

RENDERED: AUGUST 21, 2009; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-001699-ME

N.M.G.

APPELLANT

APPEAL FROM JEFFERSON CIRCUIT COURT,
FAMILY COURT DIVISION
v. HONORABLE PATRICIA WALKER FITZGERALD, JUDGE
ACTION NO. 07-AD-500367

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAIMLY
SERVICES; N.D.J.G.; K.L.G.; D.D.G.;
AND CATHERINE SPALDING,
GUARDIAN AD LITEM

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; NICKELL AND TAYLOR, JUDGES.

TAYLOR, JUDGE: N.M.G. brings this appeal from three June 27, 2008, orders of the Jefferson Circuit Court, Family Court Division, involuntarily terminating her

parental rights to three minor children, N.D.J.G., K.L.G., and D.D.G. and from an August 27, 2008, amended order. We affirm.

On November 13, 2007, the Cabinet for Health and Family Services, Commonwealth of Kentucky (Cabinet) filed a petition for involuntary termination of parental rights seeking to terminate appellant's parental rights as to N.D.J.G., K.L.G., and D.D.G.¹ in the family court.

The family court conducted an evidentiary hearing. By orders entered June 27, 2008, the family court made detailed findings of fact and conclusions of law. Therein, the court found that based upon clear and convincing evidence, N.D.J.G., K.L.G., and D.D.G. were abused and neglected as defined by Kentucky Revised Statutes (KRS) 600.020(1). In these orders, the court painstakingly detailed the egregious physical abuse suffered by the children as well as appellant's neglect of them. Based upon these findings of fact, the family court entered separate orders terminating appellant's parental rights to each of the three children on June 27, 2008.

Appellant timely filed a motion pursuant to Kentucky Rules of Civil Procedure (CR) 59 to alter, amend, or vacate the June 27, 2008, findings of fact,

¹ N.D.J.G. was born August 15, 1999; K.L.G. was born July 26, 2003; and D.D.G. was born September 24, 2004.

and conclusions of law. By order entered August 27, 2008, the family court amended its findings of fact and conclusions of law. This appeal follows.

Involuntary termination of parental rights is governed by Kentucky Revised Statutes (KRS) 625.090. KRS 625.090 provides that parental rights may be involuntarily terminated if the court finds by clear and convincing evidence that the child is abused or neglected and that termination is in the child's best interest. *M.P.S. v. Cabinet for Human Res.*, 979 S.W.2d 114 (Ky.App. 1998). And, concomitantly, the court must further find at least one of the specified grounds for termination of parental rights as set forth in KRS 625.090(2). An appeal from an order of involuntary termination of parental rights is reviewed pursuant to the clearly erroneous standard found in Kentucky Rules of Civil Procedure (CR) 52.01. *M.P.S.*, 979 S.W.2d 114.

Appellant contends the family court erred by terminating her parental rights. Appellant specifically contends that the family court erred in its best interest analysis by failing to consider the Cabinet's lack of reasonable efforts to reunite appellant with the children. In support thereof, appellant merely asserts that she was initially referred to domestic violence counseling when she actually needed abusive parenting counseling and that her psychological assessment was delayed five months due to a lack of funding.

KRS 625.090 delineates the grounds for involuntary termination of parental rights. KRS 625.090(3)(c) specifically addresses reunification efforts and provides:

If 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 unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court[.]

Essentially, KRS 625.090 requires a court to consider whether the Cabinet made reasonable efforts to reunite the child with the parent. Reasonable efforts are defined by KRS 620.020(10) as the “exercise of ordinary diligence and care by the department to utilize all preventative and reunification services available . . . necessary to enable the child to safely live at home[.]”

In the case *sub judice*, it is undisputed that appellant was initially sent to domestic violence counseling rather than abusive parenting counseling. Once the Cabinet became aware of the referral, it quickly referred appellant to abusive parenting counseling. It is also uncontroverted that appellant’s psychological assessment was delayed. A review of the record, however, reveals that the Cabinet made reasonable efforts to reunite the children with appellant and in so doing provided numerous services to appellant over the past eight years. Among the services provided to appellant were family therapy, abusive parenting therapy,

mental health assessment and counseling, daycare references, out-of-home care for the children, prevention planning, and housing and employment counseling.

Despite the vast number of services provided to appellant, her psychological assessment still revealed a number of troubling issues. Appellant's assessment revealed that due to her lack of empathy for the children and her limited intellectual functioning she may not have the capacity to even benefit from the services provided. In its amended order, the family court specifically found:

3. [T]here were some delays in providing services to [appellant]. [Appellant] initially was referred to, or elected without appropriate guidance to attend, domestic violence offenders' treatment rather than abusive parenting counseling. She later transferred to a program that focused on child-related issues. The Forecast [psychological] assessment was delayed due to funding issues. The Court did consider these delays in rendering its decision. However, the Court also considered that [appellant] was provided intensive services prior to the time that [N.D.J.G.] was returned to her, the limited progress she had made in eight (8) months of counseling for abusive parenting issues, and the various evaluations and reports that indicated that due to her limited intellectual functioning and lack of empathy she might not have the capacity to benefit successfully from those services. These considerations, together with the seriousness of the children's injuries and the length of time the children have been removed from her care, necessitate finding another permanent home for these children.

The court clearly believed the Cabinet had made reasonable efforts to reunite appellant with the children. Considering the seriousness of the children's abuse coupled with appellant's lack of progress, the family court through extensive findings, determined that termination of appellant's parental rights would be in the children's best interest. Upon careful review of the record in this case, we can find no error in the family court's findings.

For the foregoing reasons, the orders of the Jefferson Circuit Court, Family Court Division, are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John E. Hamlet
Louisville, Kentucky

BRIEF FOR APPELLEES N.D.J.G.,
K.L.G., AND D.D.G.:

Catherine Spalding
Guardian Ad Litem
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BRIEF FOR APPELLEE
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Brenda L. Bourgeois
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