

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-000366-ME

T.S.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ELEANORE GARBER, JUDGE
ACTION NO. 07-AD-500299

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: LAMBERT, STUMBO, AND THOMPSON, JUDGES.

STUMBO, JUDGE: T.S. (hereinafter referred to as “Mother”)¹ appeals from an order of the Jefferson Circuit Court terminating her parental rights as to her minor children, referred to herein as “Child A” and “Child B,” upon finding that the statutory factors supporting termination were present. Mother argues that the

¹ An order of this Court rendered March 4, 2008, directed that the record in this matter shall remain confidential. The order reflected Court of Appeals Administrative Order No. 2006-01.

circuit court made several material errors of fact which necessitate that the orders be reversed or vacated. She also maintains that the circuit court improperly failed to meet the 30-day time requirement for rendering a final order as set out in KRS 625.090(6), thus requiring the orders at issue to be reversed or vacated. For the reasons stated below, we affirm the orders on appeal.

On September 7, 2007, the Cabinet for Health and Family Services (hereinafter “the Cabinet”) filed a Petition for Involuntary Termination of Parental Rights and Appointment of Guardian Ad Litem against Mother and her boyfriend “Father.” The petition alleged that the parties’ children - Child A and Child B - were abused and neglected children as defined in KRS 600.020, and that it was in the best interest of said children that the parental rights of Mother and Father be terminated.

After various procedural matters were addressed, a bench trial on the petition was conducted on November 29, 2007. On January 23, 2008, the court rendered its Findings of Fact and Conclusions of Law. The court found that on August 22, 2006, the Cabinet had filed verified dependency action petitions alleging that its representatives visited the residence of Mother on August 19, 2006, and found “urine all over the floor, dried up feces all over the floor and the children [then ages 1 and 3] were crawling around on the floor.” The officer stated that “there was broken glass in the bath tub and beer cans all over the house.” The affiant found roaches in the kitchen, a strong odor throughout the home, and noted

that Mother had been diagnosed with Tourette Syndrome and Schizoid Personality Disorder for which she was not on any medication.

In reciting the record, the court noted that a temporary removal hearing was conducted on August 30, 2006, resulting in an order that the children remain with the respondent parents. The order was conditioned on the parents cooperating with a “FORECAST” team and following its recommendations, Mother enrolling in counseling at Seven Counties Services, both parents remaining sober, the home being maintained in a clean and orderly condition, the children not to be left alone with the family dog, and no domestic violence.

The January 23, 2008, findings also noted that on November 9, 2006, the Cabinet filed verified dependency action petitions against Mother and Father alleging that on November 11, 2006, one of the children was injured when Father threw a tape measure at Mother during a confrontation and inadvertently struck the child in the head; that the parties were uncooperative with the Cabinet; that Father had a history of domestic violence; and that the parties had a long history of neglect and emotional injury against their children, resulting in their parental rights being terminated as to three other children. On January 24, 2007, the Family Court rendered an order committing Child A and Child B to the care and custody of the Cabinet upon finding that Mother lacked stable housing, employment or completion of the case plan, and that Father was not present and had not followed the case plan.

The circuit court also addressed the evidence presented at trial, noting that the Cabinet had engaged in reasonable attempts to reunite the family including the making of referrals to drug and alcohol abuse treatment; mental health assessment and counseling; FORECAST assessment; out-of-home care for the children; “First Steps” services for the children; anger management and domestic violence counseling; parenting classes; household management and budget counseling, and numerous other services. The court found that the parents had not participated in these services or had otherwise failed to make sufficient progress. In April, 2007, Mother’s treatment with Seven County Services was terminated due to her inability to address the issues raised by the Cabinet and her therapist.

After considering the record and the evidenced adduced at the November 29, 2007, hearing, on January 23, 2008, the court rendered its “Order Terminating Parental Rights and Order of Judgment,” and separate “Findings of Fact and Conclusions of Law” in support of the order. The court found that Father had abandoned the children, and that both Mother and Father had failed, refused or been substantially incapable of providing essential parental care to the children. It further found that despite reasonable efforts to unify the family, they engaged in a pattern of conduct which rendered them incapable of rendering care to the children,

it concluded that termination of the parties' parental rights was in the children's best interest, and termination was so ordered. This appeal followed.

