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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-002068-ME

T.R.V. AND L.V. APPELLANTS

v.

APPEAL FROM BALLARD CIRCUIT COURT
HONORABLE CYNTHIA E. SANDERSON, JUDGE
ACTION NO. 05-AD-00010

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES
AS NEXT FRIEND OF J.S.V., A CHILD,
AND S.V., A CHILD APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ABRAMSON AND DIXON, JUDGES; HOWARD,[1] SPECIAL JUDGE.

ABRAMSON, JUDGE: T.R.V. and L.V., husband and wife, appeal from August 16, 2005, orders of the Ballard Circuit Court terminating their parental rights with respect to their natural daughters S.V. (d.o.b. 6/25/91) and J.S.V. (d.o.b. 10/5/96). The court assigned those rights to the Cabinet for Health and Family

[1] Judge James I Howard sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110 (5) (b) of the Kentucky Constitution.

Services (CHFS) so that the children can be adopted. The parents contend that the elder daughter's allegations of sexual abuse have not been adequately substantiated to justify termination of rights. Because the trial court's contrary findings are supported by the record, we affirm its termination orders.

This matter began in late February 2003 when S.V., eleven years-old at the time, reported to one of her school teachers that her thirteen year-old brother, T.L.V., had reached beneath her clothes and touched her genitals. The teacher reported the allegation to the Cabinet, which immediately took emergency custody of S.V. and her younger sister, J.S.V. The next day the parents took S.V. for a medical exam, which revealed no lesions, bruises, or other physical signs of abuse. The parents, the father in particular, thereupon became openly skeptical of S.V.'s report and defended the son. Concerned that the parents would not protect the girls, the Cabinet retained custody pending further investigation. The girls were observed on several occasions and interviewed by qualified social workers and a family therapist. S.V. described the son's abuse in what these professionals believed was convincing detail, and both girls exhibited symptoms associated with sexual abuse and post-traumatic stress. S.V. was painfully withdrawn, suffered from abuse-related nightmares and flashbacks, and was prone to long

spells of crying for no apparent reason. She expressed a desire not to have contact with her parents, and her symptoms intensified immediately before and after visits with them.

J.S.V. was less verbal than S.V., but using dolls and figures she too accurately represented sexual abuse. J.S.V. was also prone to long crying spells, had frequent temper tantrums, engaged in feces smearing, touched other children in foster care in a sexual manner, and otherwise engaged in sexual behavior untypical of a six year old. The Cabinet's experts believed that the feces smearing and sexual behaviors, in particular, strongly indicated that J.S.V. had also been sexually abused. In light of this evidence, the Cabinet deemed S.V.'s abuse allegation substantiated. The McCracken Family Court agreed, and because the parents had failed to protect the girls from this abuse, that court, by order entered April 3, 2003, found that the girls were "abused or neglected child[ren]" for the purposes of KRS 600.020, and that the Cabinet was entitled to retain their custody pursuant to KRS Chapter 610.

The Cabinet then began working with the parents on a case plan for reunification. Key elements of the plan included protecting the girls from future abuse by their brother, improving T.R.V. and L.V.'s parenting skills, and attempting to mitigate the girls' psychological injuries through family therapy. To address the first element, the parents removed the

son from their home by sending him to live with relatives in North Carolina. Both parents then passed a parenting class, the Cabinet's requirement with respect to the second element. The third element was more difficult. Apparently, the mental health workers sought to prepare the girls for family therapy by providing them with individual therapy and with a series of supervised visits with the parents. The Cabinet's experts testified that the girls continued to find the visits stressful and that in conjunction with the visits the girls' behavior often regressed. Nevertheless, the case plan remained family therapy leading to reunification. Family therapy sessions began in the fall of 2003, but the therapists found the parents' attitude disconcerting. The parents continued to deny and to depreciate S.V.'s abuse allegations, and indicated their desire simply to return their household to the way it had been prior to the Cabinet's intervention.

After only four family sessions, in early October 2003, S.V. revealed to her therapists that she had been sexually abused by her father as well as her brother. This revelation caused the suspension of family therapy sessions and the initiation of a new investigation. In December 2003, Cabinet investigators notified the parents that they deemed this allegation substantiated. By then, the parents had moved from Kentucky to Illinois, to escape the Cabinet's jurisdiction; had

withdrawn their request for reunification; and had sought instead to have their daughters placed with relatives in North Carolina or Georgia. For much of 2004, apparently, the Cabinet waited for its counterparts in those states to evaluate the five proposed relatives. When the evaluations all came back negative, because the relatives declined or were found to be already taking care of all the children they could handle, the Cabinet's goal for the children became adoption.

