

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001207-ME

L.A.H.C.

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE HUGH SMITH HAYNIE, JUDGE
ACTION NO. 05-AD-500058

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; S.E.C., AN INFANT; M.L.H., AN
INFANT; D.L.H., AN INFANT

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ABRAMSON, ACREE, AND WINE, JUDGES.

WINE, JUDGE: L.A.H.C. appeals from an order of the Jefferson Family Court terminating her parental rights to three of her children. She argues that termination was inappropriate because the Cabinet for Health and Family Services (Cabinet) failed to make reasonable efforts for family reunification and because she substantially complied with all of the Cabinet's directions. We conclude, however, that the trial court's findings

were supported by substantial evidence, and the court did not abuse its discretion by ordering that her parental rights be terminated. Hence, we affirm.

The details of this case are fully set out in the trial court's findings of fact. For purposes of this appeal, the following facts are relevant. L.A.H.C. is the biological mother of S.E.C. (d.o.b. 07/17/1991), M.L.H. (d.o.b. 06/26/1996), and D.L.H. (d.o.b. 10/16/1998). K.E.C. is the biological father of S.E.C., and is the legal father of M.L.H. and D.L.H., inasmuch as these children were born during his marriage to L.A.H.C. D.H. is the putative father of M.L.H. and D.L.H., but there has never been an adjudication of paternity.

On June 10, 2003, the Cabinet filed a dependency petition alleging that L.A.H.C. had neglected the educational and medical needs of S.E.C. Thereafter, in September 2003, the Cabinet filed dependency petitions on behalf of M.L.H. and D.L.H. based upon additional allegations of educational and medical neglect. In November 2003, the family court placed custody of the children with the Cabinet, but allowed L.A.H.C. to retain temporary custody of M.L.H. and D.L.H.

However, in March 2004, the court removed M.L.H. and D.L.H. after L.A.H.C. stipulated that the children had missed too much school and she had failed to follow court orders to take them to counseling and medical appointments. L.A.H.C. had also tested positive for use of drugs. The court found L.A.H.C. in contempt of court for failure to comply with the court's orders, but discharged the sentence on the condition that L.A.H.C. comply with the court's orders and the Cabinet's treatment plan. However,

in June of 2004, the court revoked L.A.H.C.'s conditional discharge and ordered her to serve ten days for the prior contempt.

After L.A.H.C.'s release from jail, the court again ordered her to comply with all court orders and directions from the Cabinet, and committed the children exclusively to the Cabinet. The Cabinet, however, became dissatisfied with L.A.H.C.'s compliance with the children's treatment plan and with her failure to participate in drug treatment and domestic violence counseling. Consequently, on February 1, 2005, the Cabinet filed a petition to terminate the parental rights of L.A.H.C., K.E.C., and D.H. to S.E.C., D.L.H. and M.L.H.

The termination hearing was originally scheduled for June 19, 2005. But since L.A.H.C. was making progress with her drug treatment and domestic violence counseling, the court continued the hearing. In an effort to re-establish a bond between L.A.H.C. and the children, the Cabinet reinstated visitation with M.L.H. and D.L.H., first with supervised visitation, then unsupervised daytime visitation, and finally unsupervised overnight visitation. As a condition of visitation, the Cabinet advised L.A.H.C. that the children should not have contact with her current boyfriend or D.H.

However, in November 2005, the Cabinet received information that D.L.H. was coming to school unkempt and that he was not receiving his medication. In addition, the Cabinet learned that L.A.H.C.'s boyfriend had been at the house during the children's visits, and that L.A.H.C. had been allowing D.H. to have contact with the children.

Based upon these violations of the treatment plan, the Cabinet discontinued L.A.H.C.'s visitation with the children and re-docketed the termination hearing.

The trial court conducted the termination hearing on April 28, 2006.

L.A.H.C. and D.H. were present with counsel. The court appointed counsel for K.E.C., but he failed to appear or contact the court. The Cabinet was represented by counsel and the children were represented by an appointed guardian *ad litem*. The Cabinet introduced its records and the records of the dependency actions as exhibits. The social workers who handled the case and the children's therapist testified for the Cabinet. L.A.H.C. testified on her own behalf, and she called her aunt, who testified that she was willing and able to take custody of the children. Likewise, D.H. testified that he was willing and able to assume support and custody of D.L.H. and M.L.H.

At the conclusion of the hearing, the trial court found that while L.A.H.C. had come into compliance with some of the Cabinet's directions, she had failed to comply with all of the Cabinet's directions or demonstrate reasonable progress toward reunification with the children. The court further found that the children had been in foster care for more than fifteen of the twenty-two previous months, and they had previously been adjudicated to be abused or neglected. The court also noted that L.A.H.C., K.E.C., and D.H. had failed to provide essential care for the children. Based upon the evidence presented at the hearing, the court found that termination of parental

rights would be in the best interests of the children, which the court so ordered. L.A.H.C. now appeals from this order.¹

Our standard of review in termination of parental rights cases is set forth in *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116-17 (Ky.App. 1998), as follows:

The trial court has a great deal of 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*, 552 S.W.2d 672, 675 (Ky.App. 1977). This Court's standard of review in a termination of parental rights action 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. *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky.App. 1986).

