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Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000566-ME

C. D. F.

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE DEANA C. MCDONALD, JUDGE
ACTION NO. 14-AD-500131

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH OF
KENTUCKY; AND K. C. F., A MINOR CHILD

APPELLEES

AND

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OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, THOMPSON AND VANMETER, JUDGES.

THOMPSON, JUDGE: C. D. F. (mother), *pro se*, appeals from the judgments terminating her parental rights to K. C. F. and M. E. F. (children).

K. C. F. was born in 2008 to mother and S. S. A. M. E. F. was born in 2005 to mother and K. B.

On October 31, 2012, children were removed from the home based upon a report that M. E. F. had a large fresh bruise on the right side of her face and a faded bruise on the left side of her face. Abuse was substantiated; M. E. F. reported that mother spanked her with her hand, struck her on the face and used a “whooping stick.” Mother refused to sign a prevention plan that she would not use corporal punishment. Emergency custody was granted to the Cabinet for Health and Family Services.

The Cabinet filed a dependency, abuse and neglect petition. At the temporary removal hearing on November 5, 2012, temporary custody was granted to the Cabinet and children have remained in the custody of the Cabinet since that time. At the hearing, mother was ordered to cooperate with the Cabinet, complete a parenting assessment and follow all recommendations, and granted supervised visitation. At further hearings, mother was prohibited from using corporal punishment and ordered to comply with all treatment recommendations.

On February 14, 2013, the family court found children were abused or neglected after mother stipulated she “used inappropriate corporal punishment on children.” At the disposition hearing held on April 11, 2013, the children were committed to the Cabinet and mother was ordered to comply with previous orders.

On April 14, 2014, the Cabinet filed a petition for termination of parental rights.¹ At the termination hearing, the family court heard testimony from Cindi Vaughn, the Cabinet social worker assigned to the family; Aubrey Obradovich, the therapist for children; Sharon Franklin, foster mother to children; and mother.

Vaughn testified about previous hearings and the tasks mother was required to complete. Vaughn testified Mother was referred for a parenting assessment by the Foster Care Clinic and Assessment Team (FORECAST) which included a psychological evaluation. The family court ordered mother participate in this assessment and comply with its recommendations. Vaughn testified mother was not compliant during the assessment, would not answer some questions, refused to sign a release to allow them to speak with her mother (with whom she was living) and would not commit to refraining from using corporal punishment.

The FORECAST evaluation was admitted into evidence. It recommended that mother: (1) not employ or threaten to employ corporal punishment; (2) receive individual therapy until released; (3) see a psychiatrist for an evaluation; (4) complete a basic parenting class; (5) enroll in anger management classes; (6) obtain and maintain appropriate independent housing for at least six months; (7)

¹ S. S. A. is deceased. K. B.’s parental rights were terminated and he has not appealed. Therefore, we omit the evidence and rulings pertaining to either father.

maintain stable employment for at least six months; (8) receive sight and sound supervised visitation; and (9) complete abusive parenting classes. During the evaluation, mother refused to agree not to use corporal punishment in the future. Due to her refusal, FORECAST could not recommend children being returned to mother's custody. Although FORECAST recommended mother be referred to complete abusive parenting classes, it noted she would not be able to enroll until she admitted to the abuse.

Vaughn testified mother failed to provide any verification that she complied with the FORECAST recommendations and refused to sign releases so that the Cabinet could obtain information directly from her treatment providers. In June 2013, she told the Cabinet she was being seen by a therapist, but failed to provide any method by which this could be verified. The only evidence she provided that she was employed was an Amazon employee orientation form. The only evidence she provided that she had achieved stable housing was a form stating she was on a housing authority waiting list. Mother was asked for updated information in 2014, but never provided it.

Vaughn testified mother initially had her visitation supervised by her mother, but they did not get along and the Cabinet asked that mother find someone else to supervise. When mother did not suggest anyone, the Cabinet offered to have her visitation supervised at its office or at A Family Place, but mother declined, stating neither was convenient.

Vaughn testified that in April 2013, mother told the family court she was “not in a good place,” did not want in-person visitation with her children and opted for phone contact. She never resumed visitation after April 2013, and only had phone contact from April 2013 through September 2013. Phone contact was halted after mother exhibited poor behavior to the foster mother over the phone and mother refused to meet with her social worker to discuss her behavior. Mother’s last contact with the children was in January 2014.