Accordingly, in October 2004, the Cabinet brought the present action in McCracken Family Court to terminate the parents' rights. Following the parents' successful change of venue motion, the Ballard Circuit Court heard the matter in July 2005. As previously indicated, the Cabinet offered proof tending to show that both girls have suffered significant psychological injuries strongly corroborative of S.V.'s substantiated allegations of sexual abuse perpetrated by her brother and her father. The Cabinet's proof and the parents' own testimony also confirmed that the parents continue to deny S.V.'s allegations and that they remain skeptical about the girls' needs for empathy and understanding and for therapy. Finally, the Cabinet offered proof that in their current foster home, where there is a good chance that both of them will be adopted, the girls' symptoms of crying, withdrawing, and acting out have abated somewhat; that they have become better able to

articulate their feelings; and that their schooling has gone fairly well.

Emphasizing the parents' failure to face up to the calamity that has befallen their daughters, their failure to provide any financial support for them while in foster care, their failure to make provision for financial support in the future, and their unwillingness and inability to provide the sort of psychological protection and nurturing that the girls require, the circuit court granted the Cabinet's petition and ordered the termination of T.R.V. and L.V.'s parental rights. Appealing from that order, the parents contend that without physical proof of abuse any finding of abuse against L.V. or T.L.V. remains speculative and does not amount to the sort of clear and convincing evidence that would justify the termination of a parent's right to his or her child. We disagree.

As it pertains to this case, KRS 625.090 permits the termination of parental rights only upon a finding, by clear and convincing evidence, of all of the following: (1) that the child has been adjudged or shown to be abused or neglected; (2) that termination would be in the child's best interest; and (3) the existence of at least one of the grounds listed in KRS 625.090(2), such as the parents' causing or allowing the child to be sexually abused, KRS 625.090(2)(f), or the parents' failing to provide essential care and protection for a period of

at least six months with no reasonable expectation of timely improvement, KRS 625.090(2)(e). If one accepts the Cabinet's allegations either that the parents allowed the girls to be sexually abused by their brother or that L.V. himself abused his daughters, then there can be no dispute that all of these elements are satisfied. Sexual abuse is a ground for finding "abuse and neglect" under KRS 600.020 as well as a ground for termination under KRS 625.090(2). It is clearly in the girls' best interest, moreover, to be removed from the home where they have suffered such abuse and to be placed in a home where their psychological needs will be respected. The trial court found that both girls had been abused by their brother and that the parents had failed both to protect them from that abuse and to provide for their physical and emotional needs in its aftermath. This Court must uphold the trial court's findings if they are supported by substantial evidence. *M.P.S. v. Cabinet for Human Resources,* 979 S.W.2d 114 (Ky. App. 1998). In this context, substantial evidence is evidence a rational fact finder could deem clear and convincing. *Id.* The parents contend that the trial court erred by accepting the Cabinet's abuse allegations because those allegations were not substantiated by clear and convincing evidence.

In particular, although the trial court did not base its conclusions on a finding that L.V. had abused his daughters,

the parents maintain that the Cabinet fabricated the allegation against L.V. to derail the case plan. They note that S.V. allegedly revealed L.V.'s abuse on October 2, 2003, and yet at a status hearing on October 16, 2003, their social worker did not mention it, but instead represented to the court that the case plan was progressing and that visitation in the home was the next step. They conclude that the Cabinet manufactured the allegation some time after October 16. When asked at trial about the apparent discrepancy, the parents' social worker explained that at the time of the October 16, 2003, status hearing S.V.'s new allegation regarding her father had not been investigated or substantiated and that until it was the case plan remained a viable possibility. The trial court did not err by crediting this explanation and concluding that the Cabinet had not falsely reported S.V.'s allegation against her father.

Even if S.V. made allegations against her brother and her father, the parents next contend, her allegations should not be credited because they were not substantiated by physical signs of abuse. Sexual abuse need not cause physical injury, however, and there are other ways to substantiate it. Here, as the Cabinet showed, both girls displayed knowledge of sexual facts they could not have acquired except through sexual contact like that S.V. alleged. The girls also behaved in ways—withdrawing, prolonged crying, raging, feces smearing, sexual

acting out—highly unusual for their young ages and significantly associated with the victims of sexual abuse. A rational fact finder could believe that this evidence clearly and convincingly corroborated S.V.'s allegations. The trial court did not err, therefore, by finding that the parents had failed to protect the girls from sexual abuse and that the girls' best interest would be served by the severance of T.R.V. and L.V.'s parental rights so that S.V. and J.S.V. may be adopted. Accordingly, we affirm the August 16, 2005, parental rights termination orders of the Ballard Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

T.R.V. and L.V., *pro se*
Cairo, Illinois

BRIEF FOR APPELLEE:

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