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Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-000193-ME

R.G.B. APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE TIMOTHY PHILPOT, JUDGE
ACTION NO. 05-AD-00008

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH
AND FAMILY SERVICES
APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ABRAMSON AND GUIDUGLI, JUDGES; BUCKINGHAM,[1] SENIOR JUDGE.

ABRAMSON, JUDGE: R.G.B. appeals from a January 6, 2006, order of the Fayette Family Court terminating her parental rights with respect to her natural children B.R. (d.o.b. 12/29/90) and A.O. (d.o.b. 11/17/97) and assigning those rights to the Cabinet for Health and Family Services so that the children could be

[1] Senior Judge David C. Buckingham sitting as Special Judge by assignment of the chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

adopted. R.G.B. contends that the trial court gave insufficient consideration to the efforts she has made to reestablish her life after a devastating period of drug and alcohol abuse. She claims that she is again able to care for her children and should be allowed to do so. Because the trial court's contrary findings are adequately supported by the record, we affirm its order terminating R.G.B.'s parental rights.

For the most part the facts are not in dispute. R.G.B. suffers from Attention Deficit, Hyperactive Disorder (ADHD) and depression and has, since late adolescence, been subject to periodic and increasingly severe periods of alcohol and drug abuse. She has been married three times, each marriage ending in divorce after no more than three years. She has two children: B.R. from her second marriage, in California, and A.O. from her third marriage, in Kentucky. The outbreaks of her addictions have led to several hospitalizations, but they have been separated by significant periods of sobriety. During one such outbreak, in 1995, the Cabinet removed B.R. from R.G.B.' s custody and sent her to California to live with her father. For several years thereafter, however, R.G.B. maintained sobriety, completed her PhD in Psychology, and formed and managed a successful consulting practice in Lexington. In 1999, B.R. rejoined her mother and new sister in Kentucky. Unfortunately, in about late 2001, R.G.B. entered upon a new phase of drinking

and abusing prescription medications, which she obtained via the internet. The abuse gradually became acute, culminating in the fall and winter of 2003 with several emergency-room treatments for overdoses, with the emergency removal of the children from R.G.B.'s custody, with the collapse of her business, and with the suspension of her professional license. When, in February 2004, an intoxicated R.G.B. threatened the friends who had accepted temporary custody of the children, the Cabinet removed the children to foster care and warned R.G.B. that she risked losing her parental rights if she did not take steps to restore her ability to parent.

Since then, R.G.B. has made efforts to turn her life around. In April 2004 she entered the Tammi House Recovery Program in or near Clearwater, Florida, an in-patient substance-abuse treatment facility. Although she initially sought treatment in Florida only because the Kentucky facilities all had long waiting lists, her treatment in Florida led her to relocate there. She completed the Tammi House program in July 2004, and then began out-patient treatment with an affiliated program called Operation Par. Through Operation Par she obtained on-going treatment for her ADHD and, according to R.G.B., began attending AA/NA meetings. She met a friend in Clearwater, whose mother at first gave her living space in her condominium and later, apparently, agreed to lease the entire

unit to her through a Florida housing-assistance program. She also obtained food stamps and applied for Social Security Disability Benefits.

These measures led the Cabinet's social workers to consider a reunification plan whereby B.R. would again be sent to her father in California, and A.O. would be returned to R.G.B. in Florida. Pursuit of that plan ceased, however, when B.R.'s father refused to participate. The Cabinet's goal for the children then became adoption, and in February 2005 it petitioned for termination of R.G.B.'s parental rights. While the matter was pending, in July 2005, a visitation dispute arose, and R.G.B. again relapsed. She came to court intoxicated and was obliged to return to Florida to reestablish sobriety.

