

RENDERED: DECEMBER 2, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000580-ME

C.F.H.

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 15-AD-00059

V.C., B.C., AND C.R.B., A CHILD

APPELLEES

AND

NO. 2016-CA-000581-ME

C.F.H.

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 15-AD-00060

V.C., B.C., AND J.T.B., A CHILD

APPELLEES

AND

2016-CA-000582-ME

C.F.H.

APPELLANT

v. APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 15-AD-00061

V.C., B.C., AND A.C.B., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CLAYTON, AND LAMBERT, J., JUDGES.

CLAYTON, JUDGE: We issue this opinion resolving the three above-styled cases as they all involve the termination of C.F.H.’s parental rights of her three children. Following a standard-of-review recitation, we address the facts and issues raised by C.F.H.

STANDARD OF REVIEW

Involuntarily terminating parental rights “is a scrupulous undertaking that is of the utmost constitutional concern[,]” and implicates a parent’s “‘fundamental liberty interest’ in the care and custody of his or her child.” *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014) (citing *M.L.B. v. S.L.J.*, 519 U.S. 102, 119-20, 117 S.Ct. 555, 136 L.Ed.2d 473

(1996); *quoting Santsoy v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982)). Pursuant to Kentucky Revised Statutes (“KRS”) 625.090, parents receive due process protections against having their parental rights terminated as the statute permits termination only if a three-part test is satisfied by clear and convincing evidence: “(1) the child is found or has been adjudged to be an abused or neglected child as defined in KRS 600.020(1); (2) termination of the parent’s rights is in the child’s best interests; and (3) at least one of the termination grounds enumerated in KRS 625.090(2)(a)-(j) exists.” *K.H.*, 423 S.W.3d at 209.

A trial court “has wide discretion in terminating parental rights.” *Id.* at 211 (citing *Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010)). Appellate review occurs under the clear error standard that “focuses on whether the family court’s order of termination was based on clear and convincing evidence.” *K.H.*, 423 S.W.3d at 211 (citing Kentucky Rules of Civil Procedure [“CR”] 52.01). The Kentucky Supreme Court has summarized this standard in termination cases accordingly:

Pursuant to this standard, an appellate court is obligated to give a great deal of deference to the family court’s findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them. Due to the fact that termination decisions are so factually sensitive, appellate courts are generally loathe to reverse them, regardless of the outcome.

K.H., 423 S.W.3d at 211 (citations omitted).

With these standards in mind, we now turn to the facts and issues.

FACTS

C.F.H. (“Mother”) is the mother of J.T.B., A.C.B., and C.R.B. (“Children”). Children’s biological father is A.R.B. (“Father”), who is the brother of B.C. (“Foster Mother”). Foster Mother is married to V.C. (“Foster Father”). In 2009, due to Mother and Father’s drug abuse and an investigation by the Cabinet for Families and Children, Mother and Father voluntarily gave custody of Children to Foster Mother and Foster Father.

Since 2009, Children have lived exclusively with Foster Mother and Foster Father. In December, 2015, Foster Mother and Foster Father filed a “Complaint in the Nature of a Petition for Termination of Parental Rights and Adoption.” A January, 2016-filed report by the Guardian Ad Litem noted that all three Children were responding well to Foster Mother and Foster Father, they wanted to live with Foster Mother and Foster Father, they had “developed a very close family relationship” with them and Foster Mother and Foster Father’s two teenage children, and they are all open to adoption by Foster Mother and Foster Father.

On March 14, 2016, the Boyd Circuit Court held a hearing on the motion to terminate Mother and Father’s parental rights. Father was not present at the hearing but had, on December 10, 2015, signed a voluntary consent to terminate his parental rights and have Children be adopted by Foster Mother and Foster Father. Thus, the hearing focused primarily on whether Mother’s rights should be terminated. The facts adduced at the hearing are as follows.

Mother's problems stem primarily from the fact that she has abused drugs for most of her life. Mother has tried numerous drug-abuse treatment methods but was repeatedly unsuccessful at ending her drug addiction. Some five years after Children were placed with Foster Mother and Foster Father, Mother began receiving suboxone treatment for her drug abuse. In the two years since she began receiving suboxone, her dosage has only reduced from 16 milligrams per day to 12 milligrams per day. In the three months prior to the hearing, Mother's success at kicking her drug habit was improving.

