

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2021 CJ 0728

STATE OF LOUISIANA IN THE INTEREST OF T.L.

Judgment Rendered: DEC 22 2021

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On Appeal from the
Twenty-Second Judicial District Court
In and for the Parish of Washington
State of Louisiana
Trial Court No. J-19-78

The Honorable Scott Gardner, Judge Presiding

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BEFORE: WHIPPLE, C.J., PENZATO, AND HESTER, JJ.

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PENZATO, J.

The mother appeals a judgment terminating the parental rights of both the mother and father of their minor child. We find that the State of Louisiana, Department of Children and Family Services (the State), has carried its burden of proof to terminate the mother’s parental rights. For the reasons discussed below, we affirm the trial court’s termination judgment.

FACTS AND PROCEDURAL HISTORY

T.P. and K.L. are the mother and father of T.L., born August 29, 2019.¹ At birth, T.L. tested positive for amphetamines and methamphetamines, causing the State to become involved in T.L.’s care. In October 2019, both parents were referred to Truth 180 for a substance abuse evaluation and to Family Preservation Court, but neither parent complied with the recommendations. On November 26, 2019, the State filed an instanter order requesting that the maternal grandmother be given provisional custody of T.L. based on both parents’ history of drug abuse and failure to comply with the previous recommendations for treatment. A hearing was held on that date, and the trial court granted provisional custody of T.L. to the maternal grandmother.

On December 12, 2019, the State filed a “Child In Need of Care Petition Without Custody.” On January 9, 2020, the trial court held a hearing² and adjudicated T.L. to be a child in need of care after determining that remaining in the maternal grandmother’s home would be contrary to the welfare, safety, and best interest of the child. The trial court placed T.L. in the custody of the State, found that the State’s case plan dated January 7, 2020, was to be made part of the judgment,

¹ The initials of the child and the parents are used to protect the identity of the minor child. See Uniform Rules-Courts of Appeal, Rules 5-1 and 5-2.

² The record does not contain the transcript from the January 9, 2020 hearing, nor the subsequent review hearings held on June 4, 2020, December 4, 2020, and December 10, 2020. The judgment adjudicating T.L. a Child in Need of Care arising from the January 9, 2020 hearing is contained therein.

and determined that the parents were obliged to comply with the requirements of the case plan.

On June 4, 2020, the trial court held a review hearing and continued T.L. in the custody of the State with the case plan dated May 20, 2020, being incorporated into the judgment. The case plan indicated that the maternal grandmother, while having provisional custody of T.L., permitted the parents full access and unsupervised care of T.L. and permitted the parents to use drugs in her home in the presence of the child. T.L. was placed in the home of a maternal aunt and uncle determined by the State to be a safe, family setting.

On December 4, 2020, and December 10, 2020, the trial court held review hearings where the parties stipulated that the child remain in the custody of the State, and the trial court approved and adopted the case plan, noting that adoption was the current goal. On December 23, 2020, the trial court signed a judgment approving a case plan dated November 23, 2020, and ordering that adoption was in the best interest of T.L.³

On March 17, 2021, the State filed a Petition for Termination of Parental Rights and Certification for Adoption. The State alleged that T.L. had been placed in foster care on December 17, 2019, after having been born a drug-affected newborn and having a lack of adequate supervision from her parents. The State attempted a safety plan with the maternal grandmother, but when the family was noncompliant, the child entered the custody of the State. With regard to T.P., the State alleged that her rights should be terminated pursuant to La. Ch.C. art. 1015(5)(b) and (6). The State asserted that T.P. violated La. Ch.C. art. 1015(5)(b) by failing to provide a significant contribution to the child's care and support for a period in excess of six months. The approved case plans required T.P. to contribute \$10.00 per month for

³ The case plan dated November 23, 2020, is also not contained in the record. The trial court, however, noted in its reasons for judgment that all case plans were similar in nature.

the care of T.L., but the State alleged that she made only one contribution of \$20.00 on May 11, 2020. The State also maintained that T.P. violated La. Ch.C. art. 1015(6) because over a year had elapsed since T.L. was removed from her custody pursuant to a court order, and T.P. did not substantially comply with the case plans dated January 7, 2020, May 20, 2020, and November 23, 2020, and there was no reasonable expectation of significant improvement in the mother's condition or conduct. As the maternal aunt was willing to adopt T.L., the State asked that the parental rights of T.P. and K.L. be terminated to allow T.L. to be adopted.