The trial court heard the termination matter in November 2005. The Cabinet offered proof of the severe neglect the children had suffered during 2003 as a result of R.G.B.'s incapacity, and proof of R.G.B.'s continuing fragility, her continuing unemployment, and her limited financial resources. The Cabinet also offered the testimony of the children's social workers and therapists and of B.R. to the effect that the children had adjusted well to their foster family, that the foster family was eager to adopt both of them, and that B.R., at least, wished not to live with R.G.B. Emphasizing both the unacceptable risk that R.G.B. would again have a serious relapse

as well as her inability, more than two years after the removal of the children, "to get her financial affairs in order or to obtain employment," the family court granted the Cabinet's petition and ordered the termination of R.G.B.'s parental rights. Appealing from that order, R.G.B. contends that the court's finding that she continues to be incapable of providing parental care is not supported by sufficient evidence. We disagree.

R.G.B. correctly notes that, as it pertains to this case, KRS 625.090 permits the termination of parental rights only upon a finding, by clear and convincing evidence, of all of the following: (1) that the child has been adjudged or shown to be abused or neglected; (2) that termination would be in the child's best interest; and (3) the existence of at least one of the grounds listed in KRS 625.090(2). R.G.B. concedes that the horrific conditions she subjected the children to for several months in late 2003 amounted to abuse or neglect. And she does not dispute that a rational fact finder could believe that the adoption of both children into the foster family that has provided a stable haven from those conditions is clearly and convincingly in the children's best interest.

With respect to the KRS 625.090(2) grounds, the trial court found the existence of all of the following:

> (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm; . . .
> (e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has 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; . . . [and]
> (g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child.

R.G.B. contends that any emotional harm she may have inflicted was not severe enough to satisfy the statutory requirement and that her ability to provide parental care and support has significantly improved and can be reasonably expected to continue improving.

Because the existence of any one of these grounds would be sufficient to uphold the trial court's order, we shall focus on the strongest and most serious, *i.e.,* ground (e) regarding failure to provide essential parental care and protection with no reasonable expectation of improvement. This Court must uphold the trial court's finding if it is supported

by substantial evidence. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114 (Ky.App. 1998). Here, substantial evidence is evidence a rational fact finder could deem clear and convincing. *Id.* There is no dispute that R.G.B.'s severe drug and alcohol abuse rendered her incapable of providing essential parental care and protection for her children. Furthermore, there is no dispute that her incapacity lasted more than six months, through her completion of the Tammi House program. Contrary to R.G.B.'s assertions, moreover, evidence that a rational fact finder could deem clear and convincing supports the trial court's findings that her incapacity continued until the hearing and was reasonably likely to continue indefinitely beyond that.

As the trial court noted, more than two years after the emergency removal of her children, R.G.B. remained unemployed and had yet to confront her dire financial situation. Not only were these significant obstacles to her providing stable care for her children, but they were also significant challenges to her sobriety which she had not yet faced. Her sobriety, furthermore, did not appear even relatively secure. Her July 2005 relapse clearly demonstrated that alcohol abuse remained a serious risk, and her own therapist testified that more such relapses were likely. Faced with termination of her parental rights, R.G.B. did not even provide the trial court with any proof corroborating her representations that she

regularly attended AA/NA meetings. Given R.G.B.'s history of periodically severe dysfunction, the risk these likely relapses posed to the health and welfare of R.G.B.'s children could reasonably be deemed unacceptable. The trial court's finding of "no reasonable expectation of improvement in parental care and protection" is clearly and convincingly supported by the record.

Without greater assurance than this record provides that R.G.B. has the ability to meet the emotional and practical demands of parenthood and would not again subject her children to the devastating consequences of her illnesses, the trial court did not err by finding that she was, and could reasonably be expected to remain, substantially incapable of providing essential parental care and protection for B.R. and A.O. As the trial court opined, when the children are adults, if R.G.B. has obtained sobriety and control of her mental health issues, an adult relationship between mother and child may be possible, but for now termination is clearly in the children's best interest. The Cabinet proved all the elements of KRS 625.090, and the trial court appropriately granted its petition to terminate R.G.B.'s parental rights. Accordingly, we affirm the January 6, 2006, order of the Fayette Family Court.

ALL CONCUR.

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