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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001946-ME

M.F.W.

APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE LISA O. BUSHELMAN, JUDGE
ACTION NO. 11-AD-00182

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; AND M.W., AN INFANT

APPELLEES

AND

NO. 2012-CA-001947-ME

M.F.W.

APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE LISA O. BUSHELMAN, JUDGE
ACTION NO. 11-AD-00183

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; AND S.W., AN INFANT

APPELLEES

OPINION
AFFIRMING

** **

BEFORE: CLAYTON, DIXON, AND MAZE, JUDGES.

CLAYTON, JUDGE: In two separate appeals, M.F.W. appeals the Kenton Family Court's judgments, which involuntarily terminated parental rights to her minor children, M.W. and S.W. After careful consideration, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

M.F.W. and T.E.W. were married, and during the marriage had two daughters: M.W., who was born on April 4, 2008; and S.W., who was born on October 12, 2009. On December 19, 2011, the Cabinet for Health and Family Services (hereinafter "the Cabinet") filed a petition of involuntary termination of parental rights for each child.

M.W. and S.W. have been in foster care and the custody of the Cabinet since December 16, 2010. Also, in 2008, M.W. had been removed from the father's care because of neglect. On that occasion, the mother was in the hospital, and the father, who was caring for the child, kept calling the hospital. He was apparently quite intoxicated. The police went to the home to check on the child and discovered the father unresponsive and smelling of alcohol. Upon this discovery, the police put M.W. in the care of a neighbor until the mother's return home.

After this incident, the family court ordered that the child not be left alone with the father, and that the child be supervised when she was with the father. Further, the Cabinet offered the parents anger management and parenting classes plus counseling services. In October 2009, an agreed order was entered that stated the father had been compliant with his treatment plan, made significant progress, and could now have unsupervised contact with the child.

Then, in December 2010, the Cabinet again intervened in the children's lives. The mother was again hospitalized. This time she was in a psychiatric facility because of suicidal and homicidal ideation. While the mother was in the hospital, the father called the police and requested help finding one of the children because he could not locate her.

When the police arrived, they found the child asleep under the covers. But they also discovered deplorable conditions in the home. Besides the father's intoxication and the children being dirty, the police observed that the home was infested with bedbugs and roaches, had over 100 empty beer cans lying around, plus old food littered throughout the house.

Following this incident, the family court entered an emergency custody order that removed the children from the home. Thereafter, the father was charged with, and later convicted of, wanton endangerment of a child.

After the entry of the emergency custody order, the Cabinet offered the parents services to address domestic violence, mental health, and parenting issues. Over the course of the case, the father filed an emergency protective order

against the mother, was arrested for driving under the influence, and assaulted a police officer. Additionally, family court ordered that the father have no contact with the Cabinet worker assigned to the case because of his threats toward her.

An adjudication hearing was held in January 2011, wherein the family court made a finding of neglect. At the dispositional hearing, held on March 24, 2011, the children were committed to the Cabinet. Then, in December 2011, the Cabinet filed separate petitions for each child requesting the involuntary termination of parental rights.

On August 2, 2012, a trial was held regarding the petition for involuntary termination of the parents' rights. Each parent was represented by counsel, and children's guardian *ad litem* attended the trial. The father did not personally appear at the trial because following the filing of the petition, he executed an "Entry of Appearance," "Waiver," and "Consent to Adopt." He did so with the assistance and advice of his attorney.

The mother, however, personally appeared at trial with counsel. She testified that she has not abused or neglected her children. The mother admitted that she had been diagnosed with several mental health issues but that she regularly attended medication and counseling appointments. The mother also said that although she remained in a relationship with her husband after the children's removal in December 2010, she had decided, in June 2012, to separate from him. Danielle Hamilton, the Cabinet social worker assigned to the case, also testified at the hearing. Her statements will be referred to later.

The family court entered findings of fact, conclusions of law, and judgments terminating parental rights on October 8, 2012. It is from these judgments that the mother now appeals.

STANDARD OF REVIEW

The standard for 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 (Ky. App. 1998). Therein, the Court states that the standard of review in a termination of parental rights case is the clearly erroneous standard. This standard is enunciated in Kentucky Rules of Civil Procedure (CR) 52.01 wherein it provides that “[f]indings of fact, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.” Hence, this Court's review is to determine whether the trial court's order was supported by substantial evidence on the record. Moreover, the Court will not disturb the trial court's findings unless no substantial evidence exists on the record. *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky. App. 1986).

DISCUSSION

On appeal, the mother posits three arguments to support her position that the family court's decision should be reversed. First, she argues that the family court erred when it concluded that substantial evidence existed to terminate her parental rights. Second, the mother maintains that the family court erred in its determination that the Cabinet made reasonable efforts to reunite the children with

her. Finally, the mother claims that the family court did not have substantial evidence to support its decision that it was in the children's best interests to terminate her parental rights.

The Cabinet counters these arguments. It states that the family court's findings to terminate were not clearly erroneous because they were supported by substantial evidence. Next, the Cabinet claims that it made reasonable efforts to reunite the children with the mother. Finally, it contends that the family court's finding that termination of parental rights was in the in the children's best interest was supported by substantial evidence and, therefore, not clearly erroneous.

We begin our analysis by observing that Kentucky Revised Statutes (KRS) 625.090 sets forth the grounds for involuntary termination of parental rights. A family 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 family court must find the existence of one or more of ten specific grounds set forth in KRS 625.090(2).

