

RENDERED: DECEMBER 3, 2010; 10:00 A.M.  
NOT TO BE PUBLISHED

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

NO. 2010-CA-000664-ME

B.H.

APPELLANT

v. APPEAL FROM MCCRACKEN FAMILY COURT  
HONORABLE CYNTHIA E. SANDERSON, JUDGE  
ACTION NO. 09-AD-00016

CABINET FOR HEALTH AND FAMILY  
SERVICES, COMMONWEALTH OF  
KENTUCKY

APPELLEE

OPINION  
AFFIRMING

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BEFORE: TAYLOR, CHIEF JUDGE; STUMBO, JUDGE; SHAKE,<sup>1</sup> SENIOR  
JUDGE.

SHAKE, SENIOR JUDGE: B.H. appeals from a McCracken Family Court Order  
entered on February 23, 2010 (Order), terminating her parental rights concerning

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<sup>1</sup> Senior Judge Ann O'Malley Shake 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.

J.T.H. On appeal, B.H. claims that the Order must be reversed for the following reasons: (1) B.H. was neither served with notice of the underlying dependency proceedings nor was she afforded benefit of court-appointed counsel; (2) the Cabinet for Health and Family Services (Cabinet) failed to make reasonable efforts to render services to B.H.; and (3) the Family Court's finding that termination was in the best interest of the child was not supported by clear and convincing evidence. Following a careful review of the record, counsels' briefs, and applicable law, we affirm the Order.

#### I. Factual Background and Procedural History

J.T.H. was born on October 2, 1993, to B.H, mother, and T.R., putative father. J.T.H. is one of eight children born to B.H., none of which are in her care. J.T.H.'s young life has been filled with abuse and neglect from both his father and his mother.

From the time J.T.H. was very young, B.H. failed to provide his most basic necessities. He was eventually removed from her care based upon a finding of neglect and risk of sexual harm. B.H. had left him in the care of a known sexual predator and had disappeared for several days. He was adjudicated neglected on March 13, 2006, in Illinois. Moreover, B.H. failed to provide proper medical care, dental care, and educational needs for her son.

The abuse continued when J.T.H. moved to Kentucky to live with his father, T.R. In one instance, T.R. struck his son with the butt of a shotgun. After

T.R. was sentenced to imprisonment, convicted of criminal abuse of J.T.H.'s younger half brother, J.T.H. moved in with his paternal relatives in May 2007. During this time, J.T.H. was defiant, violent, easily angered, and practiced self mutilation. His paternal relatives could not control him. Out of concern for his safety, J.T.H.'s paternal relatives contacted the Cabinet in July 2007.

On September 20, 2007, the McCracken Family Court found that J.T.H. was dependant and committed him to the custody of the Cabinet. This determination was based upon the paternal relatives' inability to properly care for him. Neither B.H. nor T.R. was present for the proceeding. B.H. was not served with notice and was not appointed counsel.

On February 19, 2010, the McCracken Family Court held a hearing on the Cabinet's motion to terminate the parental rights of B.H. and T.R. Both parents were present at the hearing and represented by counsel. In its order, the trial court granted the Cabinet's motion to terminate parental rights. This appeal follows.

## II. Standard of Review

The appropriate standard of review for a trial court's decision to terminate parental rights is a clearly erroneous standard which requires the court's decision to be based upon clear and convincing evidence. Kentucky Rules of Civil

Procedure (CR) 52.01; *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116-17 (Ky. App. 1998). A court's decision will not be disturbed concerning a termination of parental rights unless the decision was not based upon substantial evidence. *M.E.C. v. Commonwealth, Cabinet for Health and Family Services*, 254 S.W.3d 846, 851 (Ky. App. 2008).

This standard of review reflects the law's protection of the parent-child relationship. While termination proceedings are not criminal matters, they "[encroach] 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." *Id.* These proceedings must be regarded with the utmost caution.

### III. Due Process Requirements

B.H. claims her due process rights were denied when she did not receive notice of the underlying dependency action and was not appointed an attorney for that proceeding. The court record of the termination proceeding provides little information concerning the dependency action. However, we find no evidence that contradicts B.H.'s contentions.

KRS 620.100 and 625.080 provide custodial parents with the right to counsel during dependency proceedings. *R.V. v. Commonwealth, Dept. of Health and Family Services*, 242 S.W.3d 669, 672 (Ky. App. 2007). Because B.H. did not have custodial rights, she was not entitled to notice and representation. However,

parents are entitled to notice and representation during all proceedings that involve the termination parental rights. *R.V. v. Commonwealth* at 673.

