

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001085-MR

JASON HOLT THALMANN

APPELLANT

v. APPEAL FROM CHRISTIAN FAMILY COURT
HONORABLE JUDY A. HALL, JUDGE
ACTION NO. 99-AD-00005

TIM DUNLAVEY; WENDY DUNLAVEY;
J. H. T., A MINOR CHILD; AND
J. L. T., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE, GUIDUGLI, AND SCHRODER, JUDGES.

DYCHE, JUDGE. Jason Holt Thalmann appeals from judgments and orders of the Christian Family Court allowing Tim Dunlavey, his ex-wife Wendy's present husband, to adopt his two natural sons, and concurrently terminating his parental rights in and to the boys. We affirm.

Jason and Wendy were divorced March 26, 1989; Wendy married Tim Dunlavey in March, 1990. Jason has also remarried, and has a daughter by that marriage. Jason is currently incarcerated under sentences from the Christian and Boone Circuit Courts, serving sentences totaling twelve and one-half years; his

minimum expiration date is August 13, 2006. He has been granted shock probation by the Christian Circuit Court three times; three times that probation has been revoked due to his violations of the conditions of his release.

We have examined the record, including the record of Jason's child support payment (or lack thereof), and watched a portion of the taped proceedings, most specifically the testimony of appellant, his parents, and the two sons. From the record we glean that Jason has been, at best, an indifferent and unengaged father to his two boys. Even when he was not in jail, he found little or no time for them, and paid little or no support for them. Although the boys spend virtually all of every weekend with Jason's parents, while free he rarely, if ever, visited with them in his parents' home. He rarely exercised his visitation rights with the boys. Although he claimed at the hearing that he did a lot of things with them, he could cite very, very few things they had done together. He did not attend their sporting events. He does not talk to them when he calls his parents from jail, but rather asks to speak to one of his parents. He claims to have sent 30-40 letters to them while in jail, addressed to them at his parents' home, but the boys have received only one or two.

We commend the trial court for the careful and caring way that it conducted the hearing herein, especially the way the boys were treated. It is obvious that the trial court thoroughly deliberated this important and difficult decision. It is equally obvious that the trial court made the correct decision.

Jason primarily argues that the requisites of Kentucky Revised Statutes ("KRS") 625.090, pertaining to Termination of Parental Rights, were not met. That statute applies to termination cases where there is no adoptive parent ready, willing, and available to adopt a child, and generally the child is to be a ward of the state. This petition was brought under KRS 199.502, which allows adoption without a natural parent's consent, and concurrently terminates that parent's parental rights. Both statutes are part of a comprehensive scheme enacted by the General Assembly to deal with dependent, neglected, or abused children and their permanency planning.

The trial court found that Jason's dedication to the criminal lifestyle has prevented him from providing parental care and protection and essential needs of the children. Further, the court found that he failed to provide that care and protection and to fulfill the boys' essential needs, even when not incarcerated. The court cited his failure to act as father to the boys, or establish any sort of relationship with the boys, even when released on shock probation. KRS 199.502(e) and (g).

The court further found that the adoptive father was suitable to the trust and that the adoption by Tim Dunlavey was in the best interest of the children, as was the termination of Jason's parental rights.

These findings are supported by the record, and sufficient under the statute to support the termination of Jason's parental rights, and allow adoption of the boys by Tim. Further findings are not necessary, nor are separate hearings.

The orders and judgments of the Christian Family Court
are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James R. Redd III
Guardian Ad Litem
Hopkinsville, Kentucky

BRIEF FOR APPELLEE
TIM DUNLAVEY:

Samantha J. Evans
Hopkinsville, Kentucky