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Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001640-ME

A.W.

APPELLANT

v.

APPEAL FROM KENTON FAMILY COURT
HONORABLE LISA O. BUSHELMAN, JUDGE
ACTION NO. 13-AD-00179

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; AND C.A.N.T. (A CHILD)

APPELLEES

AND

NO. 2014-CA-001641-ME

A.W.

APPELLANT

v.

APPEAL FROM KENTON FAMILY COURT
HONORABLE LISA O. BUSHELMAN, JUDGE
ACTION NO. 13-AD-00180

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; AND A.W. (A CHILD)

APPELLEES

AND

NO. 2014-CA-001763-ME

A.R.

APPELLANT

v. APPEAL FROM KENTON FAMILY COURT
HONORABLE LISA O. BUSHELMAN, JUDGE
ACTION NO. 13-AD-00179

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; AND C.A.N.T. (A CHILD)

APPELLEES

AND

NO. 2014-CA-001764-ME

A.R.

APPELLANT

v. APPEAL FROM KENTON FAMILY COURT
HONORABLE LISA O. BUSHELMAN, JUDGE
ACTION NO. 13-AD-00180

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; AND A.W. (A CHILD)

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: D. LAMBERT, MAZE, AND THOMPSON, JUDGES.

MAZE, JUDGE: Appellants A.W. (hereinafter “Father”) and A.R. (hereinafter “Mother”) appeal from a Kenton Family Court order terminating their parental rights to two of their three children. The trial court found that the three-part test set forth by KRS¹ 625.090 was satisfied, and the court entered an order involuntarily terminating Mother and Father’s parental rights. On review, we conclude that there was substantial evidence to support the trial court’s findings. Thus, we affirm.

Background

Mother was a minor at the time she gave birth to both children in 2010 and 2011. Court-ordered DNA testing confirmed Father was the biological father of both children. The Cabinet for Health and Family Services (hereinafter “the Cabinet”) first became involved with Mother in 2011 when the maternal grandmother to Child 1 and Child 2 filed for emergency custody of the children. Maternal grandmother expressed concern after Mother visited Father in Ohio while he had an open case of child abuse against him. The court granted emergency custody to maternal grandmother. In May of 2011, the court ordered no contact between Father, Mother, and the eldest child. Father later pled guilty in Ohio to attempt of endangering a child and received a sentence of 124 days already served.

In July of 2011, Mother (still a minor) and both children lived with maternal grandmother; however, the Cabinet later removed all three from maternal

¹ Kentucky Revised Statutes.

grandmother's care due to unsanitary living conditions and allegations of neglect.² The Cabinet placed Mother and both children in foster care until Mother turned eighteen in October of 2011, at which time she extended her time with the Cabinet and entered transitional housing.

In August of 2012, due to Mother's frequent violation of program rules, her failure to pursue completion of her GED, her unemployment, and her continued relationship with Father despite the no contact order, the Cabinet removed the children from Mother's care. Thus, the children have been in foster care since July 2011 and out of Mother's care since August of 2012.

On August 14, 2012, Mother filed an Emergency Protection Order (EPO) after Father demanded to see the children and Mother informed Father he could not because of the no contact order. According to the EPO, Father then dragged Mother outside, choked her and slammed her to the ground. Eight days later, the court dismissed the Domestic Violence Order after Mother failed to appear at the hearing.

As of January 23, 2013, Father had not paid child support for the period of June 1, 2012 to December 31, 2012 and had an arrearage of \$11,143.52. On June 1, 2013, the trial court issued a warrant for his arrest for the non-support of both children for which Father later served jail time.

² In July of 2011, paternal grandmother filed a petition of abuse and neglect alleging that Mother wanted the children to reside with the paternal grandmother because there was no food in maternal grandmother's house and the living conditions were unsanitary. The Cabinet found that paternal grandmother had a history with Child Protective Services and could not be granted custody.

In September of 2013, the Cabinet reported that Father was still uncooperative in developing a case plan. The Cabinet also reported that Mother had not made substantial efforts to comply with her case plan. This was based, in part, on the fact that Mother had neither secured employment nor completed her GED, and she was still in a relationship with Father despite their domestic violence history. However, Mother was working toward completing her parenting classes. Based on this, the trial court waived the Cabinet's burden to make reasonable efforts to reunite Mother and Father with their children.