Part of the turnaround was due to Mother obtaining part-time employment, which she was required to obtain due to a criminal non-support action filed against her for her substantial child-support arrears. Mother began working 25 hours per week at an airport food service company. As a result of her employment, she is drug tested ten times per month.

Mother also obtained housing only a month prior to the hearing. At the time of the hearing she was living with her mother and her fiancé at a house owned by her aunt. The fiancé has drug-abuse issues and is currently taking suboxone.

Mother and Father provided almost none of Children's financial support since Children went to live with Foster Mother and Foster Father in 2009. Father occasionally provided some clothing or toys for Children, and Mother paid some child support payments, though she is substantially in arrears. Mother also

only sporadically visited Children prior to having her visitation rights terminated in January, 2012, due to ongoing drug abuse and failure to abide by court orders.

One Child has serious medical conditions that require frequent medical treatment. Those treatments are provided by Foster Mother and Foster Father and require special training in order to administer. Mother has never been trained to treat the Child.

The evidence at the hearing showed that Mother has been doing better as of recent months. For example, Mother's aunt stated that Mother has been invited to family events recently, whereas when she was heavily into drugs she would not have been invited. Mother also had obtained a part-time job and was living in a house she rented from her aunt.

Based on the evidence presented, the trial court made the following conclusions of law:

- (1) Mother and Father abandoned Children for a period of not less than 90 days;
- (2) Mother and Father "have repeatedly inflicted upon the three minor children emotional harm by other than accidental means due to their substance abuse issues, failure to maintain meaningful contact and failure to provide support;"
- (3) Mother has for a period of not less than six months continuously failed to provide, or been substantially incapable of providing, essential parental care and protection for Children and there is no reasonable expectation of improvement in the parental care and protection, considering Children's age and the substantial length of time and history of not providing such care;

(4) Mother and Father, “for reasons other than poverty alone, have continuously failed to provide or are incapable of providing essential food, clothing, shelter, medical care, and education reasonably necessary and available for the children’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 ages of the children;”

(5) Mother’s ongoing drug addiction problems are an obstacle to her being fit to be around Children;

(6) Mother has made “very little progress in the last 7 years to clean up her life and make a suitable life for these children”;

(7) Mother has a history of substance abuse and relapses from treatments;

(8) Mother only recently obtained part-time employment that is insufficient to afford housing, food, transportation, and otherwise provide for the needs of the three Children;

(9) Mother resides in a house with a fiancé who has a history of substance abuse;

(10) Children would be emotionally harmed to be around Mother, and “there is no reasonable expectation of significant improvement in the foreseeable future”;

(11) It is in the best interests of Children that Mother’s parental rights be terminated;

(12) Father has voluntarily consented to his parental rights being terminated

ISSUES

Mother now appeals. She claims the trial court’s order lacks the requisite findings to terminate her parental rights. Specifically, Mother claims the trial court never made a finding either: (1) that a court of competent jurisdiction

had adjudged the children to be abused or neglected; or (2) that in this particular action, based upon the circumstances presented at the time of the hearing, the Children constituted abused or neglected children as defined by KRS 600.020(1). We find this argument elevates form over substance.

As stated above, KRS 625.090(1)(a) requires the trial court to first find that the child has been either adjudged to be an abused or neglected child or that the child is an abused or neglected child as defined in KRS 600.020(1).

Pursuant to KRS 600.020(1), a child is abused or neglected when his parent:

1. Inflicts or allows to be inflicted upon the child physical or emotional injury as defined in this section by other than accidental means;
2. Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;
3. Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005;
4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
- ...
7. Abandons or exploits the child;
8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. . . .

The trial court's findings and conclusions specifically relate to all of these elements. Under the first and second elements, the trial court found Mother inflicted emotional harm on the children by means other than accidental. Under the third element the trial court found Mother's drug addiction, her part-time employment funds, and her living situation with another drug abuser render her incapable of caring for Children's ongoing needs. Under the fourth element the trial court found Mother's ongoing drug problems are relapsing and continue to keep her from providing essential care and protection for the children. Under the seventh element, the trial court found Mother had abandoned Children for a period of not less than 90 days. And under the eighth element, the trial court found Mother was incapable of providing adequate food, clothing, shelter, and medical care for Children's well-being.

