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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000350-ME

M.C.

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE JAY A. WETHINGTON, JUDGE
ACTION NOS. 13-AD-00086

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
AND K.S.M., A CHILD

APPELLEES

AND

NO. 2014-CA-000358-ME

M.C.

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HONORABLE JAY A. WETHINGTON, JUDGE
ACTION NOS. 13-AD-00087

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
AND K.S.M., A CHILD

APPELLEES

OPINION
AFFIRMING

BEFORE: CLAYTON, LAMBERT AND THOMPSON, JUDGES.

THOMPSON, JUDGE: These appeals are taken from orders of the Daviess Circuit Court terminating the parental rights of M.C. (“mother”) in her two children, a daughter, born on December 20, 2007 (2014-CA-000358-ME) and a son, born on April 27, 2009 (2014-CA-000350-ME). Having reviewed the record and the applicable law, we affirm both orders.

In April 2011, mother left the two children solely in their father’s care. According to mother, she needed time to address her alcohol abuse issues after being convicted of driving under the influence. On April 10, 2012, a neglect petition was filed by the Cabinet for Health and Family Services against the father only, based upon his drinking, passing out and leaving the children unsupervised while in his care. On May 30, 2012, the father stipulated to dependency. On September 25, 2012, the Cabinet filed another neglect petition against the father, alleging continued drinking and failure to provide suitable housing for the children. The petition resulted in the removal of the children from the father and their placement in foster care where they remain.

Although mother knew the children had been placed in foster care, she claimed to be unaware of the lack of progress father was making. She testified that she visited the children while they were in their father’s care, but such visitation ceased at some time in the summer of 2012. According to Cabinet case worker

Emilee Miller, there was no contact between the mother and children after April 2011, except for one short visit with them at the father's home in May 2012.

Miller testified that when she began working with and providing services to the father in May 2012, mother was not involved and could not be located. When the children were placed in foster care in September 2012, Miller made numerous attempts by mail and telephone to contact mother. She finally succeeded in contacting mother in October 2013, over one year after the children had entered foster care. Mother had entered OASIS, a domestic violence and substance abuse treatment facility in February 2013, alleging domestic abuse. A counselor at the facility urged her to contact her children's social worker, but she failed to do so until October 2013, when she reentered the treatment facility, again alleging domestic abuse by the same man.

The Cabinet filed a petition for involuntary termination of parental rights against both parents on October 24, 2013. Over the Cabinet's objection, the district court allowed mother to visit the children on three occasions, beginning in December 2013. Following these visits, the son began wetting his bed at night and the daughter began having nightmares about being removed from the foster home. Both children also became defiant and openly pushed the boundaries in their foster home after visits with mother.

A trial on the termination petition was held in January 2014. Miller testified that she had been unable to negotiate a reunification case plan with mother for over a year due to her absence, but did so in October 2013, after the Cabinet

sought termination of parental rights. Miller opined that it was in the best interest of the children for mother's parental rights to be terminated, because of her long-term history of substance abuse and accompanying criminal history, and her long-term absence from the children's lives.

The trial court ruled from the bench that mother's parental rights would be terminated and issued an order accompanied by written findings of fact and conclusions of law. This appeal by mother followed.

Involuntary termination proceedings are governed by KRS 625.090, which provides

that a circuit court may involuntarily terminate parental rights only if the court finds by clear and convincing evidence that a three-pronged test has been met. First, the child must be deemed abused or neglected, as defined by KRS 600.020. KRS 625.090(1)(a). Second, termination of parental rights must be in the child's best interest, and the court is provided with a series of factors that it shall consider when making this determination. KRS 625.090(1)(b); KRS 625.090(3). Third, the court must also find at least one of a number of grounds listed in the statute. KRS 625.090(2).

An appellate court accords the trial court much discretion and applies the clearly erroneous standard of review under Kentucky Rule of Civil Procedure (CR) 52.01. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky.App. 1998). If the record contains substantial evidence to support the trial court's findings, we may not set them aside. *Id.*

KRS 625.090(2) provides that no termination of parental rights shall be ordered unless the circuit court finds by clear and convincing evidence the

existence of one or more of the grounds listed in subsections (a) to (j). We note that only one of the subsections needs to be satisfied, and there is no dispute that mother's actions meet subsection (a) in that she abandoned the children for a period of not less than ninety days. Mother's arguments are directed, however, at the trial court's findings under subsections (e) and (g), which state as follows:

(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[.]

(g) 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[.]

The trial court found that neither parent had exhibited a present ability

to provide essential food, clothing or shelter for the children, and that the children should not have to wait any longer for the parents to be in a stable position to provide for their ongoing needs. The court found upon consideration of the parents' histories, there was no expectation of significant improvement in the foreseeable future and that the children would be at risk of continued neglect and emotional injury if returned to either parent.

Mother argues the court failed to give adequate weight to evidence that she has made improvements to her life and future parenting capacity. Mother

argues the following evidence shows she would be able to provide essential care for the children: she enrolled herself in an inpatient substance abuse and domestic violence shelter and attended ten weeks of parenting classes, ten weeks of domestic violence classes, and Alcoholics Anonymous classes. As to the housing issue, the shelter in which she enrolled offers long-term residences for families. She contends that the Cabinet never considered her progress, as it intended to seek termination of her parental rights prior to the commencement of her case plan, and there was nothing she could have done to convince the Cabinet to reunify her with the children. There was substantial evidence to support the trial court's findings.

Mother contacted the Cabinet in October 2013, the month in which the termination petition was filed. She chose not to have any significant contact with the children since April 2011, even after she learned the children had been removed from their father and placed in foster care. Miller testified that she was not able to negotiate a reunification plan with mother for over a year due to her absence, but did so when she appeared in October 2013. Miller also testified that she believed it to be in the best interests of the children for parental rights to be terminated because concerns still existed regarding the mother's long-term history of substance abuse, she still had not completed the recommended inpatient treatment, had not maintained sobriety for any sustained period of time outside the OASIS facility, had an extensive criminal history surrounding substance abuse, and had been absent for a long time from the children's lives. At the time of the trial, mother had recently reentered OASIS, but needed at least five more months

in the program, although she indicated to her counselor that she did not feel she needed treatment. It was at least the third attempt to successfully complete a substance abuse program since 2004.

Although the court is directed by KRS 625.090 to consider the possibility of reasonable improvement on the parent's part, it properly considered the evidence that mother had made little or no effort to see her children or to regain custody of them. A trial court may look to a parent's past behavior in order to make a prediction about future actions, and "due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court." *Vinson v. Vinson*, 136 S.W.3d 465, 470 (Ky. 2004) (citations and quotation marks omitted). An appellate court should not interfere with the trial court's findings "unless the record is devoid of substantial evidence to support them." *Cabinet for Health and Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). Under the circumstances, we must uphold the trial court's finding that based on mother's history, there was no reasonable expectation of improvement on her part.

The orders of the Daviess Circuit Court terminating mother's parental rights in her son and daughter are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Steven L. Boling
Owensboro, Kentucky

BRIEFS FOR APPELLEE CABINET
FOR HEALTH AND FAMILY
SERVICES:

Kristy Abel Fulkerson
Owensboro, Kentucky