'s assertions, the record is replete with substantial evidence to support the trial court's findings. The trial court found that R.S.W. had engaged in an "irresponsible, violent and criminal lifestyle," which led to his incarceration; that R.S.W. was charged and convicted of promoting contraband for attempting to make alcohol while incarcerated; that R.S.W. has continued to have a drug and alcohol problem for which he has refused the Cabinet's treatment plans; and that there was "no reasonable expectation of improvement in the parental care and protection considering the age of the children." Accordingly, we find no reversible error in the trial court's termination of R.S.W.'s parental rights.

The decision of the Gallatin Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Marcus D. Gale  
Covington, Kentucky

BRIEF FOR APPELLEE:

Cynthia Kloeker  
Covington, Kentucky