“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.” *Rowland v. Holt*, 253 Ky. 718, 726, 70 S.W.2d 5, 9 (1934).

The General Assembly provided the mechanism for the involuntary termination of parental rights in KRS 625.090. The statute creates a three-prong test whereby the Cabinet must prove, and the court must determine that: 1) the child is abused or neglected; 2) termination would be in the child's best interest; and 3) one of

¹ D.H. also filed a notice of appeal from the trial court's order terminating his parental rights. No. 2006-CA-001240-ME. However, he did not file an appellant's brief and this Court dismissed his appeal on February 8, 2007.

several listed grounds exists. In deciding the second and third prongs, the court is required to consider several enumerated factors, including “[i]f the child has been placed with the cabinet, 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). We shall address each prong in turn.

As the trial court noted, each of the children were found to be abused or neglected in the prior dependency actions. The Cabinet introduced the dependency files as exhibits in this case. Furthermore, L.A.H.C.’s stipulation to the allegations of the dependency petitions regarding M.L.H. and D.L.H. appears in the record.

As to the second prong, KRS 625.090(3) requires the court to consider a number of factors to determine whether termination would be in a child’s best interest. In this case, the Cabinet presented evidence that the children were removed from parental custody due to abuse or neglect, that the children’s physical, mental and emotional needs were being met and their prospects for adoption are good. L.A.H.C. primarily takes issue with the trial court’s findings that the Cabinet has made reasonable efforts for reunification, KRS 625.090(3)(c), and that she has failed to comply with the Cabinet’s directions. KRS 625.090(3)(d).

In particular, L.A.H.C. points out that she has successfully completed drug treatment and domestic violence counseling, and she is continuing her participation with therapy and mental health treatment. In addition, as the trial court noted, L.A.H.C. has been compliant with all court orders, at least since June of 2004. However, the trial court

also ordered L.A.H.C. to comply with the Cabinet's directions and case plan. L.A.H.C.'s compliance with many of the Cabinet's instructions is offset by her failure to fully comply with other aspects of her agreement with the Cabinet.

Furthermore, we disagree with L.A.H.C. that the conditions imposed by the Cabinet were arbitrary or unreasonable. The therapist and the social worker believed that L.A.H.C. should have used the unsupervised visitation to re-establish her bond with the children. And in light of prior instances of domestic violence, they instructed her that the children should not have contact with L.A.H.C.'s current boyfriend or with D.H. during visitation. L.A.H.C. failed to comply with these directions and, in fact, attempted to prevent the Cabinet from learning about her non-compliance. Based upon the evidence, the trial court could reasonably find that L.A.H.C.'s progress has been insufficient to make it in the children's best interests to return to the home within a reasonable period of time.

L.A.H.C. also complains that the trial court never considered placing the children with her aunt, who expressed an interest in taking the children. The Cabinet's consideration of relative placement may be a factor in determining the reasonableness of the Cabinet's efforts toward family reunification. In this case, however, the aunt did not come forward until two months before the final termination hearing. At that point, the children had made considerable progress toward permanency in other placements. The Cabinet was not obligated to consider relative placement as a reasonable option at that late date.

Pursuant to the third prong, the trial court found that L.A.H.C., for reasons other than poverty alone, has failed or is incapable of providing essential care for the children. L.A.H.C. complains that there was no support order in effect and the Cabinet never sought to collect child support from her. But we note that a parent's duty to support her children exists independently of any court order of support. KRS 405.020. We recognize that L.A.H.C. is receiving social security disability and has limited ability to work. Nevertheless, there was no evidence that L.A.H.C. has made any effort to support her children (apart from birthday and Christmas gifts) since they have been in state care.

And as noted above, the court also found that the children had been in state care for more than fifteen of the most recent twenty-two months. The purpose of KRS 625.090(2)(j) is to ensure a timely return to permanent placement for children who are committed to the Cabinet. The statute requires a parent to make progress toward reunification within a reasonable period of time. If a parent fails to do so, the statutory presumption shifts toward termination.

We commend L.A.H.C. for successfully completing drug treatment and domestic violence counseling and for her continued participation with therapy and mental health treatment. However, the children have been in state care since 2003 and L.A.H.C. made no efforts to fully comply with her treatment until 2005. Her failure to complete these programs earlier has allowed the children to remain in foster care for an extended period of time.

In 2005, the court allowed her an additional period to come into full compliance. As the trial court recognized, L.A.H.C.'s violations after that time were never egregious. And if L.A.H.C. had demonstrated her progress earlier, then her more recent lapses in compliance would not be as significant. But in light of these lapses, her prior history, and the extended period of time during which her children have been in foster care, her lack of complete compliance with the Cabinet's directions weighs more heavily against her. Given the evidence presented in this case, we cannot say that the trial court clearly erred in finding that the requirements of KRS 625.090 were met, or that it abused its discretion by terminating L.A.H.C.'s parental rights. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d at 116.

Accordingly, the order of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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