RENDERED: NOVEMBER 4, 2022; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2021-CA-1420-ME

J.A.C. APPELLANT

v. APPEAL FROM MARSHALL CIRCUIT COURT
HONORABLE JILL E. CLARK, SPECIAL JUDGE
ACTION NO. 21-AD-00013

CABINET FOR HEALTH AND FAMILY SERVICES; AND Z.M.R., A MINOR CHILD APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CETRULO, AND GOODWINE, JUDGES.

GOODWINE, JUDGE: J.A.C. ("Father") appeals the November 5, 2021 judgment of the Marshall Circuit Court involuntarily terminating his parental rights to the minor child. After careful review, we affirm.

The child was born in 2011. When the child was approximately three months old, Father was incarcerated for approximately four years. During his

incarceration, Father and A.R.R. ("Mother") ended their relationship and Mother began a relationship with her paramour. While in prison, Father pled guilty to resisting arrest[1] and escape in the second degree.[2] He claimed he escaped because he was told the child was being abused by Mother's paramour.

Father was released in 2015 and began to visit the child once or twice per month during the next three years. Although he continued to be concerned the child was being mistreated in Mother's home, Father did not take legal action to gain custody or otherwise protect the child. Father alleges he made three anonymous calls to the Cabinet for Health and Family Services ("Cabinet") reporting his concerns.

In 2017, Father entered a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970), for two counts of criminal abuse of a child under twelve[3] and was incarcerated for two years. Father claims he and his stepson were playing when the child received burns on his arms and buttocks. During his incarceration, Father completed parenting classes, anger management classes, and moral recognition therapy.

[1] Kentucky Revised Statutes ("KRS") 520.090, a Class A misdemeanor.

[2] KRS 520.030, a Class D felony.

[3] KRS 508.120(1)(c), a Class A misdemeanor.

The Cabinet became involved with Mother and her four children, including the subject-child, in March 2019 when the child's step-grandmother filed a petition for emergency custody alleging neglect and abuse.[4] Father was not named as a party in the petition. The circuit court did not remove the children but assigned court appointed special advocates ("CASA") to the family. In the same month, a CASA worker filed a second petition. On April 2, 2019, the court removed the children and placed them in the care of the step-grandmother. However, within a few weeks, step-grandmother reported she was unable to care for the child and, on April 29, 2019, the child was placed in Cabinet custody.

Upon the child's placement with the Cabinet, a case planning meeting was held. Father was present and given a case plan. The plan required him to complete a parenting assessment, participate in consistent visitation with the child, and maintain stable housing and employment. In September 2020, Father completed a parenting assessment which recommended he complete an additional parenting program. He did not comply with the recommendation.

Father did not consistently visit with the child. After in-person visitation was suspended in 2020 due to COVID-19, he participated in only one video conference visit. Furthermore, when the child was returned to the step-

[4] Of Mother's four children, Father is only the natural parent of the subject-child.

grandmother's care in December 2020, he only visited the child once. Father also failed to maintain contact with the Cabinet.

As part of the Cabinet case, the family was referred to the University of Kentucky's Comprehensive Assessment and Training Services Project ("CATS"). During the CATS evaluation, when asked about his relationships with his parents, the child reported no relationship with Father. CATS recommended the child receive trauma-focused therapy. The child's therapist also reported the child had no bond or attachment to Father. The therapist further determined the child suffered from post-traumatic stress disorder ("PTSD") due to chronic neglect at critical stages of his development and recommended all communication with the parents cease. After visitation was stopped, Father did not contact the step-grandmother to check on the child.

On March 18, 2021, the Cabinet filed a petition to involuntarily terminate the parents' rights to the child. At trial on the petition, the circuit court heard testimony from the CATS assessor, the child's therapist, the CASA worker, the Cabinet caseworker, Father, Father's fiancée, and the step-grandmother. Based on the evidence presented at trial, the circuit court entered a judgment terminating Father's parental rights.[5] This appeal followed.

[5] Mother voluntarily terminated her parental rights and is not a party to this appeal.

The circuit court has "a great deal of discretion in determining whether the child fits within the abused or neglected category and whether the abuse or neglect warrants termination." *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998) (citation omitted). "This Court's standard of review in a termination of parental rights action is confined to the clearly erroneous standard in CR[6] 52.01 based upon clear and convincing evidence, and the findings of the [circuit] court will not be disturbed unless there exists no substantial evidence in the record to support its findings." *Id*. This standard does not require the circuit court's decision be supported by uncontroverted proof but only that there is probative and substantial evidence sufficient to convince "ordinarily prudent-minded people." *Id*. at 117 (citation omitted).

On appeal, Father alleges: (1) the circuit court clearly erred in finding the Cabinet made reasonable efforts to reunite him with the child before filing the petition to terminate his parental rights; and (2) he was entitled to individualized findings by the circuit court.

