

RENDERED: FEBRUARY 26, 2010; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2009-CA-000713-ME

R.G.S.J.

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT  
HONORABLE LARRY E. THOMPSON, JUDGE  
ACTION NO. 08-AD-00009

CABINET FOR HEALTH AND  
FAMILY SERVICES, COMMONWEALTH  
OF KENTUCKY; D.R.N.S., A MINOR CHILD;  
AND L.C.J., A MINOR CHILD

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \* \*\* \*

BEFORE: KELLER AND VANMETER, JUDGES; GRAVES,<sup>1</sup> SENIOR  
JUDGE.

VANMETER, JUDGE: R.G.S.J. appeals from findings and a judgment entered by  
the Pike Circuit Court, Family Division, terminating her parental rights to two  
minor children. For the reasons stated hereafter, we affirm.

---

<sup>1</sup> Senior Judge J. William Graves 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.

R.G.S.J. is the biological mother of D.R.N.S. and L.C.J. (collectively referred to as “the children”), who were born in 1992 and 1998, respectively. D.R.N.S.’s biological father is unidentified, while L.C.J.’s biological father voluntarily terminated his parental rights during the proceedings below.

The children have not resided with R.G.S.J. since July 2005, when they were removed from her home after their four-year-old brother, J.J., drowned in a neighbor’s pool after spending several hours outside, unsupervised, one morning while R.G.S.J. slept. This event occurred several months after R.G.S.J. failed to seek medical assistance after her teenage son was accidentally shot in the abdomen by his stepfather. The record shows the teenager prevailed upon a neighbor to take him to a hospital for emergency treatment requiring abdominal surgery.

The Pike Circuit Court, Family Division, adjudicated the children neglected in January 2006, and committed them to the Cabinet for Health and Family Services (Cabinet) in March 2006.<sup>2</sup> In June 2006, after an eight-day jury trial, R.G.S.J. was convicted of second-degree manslaughter relating to J.J.’s death. She was sentenced to ten years’ imprisonment. In March 2009, a panel of this court reversed the judgment of conviction on the ground that evidence of prior bad acts was improperly introduced at trial. The matter was remanded to the trial court for a new trial.

---

<sup>2</sup> D.R.N.S. also was adjudicated neglected in October 1995.

Meanwhile, in March 2008 the Cabinet filed the underlying petition seeking the termination of R.G.S.J.'s parental rights. As amended, the petition alleged that R.G.S.J. was imprisoned, that she and L.C.J.'s father had "failed to protect and preserve their children's fundamental rights to a safe and nurturing home," that the children were neglected as defined in KRS 600.020, and that it was in the children's best interest to terminate parental rights. More specifically, the petition alleged that R.G.S.J. had failed to provide for the children's medical and other needs, that she had exposed them to domestic violence and inadequate supervision, that despite the Cabinet's efforts she had not made sufficient "efforts or adjustments" so that a return to her care would be in the children's best interest, and that the children's condition had improved since placement in foster care. Finally, the petition stated that R.G.S.J. had been convicted of causing or contributing to J.J.'s death due to neglect, and that D.R.N.S. and L.C.J. had been in foster care, under the Cabinet's responsibility, for more than fifteen of the twenty-two months immediately preceding the filing of the termination petition.

The trial court conducted a two-day termination hearing in February and March 2009. Between the two hearing dates, this court rendered its opinion reversing R.G.S.J.'s manslaughter conviction. Thus, in reaching its decision the trial court noted that R.G.S.J. was awaiting further judicial proceedings and remained charged with second-degree manslaughter, but otherwise disregarded the fact of her conviction.

In its order, the trial court found by clear and convincing evidence that the children had been adjudicated neglected and committed to the Cabinet by a court of competent jurisdiction, and that they were in the Cabinet's care and custody for twenty-four consecutive months before the termination petition was filed. The court stated that in determining whether it was in the children's best interest to terminate R.G.S.J.'s parental rights, it considered neglect of "any child in the family[,]" KRS 625.090(3)(b), including the prior findings of neglect relating to J.J.'s death and R.G.S.J.'s failure to seek immediate medical care when the teenage son was shot. The court considered the Cabinet's reasonable efforts to provide available preventive and reunification services to enable the children to safely live at home, KRS 620.020(10), and found from the evidence that R.G.S.J. had failed to either comply with prior court orders or cooperate with the Cabinet's reunification efforts. The court found that the children were doing well and were having their needs met in foster care, and that they needed permanency in their lives. Further, the court determined that R.G.S.J. had inflicted emotional harm upon the children by failing to seek medical treatment when their older brother was shot, and "by subjecting them to the trauma of" J.J.'s death.