Vaughn testified mother failed to comply with her case plan and failed to make positive changes in the two and a half years children were in foster care. She did not offer proof that she was complying with the FORECAST recommendations. She failed to pay any child support.

Vaughn testified mother repeatedly refused to agree to refrain from using corporal punishment. In July 2014, mother again stated she would continue to use corporal punishment.

Vaughn testified children were having their needs met in a therapeutic foster home, were doing well and were involved with the foster family’s extended family. Children were likely to be adopted by their foster mother, should mother’s parental rights be terminated. Their older sister, who was also removed, had aged out of foster care, and had limited contact with them.

Obradovich testified the children had shown improvement with therapy, but had trouble with appropriate boundaries, lying and stealing. They were diagnosed with neglected child syndrome, ADHD and adjustment disorder. They disclosed

being nervous about mother “whooping” them and described a home in which there was fighting between their mother and older sister, glass breaking and feeling unsafe. In their current foster home, it was quieter and they felt safe. She was concerned children would regress if placed back with mother.

Franklin testified she was children’s current foster mother and they were placed with her two weeks after coming into care. They exhibited extremely destructive behaviors since arriving at her home, but showed improvement in her care. Phone contact with mother was initially pleasant but mother would not respect a schedule for when children were available for phone calls and, if Franklin did not answer the phone, mother left hostile, belligerent voice mails, which included cursing and intimidation. After an Easter visit and after phone contact, children reported they did not have to obey Franklin.

Mother testified M. E. F. received the bruise that resulted in her removal after getting in a fist fight with K. C. F. She acknowledged that before the children were removed, she was told she needed to sign a form that she agreed not to spank her children or they would be taken away and she refused, telling the worker to “do what you need to do” because she believes in spanking children.

Mother testified it was difficult to reach Vaughn and she rarely met with her or her previous worker. Usually, she and Vaughn traded phone messages.

Mother testified she followed the FORECAST assessment recommendations and always reported to her previous case worker and the previous judge what she was doing to follow it. She testified she signed releases so that her therapist could

communicate with her social worker and she completed therapy in November 2013. She testified that between March 2014 and August 2014, she completed abusive parenting classes, anger management and parenting classes. She testified she did not have an anger problem but a grief problem. She also testified her counselor referred her for a psychiatric assessment, which she completed. She testified that after Vaughn requested proof of her employment in their only meeting in July 2014, her employer emailed Vaughn a copy of all of her pay stubs.

Mother acknowledged she did not use any of the resources that she was referred to by FORECAST, but testified her former caseworker told her she could find resources on her own. She acknowledged her psychiatric assessment stated she had a major depressive episode and a personality disorder with borderline personality traits. She acknowledged she was informed that her refusal to stop spanking children might result in them not being returned to her.

Mother repeatedly stated she had documentation of her compliance with the FORECAST recommendations, which was a stack of papers in front of her on the witness stand. However, mother's attorney never attempted to have any of these documents admitted into the record.

Mother acknowledged the last time she saw children in person was October 2013, and her last phone contact with them was in April 2014. She admitted to being angry when she could not reach children by phone and to being firm and demanding in her messages, but denied cussing or being abusive.

Mother testified she used a “whooping stick” which was a long handled spoon for spanking her children. She disputed telling the FORECAST assessor that a “whooping” could last thirty minutes, explaining that she was misquoted and said a time-out could last thirty minutes. Mother testified a spanking typically consisted of six to seven “licks” but might be up to ten “licks” on children’s bottoms and thighs.

The family court asked mother why corporal punishment was so important to her that she was willing to sacrifice having the children with her. Mother explained that as a parent, she believed corporal punishment was her choice to make. The family court asked: “So you’d rather not be a parent than not have that choice to these two little girls?” Mother responded: “That is something to be honest with you, your Honor, that I still struggle with to this day.”