To involuntarily terminate parental rights, the circuit court must, by clear and convincing evidence, find "(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

[6] Kentucky Rules of Civil Procedure.

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)-[(k)] exists." *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014). Father does not contest the circuit court's findings that the child was abused or neglected, and that at least one of the grounds for termination in KRS 625.090(2)(a)-(k) exist.

Instead, Father contests only the court's finding that the Cabinet made reasonable efforts under KRS 625.090(3)(c). In determining whether termination is in the best interest of the child, the circuit court must consider a number of factors including,

> [i]f 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[.]

KRS 625.090(3)(c). Reasonable efforts are defined as "the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community . . . which are necessary to enable the child to safely live at home[.]" KRS 620.020(13).

Father primarily argues the Cabinet cannot prove reasonable efforts were made prior to the filing of the petition because a dispositional order was not

entered against him until June 18, 2021, three months after the petition was filed.[7] However, this assertion is unsupported by the record on appeal. Below, the circuit court took judicial notice of the underlying dependency, neglect, and abuse ("DNA") case, No. 19-J-00184-001.[8] In the DNA case, only Mother was named as a party. She stipulated to neglect on August 21, 2019. The record indicates, at that time, Father had recently been released from prison, was living out-of-state, and did not have consistent contact with the child. Disposition of the matter occurred on October 30, 2019.[9] Nothing in the record indicates a disposition order naming Father was entered on June 18, 2021.

However, an updated case plan for Father and Mother was entered into the record on June 18, 2021. This document plainly states it is not the first case plan made for the family. It further lists April 29, 2019, the date of the temporary removal hearing, as the date the parents were notified of the child's removal. Testimony at trial corroborated these facts. The Cabinet caseworker and

[7] Father does not cite to the record in support of this allegation. CR 76.12(4)(c)(v).

[8] The court also took notice of No. 19-J-00184-002 wherein Father filed a DNA petition for emergency custody on December 26, 2019. The court denied his petition.

[9] Upon review of the record, we are unable to locate a copy of the dispositional order. It is Father's responsibility to ensure this Court has the complete record. *Gambrel v. Gambrel*, 501 S.W.3d 900, 902 (Ky. App. 2016) (citation omitted). If the record on appeal is incomplete, we must assume the record supports the circuit court's findings. *See Ray v. Ashland Oil, Inc.*, 389 S.W.3d 140, 145 (Ky. App. 2012) (citation omitted)

CASA worker both testified Father was present at the initial case planning meeting in 2019 and was given a copy of the case plan on that day.

Despite the Cabinet meeting with Father and creating a case plan for him, Father did not complete the requisite tasks or keep in contact with the Cabinet about the case. He did not regularly visit with the child during the two years prior to the Cabinet's filing of the petition to terminate his parental rights. More than a year after he participated in the initial meeting, Father completed a parenting assessment but did not follow the resulting recommendations. Father has been absent from large portions of the child's life and, as a result, the child has no bond or attachment to him. Despite the Cabinet's reasonable efforts to provide him with a path to reunification with the child, Father was noncompliant. We find no error.

Next, Father argues he was entitled to individualized findings as to the Cabinet's reasonable efforts. Father cites page fifteen of the circuit court's findings of fact and conclusions of law, which states, "[t]he Court finds the Cabinet has shown at all stages by clear and convincing evidence that it has provided reasonable efforts. Despite all the efforts of the Cabinet, no significant progress was made by the parents." Record ("R.") at 142. While the court did refer to "the parents" in this finding, it also makes numerous findings specific to Father throughout the twenty-three-page document.

The court specifically found Father was present at the initial case planning meeting but was otherwise inconsistent in his communication with the Cabinet. The court found he had been incarcerated for significant period of the child's life for offenses including abuse of a child. The court further found Father was noncompliant with his case plan, having only completed the parenting assessment but none of the resulting recommendations. The court found the child had no relationship or bond with Father. Finally, the court specifically found

> the Cabinet has rendered all reasonable reunification services to the Respondent Father. The Cabinet offered the Respondent Father a case plan containing numerous services. Accordingly, the Court finds the Cabinet made *reasonable* efforts. [The Cabinet caseworker] testified, and the Court finds her testimony persuasive, that the Cabinet has exhausted its resources and there are no additional services that the Cabinet could offer the Respondent Father that would result in reunification of these parents with his child in the foreseeable future.

R. at 145. On this basis, we find no error.

Based on the foregoing, the judgment of the Marshall Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jacob R. Caddas
Murray, Kentucky

BRIEF FOR APPELLEE CABINET FOR HEALTH AND FAMILY SERVICES:

Leslie M. Laupp
Covington, Kentucky