Mother now argues that the circuit court made several material errors in its findings of fact which necessitate the reversal of the order on appeal.² She contends that the court incorrectly found that she failed to avail herself of the services being offered by the Cabinet; erroneously found that Mother failed to show any significant improvement; and, that the circuit court improperly failed to consider the children's young age. Mother also argues that the circuit court erroneously failed to meet the requirement set out in KRS 625.090(6) that parental termination proceedings be adjudicated within 30 days of the close of the evidence. In sum, she contends that cumulative effect of the errors demands that the order on appeal must be reversed or vacated.

We have closely examined the record and the law, and find no basis for reversing the order on appeal. As the parties are well aware, the elements of involuntary termination of parental rights are set out by statute. A circuit court may involuntarily terminate a party's parental rights if it finds by clear and convincing evidence that the child is abused or neglected as defined by statute; that the termination of parental rights is in the child's best interest; and, that at least one of statutorily enumerated factors exists. KRS 600.020; KRS 625.090.

² In her Notice of Appeal, Mother did not set out the name of the Appellee(s) either in the caption or the body of the notice as required by CR 73.03. While this might normally result in either a dismissal of the appeal or a show cause order arising from the failure to name a necessary party, the Cabinet's filing of a responsive brief demonstrated that the purpose of the rule (i.e., notice to the appellee) was satisfied. See generally, *Morris v. Cabinet for Families and Children*, 69 S.W.3d 73 (Ky. 2002).

In the matter at bar, evidence is set out in the record which reasonably supports the circuit court's findings of abuse or neglect. On November 29, 2006, Mother stipulated that the children were abused or neglected as defined by KRS 600.020(1). That stipulation refers to the November 9, 2006, petition which set out Mother's long history of neglect and emotional injury to both the three children for whom she previously lost parental rights as well as Child A and Child B. Also addressed in the petition to which Mother stipulated was the history of "environmental neglect," i.e., a home with urine and feces on the floor, roaches in the kitchen and broken glass in the bathtub; Mother's failure to appear for random drug screening; domestic violence leading to a child's injury; and "current uncooperativeness of pending CPS investigation."

Furthermore, even if the stipulation was not considered, the Cabinet tendered evidence at trial detailing the abuse and neglect which led to the termination of parental rights as to Mother's other three children, and demonstrated to the circuit court's satisfaction that

. . . the conditions or factors which were the basis for the previous termination finding have not been corrected. Specifically, despite the Cabinet's reasonable reunification efforts, the Respondent mother continue [sic] to exhibit a failure or inability to provide her children with essential parental care and protection, or to provide the basic necessities of food, shelter, clothing, medical care, or education that the children require. Moreover, once again Respondent mother has abused her children through her abusive relationships with men, her unclean and unsanitary living conditions and refusal to be compliant with mental health treatment.

Mother also argues that the circuit court improperly failed to consider the children's young age (then 1 and 3 years old) when adjudicating the termination issue. In referencing the phrase "considering the age of the child" set out in KRS 625.090(2), she states that "it stands to reason that the legislature meant that the parent of a young child should be given more leeway by the Court in determining whether significant improvement could be expected in the immediately foreseeable future."

KRS 625.090(2) sets out certain enumerated factors, one of which must be present to support termination. At issue is KRS 625.090(2) (g), upon which the court relied and which states 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"

Mother claims that the court improperly failed to consider the age of her children in its analysis, and that this failure requires reversal of the order on appeal. We disagree. In its Order Terminating Parental Rights and Order of Judgment, the court expressly "found by clear and convincing evidence that . . . there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the Petitioner child." This finding refutes Mother's claim that the children's age was not

considered as part of the court's KRS 625.090(2) (g) analysis, and we find no error on this issue.

Lastly, Mother argues that the circuit court failed to meet the 30-day time requirement for rendering a final order as set out in KRS 625.090(6), which - she maintains - requires the orders at issue to be reversed or vacated. While it is true that the court missed this 30-day period by an additional 24 days, nothing in the record indicates that Mother preserved this issue by raising it and giving the circuit court the opportunity to correct or mitigate it. Similarly, she does not cite to any published authority in support of her claim that reversal is required, nor reveal how she was harmed by the purported error. Mother has not overcome the strong presumption that the circuit court's ruling was correct, and any error arising from the time of the orders' release was harmless as it did not affect her substantial rights. CR 61.01. As such, we find no error.

For the foregoing reasons, we affirm the Order Terminating Parental Rights and Order of Judgment, and Findings of Fact and Conclusions of Law of the Jefferson Circuit Court.

ALL CONCUR.