In *R.V. v. Commonwealth*, this Court held:

[T]he parental rights of a child may not be terminated unless that parent has been represented by counsel at every critical state of the proceedings. This includes all critical stages of an underlying dependency proceeding in district court, unless it can be shown that such proceeding had no effect on the subsequent circuit court termination case.

*Id.* at 673. While the dependency proceeding did not affect B.H.'s parental rights, the action resulted in a change of goals from family reunification to adoption. Therefore, the question is whether the dependency action had any affect on the subsequent termination of rights.

The Order found that J.T.H. was an abused and neglected child who had been in foster care for two years. The allegations of abuse and neglect were fully litigated during the termination proceeding. The Order only included facts and conclusions drawn from the evidence adduced during the termination proceeding. B.H. was given the full opportunity to be heard and to defend herself against the allegations. Despite B.H.'s contentions that she was entitled to notice and counsel during the dependency action, she fails to articulate how the termination proceeding was in any way impacted by the dependency action.

#### IV. Reunification Services

B.H. claims that the Cabinet failed to provide her with reasonable efforts to reunite with J.T.H. As reunification is a goal in family courts, KRS

625.090 (3)(c) requires the Cabinet to make reasonable efforts to reunite families prior to seeking termination. *See M.E.C. v. Commonwealth, Cabinet for Health and Family Services*, 254 S.W.3d at 852. KRS 620.020 defines “reasonable efforts” as “the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community in accordance with the state plan . . . which are necessary to enable the child to safely live at home.” KRS 620.020 (11). The record indicates that the Cabinet fulfilled its obligation to make reasonable efforts toward reunification.

In order to arrange parenting services and work toward reunification, the Cabinet must be able to locate the parent. The Cabinet began inquiring about B.H.’s contact information from the time that it was first contacted by the paternal relatives. Although J.T.H. had been living with his paternal relatives and his father, none of them had contact information for B.H.

At that time, B.H. was involved in another termination of parental rights proceeding in Illinois concerning other children. The Cabinet attempted to contact her through those proceedings. However, B.H. failed to appear at the Illinois termination hearing. The Cabinet did not have contact with B.H. until July 2009, when J.T.H. had been in foster care for two years. Although there is some controverted proof about efforts made by the Cabinet to contact her, it was the conclusion of the court as finder of fact that the efforts were reasonable under all the circumstances of this case.

In addition, B.H. enrolled in several parenting programs in Illinois that are similar to those that she claims Kentucky should have provided. The record indicates that B.H. did not successfully complete these services.

Given B.H.'s lack of contact with J.T.H. and the Cabinet's multiple attempts to locate her, we conclude that the Cabinet made reasonable efforts.

#### IV. Clear and Convincing Evidence

B.H. also claims that the trial court's conclusion that termination was in J.T.H.'s best interest lacked substantial evidence. As previously mentioned, KRS 625.090 provides for the involuntary termination of parental rights upon the court's finding that clear and convincing evidence establishes that "a child is or has previously been adjudged, abused or neglected, and that termination is in the child's best interest. Then, the circuit court must find the existence of one or more of ten specific grounds set forth in KRS 625.090 (2)." *M.E.C. vs. Commonwealth*, 254 S.W.3d at 851.

In addition to finding that J.T.H. was an abused and neglected child, the court found that he had been in foster care under the supervision of the Cabinet for over two years. The court found that termination was in J.T.H.'s best interest. Our review of the record indicates that substantial evidence existed to support the trial court's conclusions.

During the termination hearing, the court heard testimony from several caseworkers employed by the Cabinet. The cumulative testimony of these

caseworkers indicated that J.T.H. had been physically abused, sexually abused, and neglected. As a result of his parents' neglect, abuse, and the incarceration of his father, J.T.H had not had contact with either parent in the two years that he was in foster care. Further, he does not want to have contact with either parent. The testimonies of the caseworkers were supported by the testimony of a social services caseworker from Illinois and J.T.H.'s testimony. Based on all the evidence supporting the court's findings, there was clear and convincing evidence to support the court's findings and conclusions.

Accordingly, we affirm the McCracken Family Court Order terminating B.H.'s parental rights.

ALL CONCUR.

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