The trial court concluded, as a matter of law, that clear and convincing evidence showed the children previously were adjudged neglected by a court of competent jurisdiction. The court found that the Cabinet had provided reasonable reunification services, but that R.G.S.J. had failed to make the necessary changes to permit the children's return, and that there was "no reasonable prospect of any

improvement.” Concluding that it would be in the children’s best interest to terminate R.G.S.J.’s parental rights, the court entered an order to that effect. This appeal followed.

In circumstances such as those alleged herein, an involuntary termination of parental rights requires the trial court to find by clear and convincing evidence that the child has been adjudged, by either the trial court in the termination proceeding or a “court of competent jurisdiction” in an earlier proceeding, to be abused or neglected as defined in KRS 600.020(1). *See* KRS 625.090(1)(a). The court must also find, by clear and convincing evidence, that the termination of parental rights would be in the child’s best interest, KRS 625.090(1)(b), and that at least one of the ten grounds set out in KRS 625.090(2) exists. Such grounds include:

(c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;

.....

(e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;

.....

(i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or

neglect; or

(j) That the child has 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).

When determining the child's best interest and the existence of any grounds for termination, the trial court must consider the factors enumerated in

KRS 625.090(3), including:

(b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;

(c) 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;

(d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;

(e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered[.]

Finally, as stated in *K.R.L. v. P.A.C.*, 210 S.W.3d 183, 187 (Ky.App. 2006), appellate review of a decision to terminate parental rights is

limited to the clearly erroneous standard set forth in Kentucky Rules of Civil Procedure (CR) 52.01. *R.C.R.*

*v. Commonwealth, Cabinet for Human Resources*, 988 S.W.2d 36, 38 (Ky.App. 1998). Since [the parent seeking termination] was the petitioner at the trial court level, she had the burden of proof and was required to prove by clear and convincing evidence that Father's parental rights should be terminated. KRS 625.090(1). With this in mind, we are required to give considerable deference to the trial court's findings, and we will not disturb those findings unless no substantial evidence exists in the record to support them. *Commonwealth, Cabinet for Families and Children v. G.C.W.*, [139 S.W.3d 172 (Ky.App. 2004)]. In addition, the trial court, as the finder of fact, has the responsibility to judge the credibility of all testimony, and may choose to believe or disbelieve any part of the evidence presented to it. *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977).

Here, the record contains undisputed substantial evidence to show that in January 2006, the Pike Circuit Court, Family Division, adjudged D.R.N.S. and L.C.J. to be neglected children. As the court undeniably was one of competent jurisdiction, the first ground for the termination of parental rights was satisfied by clear and convincing evidence. *See* KRS 625.090(1)(a)1.

Next, the record indicates that when the petition was filed, several grounds existed to support the termination of parental rights. One of the grounds was eliminated when R.G.S.J.'s second-degree manslaughter conviction was reversed on appeal, as R.G.S.J. then no longer stood convicted of having caused or contributed to J.J.'s death through neglect. *See* KRS 625.090(2)(i). Nevertheless, the trial court found and the evidence showed that several other grounds remained to support the termination of parental rights, including the undisputed fact that the children had been in foster care, under the Cabinet's responsibility, for more than

fifteen of the twenty-two months immediately preceding the filing of the termination petition. *See* KRS 625.090(2)(j). Thus, clear and convincing evidence supported the “existence of one (1) or more” of the grounds set out in KRS 625.090(2).

Finally, the trial court examined the issue of whether the termination of parental rights would be in the children’s best interest. *See* KRS 625.090(1)(b). As noted above, the court found that the children had been out of their mother’s home for over three years, that they were doing well and their needs were being met in foster care, and that they needed permanency in their lives. Additionally, the court considered the findings of neglect relating to the children’s older and younger brothers, as well as evidence, some of which was conflicting, regarding the Cabinet’s and R.G.S.J.’s efforts toward reunification. Having reviewed the evidence, we conclude the trial court did not clearly err by finding that the children’s best interest would be served by the termination of parental rights.

The judgment of the Pike Circuit Court, Family Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Timothy A. Parker  
Prestonsburg, Kentucky

BRIEF FOR APPELLEE CABINET  
FOR HEALTH AND FAMILY  
SERVICES:

David T. Adams  
Paintsville, Kentucky