The family court, in determining to terminate mother’s parental rights, made very thorough findings of fact and conclusions of law in its judgments entered on March 12, 2015. The family court found that on February 14, 2013, the children were determined to be abused or neglected due to mother’s stipulation of using inappropriate corporal punishment and concluded they are abused or neglected children based on the evidence presented at trial. Kentucky Revised Statutes (KRS) 600.020(1); KRS 625.090(1)(a)1-2; KRS 625.090(3)(b). The family court found the children were abandoned for not less than ninety days based on testimony that mother had no contact with children for a year. KRS 625.090(2)(a); KRS 600.020(1)(a)7. The family court found mother failed to provide essential

parental care and essential food, clothing, shelter, medical care or education because mother failed to comply with her case plan, failed to avail herself of services provided by the Cabinet, refused to sign a prevention plan stating she would refrain from using corporal punishment, failed to agree to refrain from corporal punishment during the FORECAST assessment, provided no proof she completed therapy, abusive parenting classes, anger management, parenting classes or proof of stable housing or employment, and failed to offer any significant financial assistance to meet the needs of children. KRS 625.090(2)(e), (3)(f); KRS 600.090(1)(a)(3)-(4). Due to these failures, children could not be returned safely to mother and spent the past twenty-six months in state care. KRS 625.090(2)(g); KRS 600.020(1)(a)8. In making such findings, the family court found the testimony by the Cabinet's witnesses to be credible and mother's testimony to be lacking in credibility.

The family court found that while the Cabinet provided reasonable efforts for reunification, mother failed to make efforts and adjustment to enable children to return to their home by failing to comply with the case plan and continuing to assert her right to engage in corporal punishment of children. KRS 625.090(3)(c)-(d), (4). The family court found the children's needs were met by the Cabinet, they were anticipated to make additional improvements and it was unpersuaded that children would not continue to be abused or neglected if returned to parental care. KRS 625.090(3)(e), (5). The court found termination of parental rights was in the

best interest of the children and the Cabinet was best qualified to receive custody.

KRS 625.090(1)(b).

Mother filed a *pro se* appeal. She argues she complied with the recommendations of the FORECAST assessment and referenced exhibits attached to her brief to establish her assertions of compliance. Mother filed a motion to supplement the record with these exhibits. This Court denied mother's motion, noting that exhibits which are not part of the certified record on appeal cannot be considered and ordered mother's exhibits stricken.

Pursuant to KRS 625.090, parental rights may be involuntarily terminated if a circuit court finds by clear and convincing evidence:

(1) that the child is abused or neglected as defined in KRS 600.020(1); (2) that termination is in the child's best interests; and (3) the existence of one or more of ten specific grounds set out in KRS 625.090(2).

M.B. v. D.W., 236 S.W.3d 31, 34 (Ky.App. 2007).

This Court's standard of review in a termination of parental rights action is confined to the clearly erroneous standard in CR 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.

M.P.S. v. Cabinet for Human Res., 979 S.W.2d 114, 116 (Ky.App. 1998).

In reviewing the family court's findings, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Kentucky Rules of Civil Procedure (CR) 52.01. The family court "is in the best position to evaluate the testimony and other evidence. Indeed, 'judging the credibility of

witnesses and weighing evidence are tasks within the *exclusive province of the trial court.*” *D.G.R. v. Commonwealth, Cabinet for Health & Family Servs.*, 364 S.W.3d 106, 114 (Ky. 2012) (quoting *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (emphasis added)).

The family court had sufficient evidence to find children abused or neglected, termination was in their best interest and specific grounds for termination were satisfied. Children were removed from mother because M. E. F. had a large bruise on her face and reported mother used a “whooping stick” on her. Mother admitted by stipulation that she “used inappropriate corporal punishment on children.” At the time of the termination trial, it was uncontested that the children had been in foster care for more than two years and mother had no contact with them for over one year. The family court heard testimony from Vaughn that mother failed to provide any proof of completing several tasks in her case plan, including completing various classes and maintaining stable housing and employment, and did not support children while they were in foster care. While mother’s testimony provided evidence that she completed some tasks and had stable employment, the family court was entitled to make a credibility judgment against mother’s testimony, which was not supported by any documentation. Additionally, it was uncontested that mother repeatedly refused to agree not to use corporal punishment on her children.

Accordingly, we affirm the Jefferson Family Court’s judgments terminating C. D. F.’s parental rights to K. C. F. and M. E. F.

ALL CONCUR.

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