

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-002288-ME

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF KENTUCKY,
NEXT FRIEND OF P.J.-R.F., A CHILD

APPELLANT

v. APPEAL FROM ALLEN CIRCUIT COURT
HONORABLE MARTHA BLAIR HARRISON, JUDGE
ACTION NO. 07-AD-00006

B.A.F., AND P.J.F.

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: LAMBERT, MOORE, AND WINE, JUDGES.

LAMBERT, JUDGE: The Cabinet for Health and Family Services appeals the Allen County Family Court's dismissal of its petition for termination of parental rights on behalf of P.J.-R.F. After careful review, we affirm.

P.J.-R.F. was born on February 7, 1998, to B.F. and P.F. P.J.-R.F. was removed from his parents' home on April 26, 2006, by temporary removal order, due to concerns about whether or not the child was receiving his psychotropic medications. Prior to the child entering foster care, an IMPACT Plus worker, Paul Markle, observed P.J.-R.F. lying on his couch in a fetal position sucking his thumb and using curse words.

Another therapist heard P.J.-R.F. say that his father would choke his mother and described that P.J.-R.F. was often hungry at his house because there was not enough food.

A treatment plan was created for B.F. and P.F., who are now separated, which included maintaining a safe and secure home for P.J.-R.F. Neither B.F. nor P.F. complied with this treatment plan.

The Commonwealth of Kentucky, Cabinet for Health and Family Services, as next friend of P.J.-R.F., filed a petition for termination of parental rights on April 12, 2007. A final hearing was held on August 3, 2007, and an order was entered on August 10, 2007, dismissing the case. The trial court found that the child was an abused or neglected child and that termination of parental rights would be in the best interest of the child. However, the court did not find that one of the factors enumerated in KRS 625.090(2) applied to the child. The cabinet filed a motion to alter, amend, or vacate the trial court's decision, which was denied on November 7, 2007. This appeal followed.

When reviewing a family court's determination in a termination of parental rights case, the ruling of the family court will not be disturbed absent a showing that the family court's decision was clearly erroneous, as set forth in Kentucky Rules of Civil Procedure (CR) 52.01. See *K.R.L. v. P.A.C.*, 210 S.W.3d 183 (Ky.App. 2006). A decision in a termination case is not clearly erroneous where there is substantial evidence in the record to support the trial court's findings of fact. *R.C.R. v. Commonwealth, Cabinet for Human Resources*, 988 S.W.2d 36, 38 (Ky.App. 1998).

Involuntary termination of parental rights requires a three-prong finding by the Family Court under KRS 625.090(1) and (2). First, the court must find under KRS 625.090(1) that either the child has been adjudged to be an abused or neglected child

by a court of competent jurisdiction or by the Family Court in the termination proceeding. In the instant case, the Allen Circuit Court found that P.J.-R.F. was a neglected child as shown by certified copy of the juvenile adjudication order dated May 25, 2006.

Second, the court must find that termination would be in the best interest of the child. Again, the circuit court found this to be the case under these facts and accordingly stated so in its order. Finally, the court must find that one of the grounds enumerated in KRS 625.090(2) exists. Here, the Cabinet for Health and Family Services argues that the court overlooked its evidence that for a period of not less than six months, B.F. and P.F. had continuously or repeatedly failed or refused to provide or had been substantially incapable of providing essential parental care and protection for the child and that there was no reasonable expectation of improvement in parental care and protection, considering the age of the child.

The trial court found three of the enumerated factors in KRS 625.090(2) to be relevant to this case: (1) 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; (2) that the parent, for a period of not less than six 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 (3) that the parent has caused or allowed the child to be sexually exploited.

The court then found that B.F. and P.F. had not fully complied with their case plan, and that at times, they were unable to provide a stable home for P.J.-R.F. However, the court stated that no witness testimony was provided by the Cabinet

demonstrating the inability to provide a nurturing, stable home, *which exceeded a six month duration* for each parent. (Emphasis added.)

Further, the court found that the observations of Paul Markle that P.J.-R.F. would be found in a fetal position sucking his thumb, suggested that there was an on-going emotional harm to the child. However, the court found that no qualified mental health professional testified that P.J.-R.F. was an emotionally abused child. Instead, the court found that the psychiatrist treating P.J.-R.F. testified that the father, P.F., had taken an interest in the child's care.

Finally, the court found that the testimony regarding sexual abuse was largely hearsay, and that while there was some record of P.J.-R.F. having been sexually molested, there was no testimony that B.F. was aware of any molestation of her son or that she failed to act to protect him. Thus, the court found that the Cabinet had not proved by clear and convincing evidence that one or more of the ten factors in KRS 625.090(2) existed with respect to P.J.-R.F.

Absent substantial proof to the contrary, we cannot disturb the trial court's finding that termination of parental rights was not justified in this case. We fail to see how the court's decision was clearly erroneous, given the specific findings of fact and conclusions of law set forth in its order. Accordingly, the decision of the Allen Family Court is hereby affirmed.

ALL CONCUR.

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