

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000375-MR

S.L.F.

APPELLANT

v.

APPEAL FROM KNOX CIRCUIT COURT
HONORABLE LEWIS B. HOPPER, JUDGE
ACTION NO. 00-AD-00001

CABINET FOR FAMILIES AND CHILDREN,
COMMONWEALTH OF KENTUCKY,
AS APPELLEE AND NEXT FRIEND OF
D.M.V., AN INFANT;
P.R.V., AN INFANT;
T.A.V., AN INFANT;
AND L.M.V., AN INFANT

APPELLEES

OPINION
AFFIRMING

** ** * * * ** **

BEFORE: GUDGEL, CHIEF JUDGE; BARBER AND GUIDUGLI, JUDGES.

BARBER, JUDGE: Appellant, S.L.F., is the father of four minor daughters aged 5 through ten years. The mother of the girls is deceased. S.L.F. was incarcerated in 1998 and has a projected release date of September 2002. S.L.F. asserts that, during the ten years prior to his incarceration, he had an ongoing relationship with his daughters and that he sometimes provided

money to aid in their support. S.L.F. was not able to provide proof of the claimed financial support.

Following the death of their mother, the children were placed in two separate foster homes. The foster parents have expressed an interest in adopting the children. The Cabinet filed neglect charges against S.L.F. and began proceedings to terminate his parental rights.

S.L.F. claims that he did not neglect the children prior to his incarceration and argues that, since his incarceration, he has done his best to comply with the Cabinet's plan in the hope of reunification with his children. He asserts that he has studied for his GED and taken vocational classes to prepare him to search for a job when released. S.L.F. has not yet taken or passed the GED exam. S.L.F. also states that he took part in drug and alcohol education programs while incarcerated. S.L.F. does not controvert evidence showing that he failed to complete case plans required by the Cabinet.

The Cabinet asserts that S.L.F.'s contact with the children during their lifetime was sporadic. The Cabinet provided evidence that the inconsistent nature of S.L.F.'s parenting coupled with his drug and alcohol abuse had adversely affected the well-being of the children. Additionally, the trial court was shown that at least one of the children was sexually molested due to lack of proper supervision by the biological parents. S.L.F. was ordered to pay child support for the children in 1992 and never did so. His outstanding child support obligation was \$16,400.00 at the time of the termination hearing.

The Cabinet had frequent contact with the children and the biological parents prior to S.L.F.'s incarceration. This contact showed repeated neglect of the children during the time S.L.F. was involved in their lives. The Cabinet also presented evidence of domestic violence by S.L.F., resulting in a charge of wanton endangerment. S.L.F. admits to a lengthy history of criminal conduct and drug and alcohol abuse. S.L.F. also admits that he has never been gainfully employed. The record reflects that the children have minimal bonding with S.L.F. and that he made only limited attempts to maintain contact with the children during the period of incarceration.

Under KRS 600.0020(1), a finding of neglect may be made against a parent, when the circuit court finds clear and convincing evidence of such neglect. The trial court reviewed the record as required by KRS 625.090(1) and found that, during the six months prior to the termination proceeding, S.L.F. had been incapable of providing essential parental care and protection for the children and that there was no reasonable expectation of him being able to provide such care and protection in the future. The trial court then found that termination was in the best interests of the children pursuant to KRS 625.090(2).

The law is clear in holding that incarceration alone cannot be construed as abandonment. J.H. v. Cabinet for Human Resources, Ky. App., 704 S.W.2d 661 (1985). Incarceration is a factor to be considered by the trial court in determining whether a child is neglected or abused. Cabinet for Human Resources v. Rogeski, Ky., 909 S.W.2d 660, 661 (1995). Additional factors

supporting the trial court's determination of neglect include lack of compliance with the Cabinet's plan, lack of continuing contact with the children, lack of means of support for the children, and lack of bonding with the children. MPS v. Cabinet, Ky. App., 979 S.W.2d 114, 117 (1998).

S.L.F. failed to support and protect the children adequately during his sporadic contact with them prior to his incarceration. Further, S.L.F. has not taken the required steps to show even minimal care and support for the children while incarcerated. A trial court has broad discretion in determining whether a child should be considered a neglected child under KRS 600.020. Department for Human Resources v. Moore, Ky. App., 552 S.W.2d 672, 675 (1977). The decision of the trial court shall not be reversed unless there is no substantial evidence in the record supporting its findings. V.S. v. Commonwealth, Cabinet for Human Resources, Ky. App., 706 S.W.2d 420, 424 (1986). In the present case, substantial evidence supported the trial court's decision.

For the foregoing reasons, the trial court's finding that termination is in the best interests of the minor children is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Guy E. Millward, Jr.
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BRIEF FOR APPELLEE:

Ray D. Baldwin
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