

RENDERED: JULY 22, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001308-ME

K.G.H.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE TIMOTHY NEIL PHILPOT, JUDGE
ACTION NO. 14-AD-00275

CABINET FOR HEALTH AND
FAMILY SERVICES; S.N.H, MOTHER;
AND A.M.H, A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: KRAMER, CHIEF JUDGE; ACREE AND MAZE, JUDGES.

ACREE, JUDGE: K.G.H. (Father) appeals from the Fayette Family Court's August 18, 2015 order and judgment involuntarily terminating his parental rights to A.M.H. (Child). Father's sole argument on appeal is that the family court's

termination decision must be overturned because it is not supported by substantial evidence. Finding no grounds to disturb the family court's decision, we affirm.¹

Child was born on July 14, 2012. Father is Child's natural parent.² Father resided with Child and Child's biological mother, S.N.H (Mother), from August 2012 until approximately May 2013. During that time, Father cared for and raised Child without apparent issue.

Father and Mother's relationship took a turn for the worse when Mother became pregnant with twins by another man. The twins were born in April 2013 with marijuana in their systems. On that basis, and the fact that Mother lacked suitable housing and was abusing marijuana and prescription pills, the Cabinet filed a dependency, neglect, and abuse action involving Child and the twins on June 4, 2013. The Cabinet, having been awarded emergency and then temporary custody, placed Child in a foster home where she remained throughout the case.

¹ Pursuant to Kentucky Rules of Civil Procedure (CR) 73.08, CR 76.03, CR 76.12, and the policy of this Court, cases concerning child custody, dependency, neglect, abuse, and support, as well as domestic violence, are to be given priority, placing them on an expedited track through our Court. That did not occur in this case. Both human error and obsolete case management software resulted in an administrative delay in assigning this case to a merits panel for decision.

On June 24, 2016, after discovering the administrative error, the Clerk of the Court informed the Chief Judge and Chief Judge-elect who, together, assigned the case to a special merits panel of sitting Court of Appeals Judges who have given it the highest priority to offset any delay to the greatest extent possible. Additionally, the Court has sent a letter of explanation and apology to the parties and placed that letter in the record.

Finally, the Court has undertaken efforts to put into effect procedures to ensure that such an error is not repeated.

² A subsequent DNA test confirmed paternity.

Mother stipulated to neglect at a subsequent adjudication hearing. An order relieving the Cabinet of reasonable efforts was entered in February 2014 on the basis that Father had had no contact with Child in over ninety days. A few months later, Child's permanency goal was changed to adoption.

The Cabinet filed a petition to terminate Father's parental rights on October 8, 2014,³ and a two-day termination trial was conducted on May 21, 2015, and June 8, 2015. Two Cabinet workers testified in person and Father, who was incarcerated, testified telephonically.

Amber Flannery, a social services clinician with the Cabinet, testified she was Child's ongoing case worker from September 2013 until June 2014. Flannery recalled interacting with Father at two separate court hearings. She offered Father a case plan and asked him to meet with her at the Cabinet to discuss and sign the plan, but Father never followed up or showed. Flannery testified Father never visited with Child while she was the case worker.

Shay Blackford, also a social services clinician with the Cabinet, testified she took over for Flannery in June 2014. Blackford testified Father had only visited with Child one or two times since her removal, never paid child support, and never provided any type of food, clothing, or other basic necessities for Child. She testified Father had adopted a criminal lifestyle resulting in multiple incarcerations, including his current incarceration on a drug-related charge.

³ The petition also sought to terminate Mother's parental rights to Child and the twins.

Blackford further stated Father had substance abuse issues, but declined to participate in drug screenings or drug treatment to address those issues.

Blackford reiterated that the Cabinet had created a case plan for Father, but he never showed up to discuss or sign the plan. The case plan required Father to drug screen, participate in drug treatment, obtain stable housing and employment, visit with Child, and demonstrate lifestyle changes and the ability to care for Child. Father made no effort to work his case plan and did not complete a single task. Blackford testified Father failed to cooperate with the Cabinet. Due to his failure to follow through with any services, Blackford testified she saw no reasonable expectation of improvement in his lifestyle or parenting abilities in the foreseeable future. Blackford clarified that she sent letters to Father and conducted absent-parent searches in an attempt to contact Father, but all were unsuccessful.

Blackford described Child's relationship with her foster parents. She stated Child is well-adjusted to her foster home, bonded with her foster family, and is thriving in her foster placement.

Father testified in opposition to the termination petition. He stated he had recently pleaded guilty to possession of heroin and was serving a one-year prison sentence. He expected to be released in four to seven months and hoped to enter a drug rehabilitation program. Father admitted he had had at least two other drug-related convictions, including a 2013 conviction for third-degree possession of a controlled substance (drug unspecified) and a 2009 conviction for possession of cocaine; at least one misdemeanor drug-related conviction; and, in addition, a

pending charge for trafficking heroin in Fayette County, Kentucky. Father also admitted he has a substance abuse problem, but claimed he had only recently, as of January 2014, developed an opiate addiction. Prior to that he had used other drugs here and there, but it never became a habit.