A hearing was held on May 6, 2021, and the trial court found that the parents had been non-compliant with the case plans and terminated the parental rights of T.P. and K.L. After issuing written reasons, the trial court signed a judgment on May 14, 2021, terminating the parental rights of T.P. and K.L. It is from this judgment that T.P. appeals.

LAW AND ANALYSIS

It is well settled that a trial court's findings on factually intense termination of parental rights issues are reviewed on appeal under a manifest error standard of review. *State in Interest of A.D.*, 2020-1298 (La. App. 1st Cir. 6/4/21), ___ So. 3d ___, ___, 2021 WL 2283873, at *2. A reviewing court must accord great deference to the factual findings of the trial court and cannot set aside those findings of fact in the absence of manifest error or unless those findings are clearly wrong. *Rosell v. ESCO*, 549 So.2d 840, 844 (La. 1989).

The purpose of involuntary termination proceedings is "to protect children whose parents are unwilling or unable to provide safety and care adequate to meet their physical, emotional, and mental health needs, by providing a judicial process for the termination of all parental rights and responsibilities and for the certification of the child for adoption." La. Ch.C. art. 1001. Recognizing that the termination of parental rights is a severe and permanent action, the Louisiana Legislature imposed

strict procedural and evidentiary requirements to be met before a judgment of termination can be rendered. *State in Interest of A.D.*, ___ So. 3d at ____, 2021 WL 2283873, at *2.

The termination procedure requires the State to establish only one ground pursuant to La. Ch.C. art. 1015 to terminate the parental rights. *State in Interest of ML and PL*, 95-0045 (La. 9/5/95), 660 So. 2d 830, 832. The State, as petitioner, bears the burden of establishing each element of a ground for termination of parental rights by clear and convincing evidence. La. Ch.C. art. 1035. The trial court must also find that termination is in the best interest of the child. La. Ch.C. art. 1037.

In this matter, the State alleged grounds for termination of T.P.'s parental rights under La. Ch.C. art. 1015(5)(b) and (6), which provide:

(5) Abandonment of the child by placing him in the physical custody of a nonparent, or the department, or by otherwise leaving him under circumstances demonstrating an intention to permanently avoid parental responsibility by any of the following:

* * *

(b) As of the time the petition is filed, the parent has failed to provide significant contributions to the child's care and support for any period of six consecutive months.

* * *

(6) Unless sooner permitted by the court, at least one year has elapsed since a child was removed from the parent's custody pursuant to a court order; there has been no substantial parental compliance with a case plan for services which has been previously filed by the department and approved by the court as necessary for the safe return of the child; and despite earlier intervention, there is no reasonable expectation of significant improvement in the parent's condition or conduct in the near future, considering the child's age and his need for a safe, stable, and permanent home.

Marie Jefferson, the case manager for the State, testified at the hearing that T.L. was born drug affected, prompting the State to implement a safety plan with the maternal grandmother. However, the family was not compliant with the safety plan. The initial goal for T.L. was reunification with her parents. An initial family meeting

was held on January 7, 2020, but neither parent was present. The parents did attend subsequent family meetings to review the case plans on May 20, 2020, and November 23, 2020. In order to achieve reunification, the case plans required the parents to provide safe and stable housing, proof of employment, and \$10 a month in parental contributions. The parents were also to complete a substance abuse assessment and follow those recommendations and participate in family evaluation services. Ms. Jefferson explained that T.P. did not provide safe and stable housing, as she lived off and on with her mother, who enabled addicts, and with T.P.'s own adult child, who also engaged in substance abuse. Ms. Jefferson also testified that T.P. had no plan of child care for T.L., and T.P. was not employed during the entire case, although at the time of the hearing, she was looking for employment.