Here, pursuant to KRS 625.090(1)(a) and (b), the family court, through clear and convincing evidence, adjudged the children to be neglected and decided that termination of the parents' rights was in the children's best interest.

Further, the family court found grounds for termination under two elements in KRS 625.090(2). First, the family court decided 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.” KRS 625.090(2)(e).

The family court’s decision is based on several factors including the fact that the mother, on two different documented occasions, left the child or children with their alcoholic father. Both times, intervention by the police was necessary. During one intervention, the home was found in deplorable condition.

In addition, Hamilton, the Cabinet social worker, stated during her testimony that the mother does not acknowledge the severity of the father’s alcoholism, his mental health issues, or his abusive actions toward her. Regarding the alcoholism in particular, this point is highlighted by the mother’s testimony that she grew up with an alcoholic parent and “was used to it.” Besides which, she confirmed at trial that she stopped attending Al-Anon meetings despite her spouse’s alcoholism. In fact, the mother left the children with the father despite the fact that he drank up to two cases a beer per day, called her offensive names, and was not compliant with his medication for bipolar disorder and schizophrenia.

Hamilton also testified that even though the mother now acknowledges that there were problems in the marriage, she still denies any physical violence or threat of physical violence occurred during the marriage. The record also contains reports from counselors and other providers, which state among other things, that the mother denies violence in the relationship and that

marital counseling would not be effective because of the father's untreated alcoholism. It is also difficult to ascertain the mother's progress since she would not sign a release with her individual counselor so that Hamilton could speak with the counselor to ascertain the mother's progress.

Even during the trial, the mother stated that she did not know if the relationship was violent. Moreover, she commented that "he's never really hit me, so that's part of domestic violence where you hit them, there has never been any of that." And after the children's removal from the home, the mother remained in the relationship with the father. And even though she purports that the relationship ended in June 2012 she continues to speak regularly with him by phone every few days.

Moreover, mother was hospitalized for mental health issues on three occasions in the last few years. Regarding the psychiatric hospitalization, she threatened to kill herself or her spouse on more than one occasion. In addition, he has threatened to kill her, too.

Mother also testified that she loved her children, she continues with her treatment and medication for her mental health issues. Notwithstanding her efforts and desires, the mother struggles with making credible decisions about the severity of her husband's alcoholism and abusive treatment of her. For example, at trial, she hesitated when first asked whether the father should spend time with the children. But when asked if she would allow him to visit the girls, she said "I

don't think he would hurt them, he loves the girls.” (The mother did say she would not allow him to visit if the court said he could not.)

We are very aware of the family court's opportunity and responsibility to judge the credibility of the witnesses under CR 52.01. Keeping this in mind, we do not disturb its decision that the mother is “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.” KRS 625.090(2)(e).

The second ground that the family court found that termination was appropriate was that “the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child.” KRS 625.090(2)(g).

The evidence in the record, which supports this family court's finding, is based on the fact that the mother has worked at Wal-Mart for the last 8 months at about 32 hours per week. Her salary was \$9.45 per hour. Further, other than providing the children's lunch during her visitation with them, she has not provided any financial or other support for the children from December 2010 until the date of the trial. When asked if she had paid child support during this time period, she responded that it had never been ordered, and so she had not.

Hamilton testified that the mother's living arrangements had changed at least four times during the pendency of this action. Further, at no location was the mother a signatory on the lease. Currently, she lives with her mother and stepfather, who is an alcoholic, in a one-bedroom apartment at an assisted living facility. Although the mother had signed up for public housing, there was no certainty as to when she might get an apartment.

Thus, given the mother's failure to provide financial support for her children, her lack of shelter, and financial instability, the family court did not err in concluding that the mother has not provided essentials for the children or that there is any reasonable expectation of improvement in the immediate future.

Thus, we conclude that the family court's findings that grounds existed for termination of parental rights was supported by substantial evidence and, therefore, not clearly erroneous.

Next, we address the mother's contention that the family court erred in its determination that the Cabinet made reasonable efforts to reunite the children with her. In fact, the Cabinet offered numerous services to bring about parental changes for reunification of the family. These services included psychological evaluations, counseling (individual and marital), Al-Anon meetings, and services for medication management.

While the mother maintains that family counseling should have been provided, her failure to improve her personal issues mitigated against offering this service. Furthermore, she contends that unsupervised visits with her children

should have been provided by the Cabinet. But the Cabinet was not authorized to provide unsupervised visits because the mother did not have a suitable place for the children to visit and continued her contact with the father.

We concur with the family court that the Cabinet provided reasonable services to make it possible for the mother to make the necessary changes in parental behavior to be reunited with her children. Unfortunately, it did not happen.

Finally, we address the mother's contention that the family court did not have substantial evidence to support its decision that it was in the children's best interests to terminate parental rights. The family court's assessment is guided by KRS 625.090(3), which provides six factors for the court's consideration concerning the best interests of the child and the grounds for termination.

An evaluation of the statutory factors shows that the mother suffers from mental illness, has neglected the children, receives numerous services from the Cabinet, and is still not able to provide a home for the children. Moreover, the girls have been in foster care since December 2010, and the mother has made little progress in making it possible for them to return to her custody. Additionally, the children are doing well with prospects for adoption.

Given the other evidence provided and consideration of these above-cited statutory factors, we hold that the family court had substantial evidence to decide that termination of the mother's parental rights was in the children's best interest and, hence, its decision was not clearly erroneous.

CONCLUSION

Substantial evidence supports the family court's determination to terminate the mother's parental rights to the children. We affirm the Kenton Family Court's October 8, 2012 order.

ALL CONCUR.

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