Father testified he lived with Child starting when she was a few months old up until a few weeks before she was removed. He tried to be the best father he could. Father testified Child was a happy baby who wanted for nothing. He bought her food, diapers, and toys, and made sure Child had a roof over her head. Father testified Child is the spitting image of him and would often fall asleep in his arms. Parenting Child, stated Father, felt good. He was not struggling to raise Child. Father testified Mother, on the other hand, was “ripping and romping,” got pregnant by another man, and pushed Father away.

Father disputed the Cabinet’s evidence that he never attempted to work a case plan. He testified he “called and called” the Cabinet, but merely got the “run around,” could not find out what was going on, and could not find out the name of his case worker, all of which discouraged Father. Father testified he wanted to be involved in a case plan, but Mother manipulated him into believing that only she (Mother) had to work a plan. When he discovered that he, too, had to be involved, Father testified he tried to contact the Cabinet, but could never get a response and again got the run around.

Father also disputed the Cabinet’s evidence that he failed to visit Child. He testified he visited Child a handful times shortly after her removal. He

testified he brought presents, food, and snacks to those visits. Other times he attempted to visit Child, but the Cabinet would not let him do so unless Mother was also present, and Mother often failed to show. He admitted he had not seen Child since the summer of 2013, and that he had never paid child support for Child.

Father testified his current lifestyle was only temporary and he had a bright future. He explained he used to work as an electrical apprentice and desired to attend Community College to become a licensed electrician. Father urged the family court not to give up on young parents. He admitted he had made mistakes, but testified he was maturing and learning from those mistakes.

On August 18, 2015, the family court entered findings of fact, conclusions of law, and orders terminating Father's parental rights to Child. The family court found Child abused or neglected. KRS⁴ 625.090(1)(a). It also found that termination was in Child's best interest, KRS 625.090(1)(b), and found that Father was unfit to parent Child because: (a) he had abandoned Child for a period of not less than ninety days; (b) he failed to provide basic necessities for Child; (c) he failed to offer essential parental care and protection for Child; and (d) Child has been in foster care for fifteen of the most recent twenty-two months preceding the filing of the termination petition. KRS 625.090(2)(a), (e), (g), and (j). Father appealed.

⁴ Kentucky Revised Statutes.

This Court shall only disturb a family court's decision to terminate a person's parental rights if clear error occurred. If there is substantial, clear, and convincing evidence to support it, the decision stands. KRS 625.090(1); *Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). The clear and convincing standard does not demand uncontradicted proof. All that is needed "is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinary prudent-minded people." *M.P.S. v. Cabinet for Human Res.*, 979 S.W.2d 114, 117 (Ky. App. 1998) (citation omitted).

Termination of a party's parental rights is proper upon satisfaction, by clear and convincing evidence, of a three-part test. *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014). First, the child must have been found to be an "abused or neglected" child, as defined by KRS 600.020. KRS 625.090(1)(a). Second, termination must be in the child's best interest. KRS 625.090(1)(b). Third, the family court must find at least one ground of parental unfitness. KRS 625.090(2).

Father argues the judgment terminating his parental rights was not supported by substantial evidence. Attacking the parental-fitness prong of the tripartite termination test,⁵ Father contends the evidence elicited at trial established he did not have a lengthy history of drug abuse; he had expended considerable efforts trying to both visit Child and to contact the Cabinet to work a case plan; that he was capable of bettering himself and foresaw a bright future for him and

⁵ The only section of the termination statute cited by Father is KRS 625.090(2), which addresses the grounds for termination of parental rights.

Child; and that he experienced terrible setbacks related to this case due to Mother's misrepresentations and manipulations.

Even assuming Father's representations are close to the mark, the record contains sufficient evidence to support the family court's decision to terminate Father's parental rights. The family court found four grounds of parental unfitness. Only one ground is needed to satisfy this statutory parameter. *See* KRS 625.090(2) (termination shall only be ordered if the family court finds the existence of at least one of the statutory grounds enumerated in KRS 625.090(2)).

It is clear that Father abandoned Child for a substantial part, if not all, of her young life. KRS 625.090(2)(a). While he may have visited Child a handful of times immediately following removal, he has not seen Child, by his own admission, since summer 2013, well past the ninety days required for abandonment. *Id.* He was not prevented from visiting Child.

Father claims Mother manipulated him into believing he did not need to work a case plan. But this does not explain or excuse Father's failure to visit Child. And, the Cabinet worker testified she twice asked Father to come to the Cabinet to discuss and sign a case plan, but he failed to avail himself of this opportunity. That was his choice.

It is equally clear that Child had lingered in foster care for at least fifteen of the most recent twenty-two months as of the filing of the termination petition. KRS 625.090(2)(j). Child was placed in foster care in June 2013. The

termination petition was filed in October 2014. This statutory factor has been satisfied.

Based on the preceding, we cannot say there is no substantial, clear, and convincing evidence to support the family court's parental-unfitness findings. Father does not challenge the family court's order on any other grounds. Accordingly, we affirm the Fayette Family Court's August 18, 2015 order and judgment terminating Father's parental rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

Thomas L. Conn
Lexington, Kentucky

BRIEF FOR APPELLEES:

Kristin Wehking
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