Ms. Jefferson noted that T.P. exhibited substance abuse issues throughout the case. From January to March 2020, T.P. was in the Washington Parish jail, following her arrest, after which she went to residential treatment facilities. In July 2020, T.P. completed a 28-day program in Rayville, Louisiana, pursuant to a drug court program of the Twenty-Second Judicial District Court (drug court) and returned to drug court thereafter. Following a positive drug screen for alcohol, amphetamines, and methamphetamines, the drug court ordered her to Grace House, a substance abuse center, in October 2020. She completed the program at Grace House on March 26, 2021, went to live with her mother for approximately two weeks, and then entered Oxford House, an addiction recovery home, on April 8, 2021. Ms. Jefferson noted that T.P. entered Oxford House voluntarily to "get away from everything around Washington Parish." Ms. Jefferson visited Oxford House and testified that she was unable to find a place that T.L. could live, as T.P. had a roommate, but there was not a bed for T.L.

Both parents were ordered to make monthly parental contributions of \$10 a month. Ms. Jefferson testified that T.P. made only one parental contribution

payment on May 11, 2020, for \$20. Ms. Jefferson explained that the State sought to terminate the parental rights of T.P. due to lack of substantial case plan compliance and lack of parental contributions. While Ms. Jefferson acknowledged that T.P. was making some progress towards sobriety, Ms. Jefferson pointed out that over the previous 16 months she had not shown any consistency with sobriety or any stability. Ms. Jefferson believed it would be in T.L.'s best interest, after being in State custody for over a year, to have some permanency and stability. On cross-examination, Ms. Jefferson admitted that T.P. had provided directly to the foster parent juice on one occasion and a cake for a birthday.

T.P. also testified at the hearing and explained that she was currently living at Oxford House, which she characterized as a recovery facility based on sober living that required a certain number of meetings a week and certain drug screens. The Oxford House required T.P. to pay a move-in fee and rent each week, perform weekly chores, hold a house position, attend meetings, seek employment, and be drug screened on a regular basis. T.P. said that T.L. could reside with her at the Oxford House. T.P. further explained that she had been enrolled in the drug court since April 27, 2020, had been verified clean as of October 15, 2020, and was continuing her recovery process. She also submitted a certificate showing her completion of the Grace House program as well as her discharge plan from there.

T.P. indicated that she provided juice, diapers, and cash to the foster mother, her own sister. She maintained that she made a parental contribution of \$100 on April 19, 2021 (which was after the Petition to Terminate Parental Rights was filed on March 17, 2021). T.P. explained that she intended to make the parental contributions, but was in Grace House and did not have the case plan with her or the information she needed. She also testified that she had an interview the day following the hearing and was able to make the necessary parental contributions.

T.P. admitted on cross-examination that she had no income to make parental contributions while she was at Grace House.

After the testimony, the trial court indicated that it had reviewed the entire record, as well as all the exhibits introduced. The trial court found that the State had proven by clear and convincing evidence that the parental rights of T.P. should be terminated, freeing T.L. for adoption. The trial court based its determination on the lack of substantial parental compliance prior to the date of the filing of the petition, no reasonable expectation of significant improvement in T.P.'s condition or conduct in the near future, and T.L.'s need for a safe, stable, and permanent home. It also determined that it was in the best interest of T.L. to terminate the parental rights of T.P. and K.L.

T.P. argues on appeal that the State did not prove she had failed to provide significant contributions to the child's care for six consecutive months. The petition in the matter was filed on March 17, 2021. The State provided evidence that the only parental contribution made by T.P. prior to the petition being filed was on May 11, 2020. T.P. asserted that she provided a \$20 payment on August 1, 2020, and a \$100 payment on April 19, 2021.⁴ Therefore, at most, before the termination petition was filed, T.P. had paid \$40 for the support of T.L. Payments or gifts made after the filing of the termination petition is filed are not to be included in evidence for the purpose of determining abandonment. *State ex rel. A.D.S., A.T.S., and J.D.S.*, 2004-0250 (La. App. 4th Cir. 9/29/04), 888 So. 2d 913, 918; *see State in Interest of E.O.*, 2018-1093 (La. App. 1st Cir. 2/6/19), 272 So. 3d 552, 557. Although T.P. testified that she provided some cash, diapers, and juice to the foster parent, there was no testimony as to the timeframe that these items were provided. Furthermore, the

