

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000018-MR

G.B.

APPELLANT

APPEAL FROM NELSON CIRCUIT COURT
v. HONORABLE CHARLES C. SIMMS III, JUDGE
ACTION NO. 00-AD-00003

COMMONWEALTH OF KENTUCKY,
CABINET FOR FAMILIES
AND CHILDREN

APPELLEE

OPINION
AFFIRMING

** **

BEFORE: COMBS, CHIEF JUDGE; GUIDUGLI AND SCHRODER, JUDGES.

COMBS, CHIEF JUDGE: G.B. appeals from an order of the Nelson Circuit Court that terminated her parental rights to her child, C.M.M.,¹ and transferred custody of the child to the Cabinet for Families and Children. The order is supported by clear and convincing evidence that the child was abused or neglected while under the appellant's care; that the mother continuously failed to provide essential care and protection for the child; and that

¹ In order to protect the privacy of the child, we will use initials to identify the parents and the child.

it is in the child's best interest that the parental rights of the natural mother be terminated. Therefore, we affirm the order.

C.M.M. was born on May 19, 1998. Based upon a petition filed by the child's grandmother in October 1998, the Nelson District Circuit Court ordered that C.M.M. be placed in the grandmother's custody on a temporary basis. In March 1999, the district court returned C.M.M. to G.B.'s custody. G.B. was ordered to cooperate with the Cabinet and to prevent the child from having any contact with G.B.'s father or step-grandfather.

On June 15, 1999, the Cabinet filed a petition alleging that C.M.M. was dependent, neglected, and abused. Through an order entered a few days later by the Nelson District Court, C.M.M. was again removed from the appellant's custody. In December 1999, the district court determined that C.M.M. was a dependent and neglected child, and she was committed to the Cabinet. C.M.M. has remained in foster care since June 15, 1999.

On February 11, 2000, the Cabinet filed a petition for the involuntary termination of the parental rights of the child's natural mother and father. Numerous hearings were held by the Nelson Circuit Court. On November 20, 2003, the circuit

court issued an order terminating the parental rights of the child's natural parents.² This appeal followed.

G.B. argues that the trial court erred in terminating her parental rights because the Cabinet failed to prove by clear and convincing evidence the existence of any grounds for termination. We disagree.

The involuntary termination of parental rights by a court is governed by KRS³ 625.090. Before a circuit court may terminate such rights, it must find by clear and convincing evidence: (1) that the child is an "abused or neglected child as defined by KRS 600.020(1)" and (2) that termination would be in the child's best interest. KRS 625.090(1). Additionally, the court must find the existence of one of the numerous grounds recited in KRS 625.090(2): including abandonment, infliction of serious physical injury or emotional harm, sexual abuse, or neglect in providing access to basic survival needs.

The Nelson Circuit Court found that C.M.M. was a neglected child. In its order terminating parental rights, the circuit court concluded as follows:

[T]his Court has also determined . . . that [G.B.] has neglected said child based upon her repeated failure to provide essential care and protection to [C.M.M.], especially

² The order also terminated the parental rights of the child's natural father, J.A.M. He did not participate in the termination hearings nor has he filed an appeal in this matter.

³ Kentucky Revised Statutes.

in light of her young age. An example of the mother's neglect includes her having contact with [G.B.'s father], a convicted sexual offender, while the child was in her custody on May 12, 1999. In addition, [G.B.] has failed to provide this Court with any real assurance that [C.M.M.] will be protected from sexual predators since [G.B.] has continued to maintain contact with [her father] and [her step-grandfather]. Another example of [G.B.'s] neglect was her failure to obtain follow-up medical attention for [C.M.M.'s] burned feet. [G.B.'s] inability to maintain employment has contributed to [C.M.M.'s] neglect as [G.B.] has been unable to maintain a residence or to provide [C.M.M.] with her necessities. Even more troublesome, Ms. Dow and Ms. Akin have observed [G.B.'s] residences on several occasions in unkept conditions. Finally, the findings of fact contained herein have clearly established that [G.B.'s] life has remained in complete and utter disarray since [C.M.M.'s] birth.

The court also found that termination of the appellant's parental rights was in the child's best interest.

The court observed as follows:

Starting in June of 1998, [C.M.M.] has continuously resided with her foster parents, and they are willing to adopt said child. According to the foster mother, [C.M.M.] has become integrated into their family. . . . In July of 2002, [G.B.'s] therapist recommended that her overnight visitation with [C.M.M.] be terminated. [G.B.] has even concluded on occasion that voluntary termination of parental rights was in [C.M.M.'s] best interest as evidenced by her sworn statement dated February 9, 2000, which was attached to the petition along with her letters which were introduced into evidence on July 10, 2003. . . . Based upon these findings, this Court is of the opinion

that the [Cabinet] has proven by clear and convincing evidence that termination is in [C.M.M.'s] best interest.

