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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000287-ME

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY SERVICES — APPELLANT

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE DONNA DELAHANTY, JUDGE
ACTION NO. 08-AD-500111

S.A.D. (CHILD); L.M.K.B.D. (CHILD);
A.R.D. (MOTHER); AND T.B. (FATHER) — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CAPERTON AND DIXON, JUDGES; HENRY,[1] SENIOR JUDGE.

DIXON, JUDGE: Appellant, Commonwealth of Kentucky, Cabinet for Health and Family Services ("Cabinet"), appeals from orders of the Jefferson Family Court

[1] Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

dismissing its petition for involuntary termination of parental rights against the parent Appellees, A.R.D. and T.B., regarding the minor Appellees, S.A.D. and L.M.K.B.D. Finding no error, we affirm.

Appellees, S.A.D. and L.M.K.B.D., were born on September 4, 1991 and July 26, 1992, respectively. The Jefferson Family Court first became involved with the girls in November 1993, when the Cabinet filed a petition alleging that their mother, A.R.D., had been diagnosed with paranoid schizophrenia and had heard "voices" telling her to kill her children. On December 1, 1993, temporary custody was granted to the natural father, T.B. On January 5, 1994, both parents stipulated to the dependency of the children, but they remained in T.B.'s temporary custody with continuing orders of no unsupervised contact with A.R.D.

In August 2006, the Cabinet filed a contempt motion against T.B., alleging that he had violated a prior court order prohibiting the use of corporal punishment on the children. The family court thereafter found T.B. in contempt and placed the children in the custody of the Cabinet. T.B. was granted supervised visitation and, for the first time, A.R.D. was granted unsupervised visitation as long as her mental heath remained stable. S.A.D. and L.M.K.B.D. have remained in the Cabinet's custody since 2006.

On March 19, 2008, the Cabinet filed a petition for the involuntary termination of A.R.D. and T.B.'s parental rights regarding S.A.D. and L.M.K.B.D. A bench trial was held on September 3, 2008, and on January 26, 2009, the family court entered separate orders dismissing the Cabinet's petition on the basis that

termination was not in the best interest of either S.A.D. or L.M.K.B.D. The Cabinet thereafter appealed to this Court.

The trial court is afforded a great deal of discretion in determining whether a child has been neglected or abused warranting termination. *R.C.R. v. Commonwealth, Cabinet for Human Resources*, 988 S.W.2d 36, 38 (Ky. App. 1998); *Department for Human Resources v. Moore*, 552 S.W.2d 672, 675 (Ky. App. 1977). Our standard of review in termination of parental rights decisions is set forth in *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998):

> 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*, Ky. App., 706 S.W.2d 420, 424 (1986).
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> "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).

Furthermore, as noted by a panel of this Court in *M.E.C. v. Commonwealth, Cabinet for Health and Family Services*, 254 S.W.3d 846, 850 (Ky. App. 2008),

> [A]lthough termination of parental rights is not a criminal matter, it encroaches on the parent's constitutional right to parent his or her child, and therefore, is a procedure that should only be employed when the statutory mandates are clearly met. While the state has a

> compelling interest to protect its youngest citizens, state intervention into the family with the result of permanently severing the relationship between parent and child must be done with utmost caution. It is a very serious matter.

KRS 625.090 sets forth the grounds for involuntary termination of parental rights. A circuit court may involuntarily terminate parental rights if it finds by clear and convincing evidence that a child is or has previously been adjudged, abused or neglected, *and* that termination is in the child's best interest. In addition, the court must find the existence of one or more of ten specific justifications set forth in KRS 625.090(2).

The parties do not challenge the trial court's findings that S.A.D. and L.M.K.B.D. are abused and neglected as defined in KRS 600.020(1). And clearly, S.A.D. and L.M.K.B. D. have been "in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights." KRS 625.090(2)(j). Thus, the only issue before us is whether the family court erred in determining that terminating A.R.D. and T.B's parental rights would not be in the best interest of these children. We conclude that it did not.

During the bench trial, the Cabinet presented evidence that S.A.D. and L.M.K.B.D.'s physical, mental, and emotional well-being had improved after being placed in the Cabinet's custody. S.A.D. is in foster placement in Louisville, Kentucky, and L.M.K.B.D. resides with a foster family in Lexington, Kentucky.

Both girls have expressed that they are happy with their current foster families. However, as the trial court noted in its order,

> Both children have indicated to the Court, to their therapists and to the Guardian Ad Litem that they wish to visit with their parents and do not want to lose that contact. Neither girl has asked to live with either parent. L.M.K.B.D. stated that she does not want to be adopted. S.A.D. will be eighteen years old on September 4, 2009. . . .
>
> [G]iven the willingness of the Respondent mother to continue her mental health treatment and the willingness of the Respondent father to provide financially for the children, to admit that he had whipped the children inappropriately, and to visit the children at the first opportunity available to him, the Court finds that there is a reasonable expectation of improvement in parental care and protection considering the age of each child.

We are of the opinion that the record herein contains sufficient evidence to support the family court's decision. Although both parents have struggled, each has attempted, on some level, to cooperate with parenting classes and treatment. Further, both have continued to have at least some measure of a parental bond with their children. We are further convinced that S.A.D. and L.M.K.B.D's ages support the trial court's decision. These are not young children. In fact, S.A.D. will have, in all likelihood, reached the age of majority prior to the resolution of this matter. As such, we agree with the trial court that terminating their parental relationship at this stage does not serve their best interests.

Obviously, the record contains evidence that would support a decision contrary to that reached by the family court. But the fact that the record contains

evidence that would support a different result does not mean that the family court's decision must be reversed. *See C.M.C. v. A.L.W.*, 180 S.W.3d 485, 495 (Ky. App. 2005). As noted above, the record contains evidence in support of the family court's ultimate conclusions.

For the reasons stated herein, we affirm the orders of the Jefferson Family Court dismissing the Cabinet's petition for a termination of parental rights.

ALL CONCUR.

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