⁴ With regard to these payments, at the hearing, T.P. introduced receipts referred to as Exhibit M-9. However, the only Exhibit 9 in the record is a portion of a treatment plan for T.P. dated January 22, 2001. The record contains two money orders with the dates August 1, 2020, and April 19, 2021, in the amounts of \$20 and \$100, respectively. This court assumes that this is the exhibit to which T.P. referred and introduced into evidence.

evidence supports the trial court's finding that T.P. "failed to provide significant contributions to the child's care and support for **any** period of six consecutive months" as provided for in La. Ch.C. art. 1015(5)(b). (Emphasis added). T.L. has been in the custody of the State since December 17, 2019, and there is no evidence in the record that T.P. provided monthly support for T.L. between December 30, 2019 and May 11, 2020 other than one \$20.00 payment. From August 1, 2020 to the day the Petition to Terminate Parental Rights was filed on March 17, 2021, a period of over six months, the record contains no evidence of monthly support by T.P. As noted in *State in Interest of S.R.*, 2013-1072 (La. App. 4th Cir. 2/12/14), 136 So. 3d 158, 165 (quoting *State in Interest of D.L.*, 457 So. 2d 141, 146 (La. App. 2nd Cir. 1984), "[P]arental responsibilities are not fulfilled by merely expressing concern or having good intentions."

T.P. maintains that the State did not offer clear and convincing evidence that something other than poverty prevented T.P. from offering support and relies on *State ex rel. A.T., T.A. & J.A.*, 2006-0501 (La. 7/6/06), 936 So. 2d 79, 85 n.7 ("Further, poverty, and thus lack of support, cannot be the sole reason for terminating parental rights, there must be willful neglect in the failure of a parent to support his or her children.") However, a parent alleging lack of employment as just cause for her failure to pay child support must show not only that she was unemployed but that she was unemployable. *State ex rel. M.L.*, 2000-153 (La. App. 3rd Cir. 5/3/00), 761 So. 2d 103, 109. As the trial court indicated in its written reasons, T.P. was seeking employment at the time of the hearing, but had not done so in the past. Louisiana Children's Code article 1015(5)(b) set a time period of six consecutive months of failing to provide significant contributions to the child's care. Based upon the record, T.P. failed to comply with providing significant support for T.L. for that time period. Therefore, we find no manifest error in the trial court's finding that the

State met its burden by clear and convincing evidence as to the allegations under La. Ch.C. art. 1015(5)(b).

The State also sought to terminate T.P.'s parental rights pursuant to La. Ch.C. art. 1015(6). Under La. Ch.C. art. 1015(6), a child is required to be removed from the parent's custody for at least one year without substantial compliance with previously approved case plans. The trial court noted in its written reasons that the Children's Code sets a time period of one year for parents to complete the case plan and be granted the return of a child. T.L. was placed in the State's custody on December 17, 2019, and has continued in that custody. The second element of La. Ch.C. art. 1015(6) requires the State to show its case plans were previously approved by the court as necessary for the safe return of the child. The State held meetings with the parents in this matter on January 7, 2020, May 20, 2020, and November 23, 2020. The case plans dated January 7, 2020, and May 20, 2020, were introduced into the record. While the November 23, 2020 case plan is not in the record before us, the judgment dated December 23, 2020, refers to and adopts the November 23, 2020 case plan.

The State must also prove that there has been no substantial compliance with the case plans by the parents. Louisiana Children's Code article 1036 governs proof of parental misconduct, and provides, in pertinent part:

C. Under Article 1015(6), lack of parental compliance with a case plan may be evidenced by one or more of the following:

- (1) The parent's failure to attend court-approved scheduled visitations with the child.
- (2) The parent's failure to communicate with the child.
- (3) The parent's failure to keep the department apprised of the parent's whereabouts and significant changes affecting the parent's ability to comply with the case plan for services.
- (4) The parent's failure to contribute to the costs of the child's foster care, if ordered to do so by the court when approving the case plan.

(5) The parent's repeated failure to comply with the required program of treatment and rehabilitation services provided in the case plan.

(6) The parent's lack of substantial improvement in redressing the problems preventing reunification.

(7) The persistence of conditions that led to removal or similar potentially harmful conditions.

(8)(a) The parent's failure to provide a negative test result for all synthetic or other controlled dangerous substances, except for any drug for which the parent has lawfully received a prescription, at the completion of a reasonable case plan.