On June 13, 2014, the Cabinet filed petitions to involuntarily terminate the parental rights of Mother and Father. The trial court heard evidence that Mother lived with Father, potentially endangering her housing status due to Father's criminal history. Mother also testified that she had not been able to get her GED because of its cost; however, she asserted that she could financially support her children once she began a new job. However, other than a one-month period, Mother had been unemployed for the duration of her interaction with the Cabinet. Father also testified he had worked for Tire Discounts, but quit due to lack of transportation. At the time of the trial, Father was unemployed.

Despite completing domestic violence courses with the Women's Crisis Center, Mother's case manager expressed doubts as to whether Mother was using the tools she learned in those classes in light of her continuing abusive relationship with Father. At trial, Mother stipulated that domestic violence had occurred between her and the Father in the past. She also testified that at times she

was the perpetrator of domestic violence. Mother's testimony downplayed the extent and severity of the domestic violence and contradicted her affidavit on the EPO she sought against Father. The Cabinet's case plan for Father included attending anger management classes, which he had not completed at the time of trial. Additionally, the Cabinet reported that the children were thriving in the same foster home and that their foster parents were meeting the children's needs and had formed healthy bonds with the children.

Following trial, the trial court terminated the parental rights of Mother and Father to both children. The court based its order on Mother's and Father's respective failure to comply with their case plans, the domestic violence between Mother and Father, the lack of a prospect for improvement, and the best interests of both children. Mother and Father now appeal from this order.

Standard of Review

"This Court's review in a termination of parental rights action is confined to the clearly erroneous standard in [CR³ 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." *W.A. v. Cabinet for Health and Family Services*, 275 S.W.3d 214, 220 (Ky.App. 2008).

Analysis

Father and Mother both allege that because they have retained custody of their third child, the termination of their parental rights to their eldest children is

³ Kentucky Rules of Civil Procedure.

unjust and violates their Fourteenth Amendment due process rights. However, the termination of parental rights is strictly a matter of statutory application to facts surrounding the children involved. Thus, the status of K.W. (the third child of Mother and Father) cannot inform our review of the case involving Mother and Father's other children.

To involuntarily terminate an individual's parental rights, the trial court must find that all three prongs of KRS 625.090 are fulfilled. *Cabinet for Health and Family Services v. K. H.*, 423 S.W.3d 204, 209 (Ky. 2014).

KRS 625.090(1) states:

- (a) 1. The child has been adjudged to be an abused or neglected child, as defined in [KRS 600.020\(1\)](#), by a court of competent jurisdiction;
2. The child is found to be an abused or neglected child, as defined in [KRS 600.020\(1\)](#), by the Circuit Court in this proceeding; or
3. The parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that physical or sexual abuse, neglect, or emotional injury to the child named on the present termination action is likely to occur if the parental rights are not terminated

The trial court found that both children were neglected. Therefore, the first prong of KRS 625.090 is satisfied.

Moreover, KRS 625.090(2) stipulates that one or more of its elements must be present for termination of parental rights to be appropriate. The trial court found the following:

.....

- (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; [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. . . .

Mother's and Father's failure to complete their case plan with the Cabinet, the potential for continuing domestic violence, the length of time the children have remained in foster care, and the lack of stability in employment and housing of Mother and Father support the trial court's findings. Therefore, the trial court had substantial evidence to support its findings pursuant to KRS 625.090(2)(e), KRS 625.090(2)(g), and KRS 625.090(2)(j).

The third and final prong requires that termination of the parental rights be in the children's best interest. "In conducting a best interest analysis, a trial court must consider the factors enumerated in KRS 625.090(3)(a)-(f)." *Cabinet for Health and Family Services v. K. H.*, 423 S.W.3d 204, 212 (Ky. 2014).

KRS 625.090(3) states:

(3) In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:

.....

(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

The trial court found that the Cabinet made reasonable efforts to reunite Mother and Father with their children. We agree with the trial court. The Cabinet began working with Mother in 2011, providing her with case plans and steps toward reunification with her children. Neither Mother nor Father have completed their case plans or accomplished the goals set forth by the Cabinet. Moreover, according to evidence the Cabinet placed in the record, the children were thriving in foster care. Therefore, there was substantial evidence in the record that termination of Mother's and Father's parental rights was in the best interest of the children.

Conclusion

These decisions are difficult, yet the record supports the termination of the parental rights of Mother and Father. There was substantial evidence of Mother's and Father's continuing failure to follow the Cabinet's case plans, domestic violence between Mother and Father, lack of stability provided by Mother and Father, the children's extended time in foster care, and the best interests of the children. We see no error in the Kenton Family Court's ruling. Therefore, we affirm.

ALL CONCUR.

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