Finally, the circuit court found that the Cabinet had established beyond any doubt the existence of a statutory ground for termination (failure to provide basic survival needs) as set forth in KRS 625.090(2). It noted as follows:

It is the finding of this Court that the [Cabinet] has proven by clear and convincing evidence "[t]hat the parent[s], for a period of not less than six (6) months, have continuously or repeatedly failed or refused to provide or have been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection considering the age of the child."

* * * *

The child's mother, [G.B.] has repeatedly failed, for a period of not less than six (6) months, to provide [C.M.M.] with essential parental care and protection. For instance, the evidence has established that [G.B.] has been unable to maintain stable housing as she has lived at the following addresses since [C.M.M.'s] birth: (1) with her grandmother on at least six occasions, (2) in Florida for approximately 1 ½ months with the child's father, (3) at Pine Village Apartment on at least two occasions, (4) in a mobile home on Cleo Avenue, (5) in a mobile home on the Curtsinger farm, (6) at Bard Home Apartments on at least two occasions, and (7) there are allegations that she has resided with her father on occasion. [G.B.] even admitted that she was evicted from at least two apartments and that she moved from Cleo Drive because she was unable to pay her rent. The evidence

also established that [G.B.] has been unable to provide certain necessities based upon the following proof: (1) her electricity was turned off, (2) [the Cabinet] has provided assistance to [G.B.] on six occasions for either food or utilities, (3) Ms. Dow personally provided her transportation, assisted [G.B.] with housing and purchased food for her, (4) Ms. Dow made arrangement through Voluntary Action to assist [G.B.] with her rent and obtaining food, (5) Ms. Dow helped [G.B.] in applying for AFDC and food stamps, and (6) Ms. Akin assisted [G.B.] on an electric bill and by personally providing her with a mattress and spring.

* * * * *

This Court does not believe there is any reasonable expectation of improvement in regard to [G.B.'s] parental care and protection, considering the age of the child.

The standard of appellate review in a termination of parental rights case is carefully circumscribed. R.C.R. v. Commonwealth, Cabinet for Human Resources, Ky. App., 988 S.W.2d 36 (1998). The trial court has broad discretion in determining whether the child fits within the abused or neglected category and whether the abuse or neglect warrants termination. Department for Human Resources v. Moore, Ky. App., 552 S.W.2d 672 (1977). The findings of the trial court will not be disturbed unless there is no substantial evidence in the record to support its findings. V.S. v. Commonwealth, Cabinet for Human Resources, Ky. App., 706 S.W.2d 420 (1986).

Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent-minded people.

Rowland v. Holt, 253 Ky. 718, 70 S.W.2d 5, 9 (1934).

We have reviewed the comprehensive findings made by the Nelson Circuit Court based upon evidence presented over the course of numerous hearings. We are not persuaded that the court erred in determining that C.M.M. was a neglected child. The court's finding that the termination of parental rights was in the child's best interest is also clearly supported by the evidence. The evidence presented by the Cabinet convincingly supported the court's conclusions.

Contrary to the appellant's contention, the Cabinet also proved by clear and convincing evidence grounds for termination as set forth in KRS 625.090(2). There is adequate evidence to support the court's determination that for a period of not less than six (6) months, the appellant continuously or repeatedly failed or refused to provide (or was substantially incapable of providing) essential parental care and protection for C.M.M. without any reasonable expectation of improvement in the appellant's care and protection of the child. Thus, we cannot conclude that the court's findings are clearly erroneous. Nor can we conclude that the Cabinet failed to meet its burden

of proving its case by clear and convincing evidence as required by KRS 625.090.

Ample evidence was presented in this case to indicate that G.B. had repeatedly failed to provide proper medical treatment for C.M.M.; that she had routinely permitted two sex offenders open access to the child in violation of a direct court order; that she was unable to provide her with a safe and stable home; and that she was unable even to provide her with safe food to eat and milk to drink. The Cabinet repeatedly offered its services to the appellant, but G.B. was unable or unwilling to complete five different case plans aimed at reuniting her with her child. G.B. even sought the voluntary termination of her parental rights on two separate occasions (so advising the child on one occasion with resulting unnecessary emotional turmoil).

The circuit court gave G.B. every opportunity over the course of numerous hearing dates to show that her ability to provide properly for the child was improving. Nevertheless, as the child's guardian *ad litem* has observed,

the evidence in this case revealed, in clear and convincing fashion, a young woman who is unable to sustain any ability to provide essential care and life skills for herself, let alone a child, and that the pattern of such has been evident for a period of over 5 years.

The overwhelming evidence demonstrates that G.B. was substantially incapable of providing essential parental care and protection for C.M.M. and that there is no reasonable expectation of improvement in her ability to care for and to protect the child. Consequently, we are not persuaded by the appellant's contention that the evidence failed to support the court's finding that sufficient grounds for termination of parental rights had been demonstrated. We find no error in the termination of the appellant's parental rights.

The judgment of the Nelson Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John David Seay
Bardstown, Kentucky

BRIEF FOR APPELLEE:

Mary Gaines Locke
Munfordville, Kentucky

BRIEF FOR THE GUARDIAN *AD*
LITEM:

Jason P. Floyd
Bardstown, Kentucky