(b) For purposes of this Article, "controlled dangerous substance" shall have the meaning ascribed in R.S. 40:961.

Finally, the state must prove the lack of any reasonable expectation of significant improvement in the parent's conduct in the near future under La. Ch.C. art. 1015(6). This may be evidenced by "substance abuse, or chemical dependency that renders the parent unable or incapable of exercising parental responsibilities without exposing the child to a substantial risk of serious harm, based upon expert opinion or based upon an established pattern of behavior." La. Ch.C. art. 1036(D)(1). No expert opinion was offered in this matter, but the State did provide evidence of an established pattern of behavior.

Reformation sufficient to prevent termination of parental rights requires that the parent demonstrate a substantial change, such as significantly altering or modifying that behavior which served as the basis for and resulted in the State's removal of the children from the home. *State ex rel. S.M.*, 99-0526 (La. App. 4th Cir. 4/28/99), 733 So. 2d 159, 167, *writ denied*, 99-2127 (La. 7/21/99), 747 So. 2d 36.

The State was able to demonstrate that after it was granted custody of T.L. on December 17, 2019, T.P. made little, if any, progress in the year that followed in complying with the case plans. As Ms. Jefferson noted at the hearing, during that time frame, T.P. had either been incarcerated, in residential treatment, or living with

her mother, from whose home T.L. was previously removed due to substance abuse in the home. Initially, T.P. completed a substance abuse assessment, but declined to participate in the recommended treatment, in violation of the case plan. T.P. was arrested in January 2020, was in the Washington Parish jail until March 2020, was subsequently placed on probation, and entered the drug court on April 27, 2020. She completed a 28-day program at Rayville, went home, and then returned to the drug court. T.P. tested positive for alcohol, amphetamines, and methamphetamines, resulting in the drug court ordering her to enter long term treatment at Grace House in October 2020. Furthermore, T.P. had not been employed at any time during the case, contrary to the case plan.

The State maintains that even though T.P. took some steps to address her substance abuse issues, there were no long-standing significant behavior changes necessary for the safe and timely return of her child. From our review of the entire record, we cannot say that the trial court was manifestly erroneous in finding the T.P.'s parental rights should be terminated under La. Ch.C. art. 1015(6). While T.P. did enter Grace House in October 2020 after being ordered to do so by the drug court, approximately ten months had passed at that time since T.L. had been removed from custody. T.P. had the opportunity throughout the duration of her case to show that she was willing and able to care for T.L. and failed to do so. Furthermore, while we commend T.P.'s ultimate efforts to achieve sobriety after October 2020, she made no payments to support T.L., had no employment or plan for financial support for T.L., and had no plan for child care had she found employment.

Additionally, we find no error in the trial court's determination that termination of T.P.'s parental rights is in the best interest of T.L. The laws of Louisiana are not intended "for children to remain in foster care permanently." *State ex rel. J.M., J.P.M., and M.M.*, 2002-2089 (La. 1/28/03), 837 So. 2d 1247, 1257. "Forcing children to remain in foster care indefinitely, when there is no hope of

reuniting them with their families, runs afoul of the state and federal mandates to further the best interests of the child.” *State ex rel. J.M.*, 837 So. 2d at 1257. As indicated above, T.P. has demonstrated an inability to comply with her case plan and had not been employed during the entirety of the case. The trial court noted in its written reasons that the mother only had vague notions of how she could live in the sober living facility and care for T.L. while she was working. Furthermore, the trial court noted that because of T.P.’s drug use during pregnancy, T.L. has special needs that require treatment, and T.L. was placed with a family member who can care for her needs and wishes to adopt her. The trial court found that it was in the best interest of T.L. to remain in the stable home where she was thriving and could be adopted. Therefore, considering the evidence in the record demonstrating grounds for termination and that termination of T.P.’s parental rights is in the best interest of T.L., we find no error in the trial court’s judgment terminating T.P.’s parental rights and finding T.L. is free and eligible for adoption.

CONCLUSION

For the reasons set forth above, the May 14, 2021 judgment of the trial court terminating the parental rights of T.P. is affirmed. All costs of this appeal are assessed to T.P.

AFFIRMED.