Thus, while the trial court did not specifically reference KRS 625.090(1)(a)(1) and (2), it did make findings about six of the KRS 600.020(1) elements. *See K.H.*, 423 S.W.3d at 211-12 (holding that a trial court's order finding three of the KRS 600.020(1) elements satisfied the KRS 625.090(1)(a)(2) findings).

Significantly, Mother cites to no case law that requires a trial court to make an explicit finding that Children were abused or neglected. Indeed, a panel of this Court has previously permitted such a finding to be implied in a trial court's overall findings and based on other conclusions of law that comport with KRS 600.020(1). *Cabinet for Families and Children v. G.C.W.*, 139 S.W.3d 172, 176

(Ky. App. 2004) (“Although the trial court did not make an explicit finding that T.L.M. and M.L.M. were abused or neglected as contemplated by KRS 600.020(1), such a finding was clearly implied in its overall findings as recited from the bench. However, the evidence did establish that the children were “abused or neglected” according to several of the criteria of the following relevant portions of KRS 600.020(1) . . .”). Thus, we hold that an explicit recitation of KRS 625.090(1)(a)(1) or (2) is not required provided the trial court’s overall findings and conclusions include KRS 600.020(1) elements.

Furthermore, we have reviewed the evidence presented at the hearing and find the trial court’s order is supported by clear and convincing evidence. *K.H.*, 423 S.W.3d at 211. Mother’s lifestyle choices and drug abuse inflicted incalculable emotional harm on Children. Mother was not trained to handle one Child’s serious medical conditions and administer his treatments. Mother did not provide financially for Children and was substantially in arrears. And Mother had abandoned Children for substantial periods of time.

Accordingly, we find no error with the trial court’s order as it relates to KRS 625.090(1)(a).

Mother next argues that the trial court erred in its determination that terminating Mother’s parental rights was in the best interests of Children. The best-interests-of-the-child determination is based on the six grounds enumerated in KRS 625.090(3)(a)-(f). We need not recite those grounds here, as the trial court’s order addresses multiple grounds, all of which are supported by clear and

convincing evidence. First, the trial court found that Mother substantially neglected Children for multiple years. KRS 625.090(3)(b). Second, though Mother made some efforts to clean up her life and drug habit in the few months prior to the hearing, Mother spent years in and out of rehab not making “efforts and adjustments [to her] circumstances, conduct, or conditions to make it in the child’s best interests to return him to his home within a reasonable period of time[.]” KRS 625.090(3)(d). Third, Children have been thriving while with Foster Mother and Foster Father, including receiving appropriate medical care, being successful at school, and being successful in extracurricular sports activities. KRS 625.090(3)(e). And finally, Mother has not shown an ability to pay a “reasonable portion of substitute physical care and maintenance[.]” KRS 625.090(3)(f). For a multitude of reasons, all of which are supported by clear and convincing evidence, the trial court did not err by finding it was in the best interests of the children to terminate Mother’s parental rights.

Finally, Mother argues that the trial court erred by determining there were no reasonable expectations of her significantly improving. Having thoroughly reviewed the record evidence in this case, we find the trial court’s order on this issue is supported by clear and convincing evidence. Mother has had more than half a decade to demonstrate she is capable of change. Her changes in the couple of months leading up to the hearing are laudable, including obtaining part-time employment and housing, but she continues to require suboxone to control her drug habit. Her suboxone treatment has only been reduced from 16 milligrams per

day to 12 milligrams per day, in spite of her treatment beginning on October 1, 2014. Mother also continues to make choices that are not in Children's best interests, as her live-in fiancé is also being treated for drug use. Mother did not present any evidence that she was seeking to obtain the medical training necessary to deal with one of Children's serious medical issues. And though Mother's family is more accepting of her, even they admitted that due to her drug addiction she was not welcome to family functions until only recently.

The trial court's order is supported by clear and convincing evidence.

Thus, we affirm the order.

ALL CONCUR.

BRIEF FOR APPELLANT:

Tracy D. Frye
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BRIEF FOR APPELLEES:

Sharon E. Rowsey
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