

RENDERED: OCTOBER 17, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-000367-ME

C.R.M.J.

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE PAULA SHERLOCK, JUDGE
ACTION NO. 07-AD-500034

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF KENTUCKY;
M.R.J., A CHILD; AND
C.M.H., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: LAMBERT, STUMBO, AND THOMPSON, JUDGES.

THOMPSON, JUDGE: C.R.M.J. (Mother) appeals from the Jefferson Family Court's January 31, 2008, judgments terminating her parental rights to her two infant children, M.R.J. and C.M.H. For the reasons stated herein, we affirm.

On July 19, 2006, Mother placed her two children in the care of a friend and checked into a mental health facility for treatment for her bipolar disorder. After the Cabinet was notified, an emergency custody order was issued on behalf of the children on July 31, 2006. At the temporary removal hearing on August 3, 2006, the children were placed in the custody and care of the Cabinet because Mother was unable to find an appropriate relative to assume temporary custody of the children.

The family court ordered that Mother receive a Jefferson Alcohol and Drug Abuse Center (JADAC) evaluation and follow the recommendations resulting from the evaluation. Mother was further ordered to attend counseling, take all her medications, obtain a FORECAST assessment, and exercise supervised visitation with her children. Several weeks later, Mother entered a stipulation that the children were abused and neglected as defined by KRS 600.020(1). In the stipulation, Mother admitted that her mental health issues and illegal drug use rendered her incapable of caring for her children.

On February 5, 2007, the Cabinet filed a petition for the involuntary termination of Mother's parental rights to both children. Additionally, the Cabinet filed a petition to involuntarily terminate the parental rights of the children's fathers. They did not contest the action nor have they appealed. On June 13, 2007, the family court conducted an involuntary termination hearing.

During the hearing, Sky Tanghe, a Cabinet social worker responsible for providing social services to Mother and her children, testified that Mother was

provided an opportunity to receive drug treatment at JADAC and began treatment on September 18, 2006. However, less than three weeks later, Mother used drugs and was referred to an in-patient drug treatment facility. On October 14, 2006, Mother left the facility and returned to JADAC.

Less than a month later, Mother again admitted to using drugs and JADAC recommended that Mother return to an in-patient facility. Mother entered an in-patient facility, complied with her treatment, and was discharged one month later.

Tanghe testified that Mother was then referred to a half-way house because she was concerned about Mother's lack of stable housing. Mother did not cooperate at her first meeting at the half-way house and did not return for any further meetings.

On February 5, 2007, Mother tested positive for opiates, cocaine, and amphetamines and was referred to the Healing Place. She was soon discharged because she was not taking her medications. Tanghe then scheduled Mother a Volunteers of America (VOA) assessment and made a referral for intensive outpatient rehabilitation. However, two weeks into her treatment, Mother again tested positive for drugs.

Subsequently, Mother was hospitalized for cutting and, after her release, returned to VOA. However, on June 5, 2007, the VOA discharged Mother due to a positive drug screen and noncompliance with its program. Mother was then referred to Seven Counties but was discharged due to noncompliance. Tanghe

testified that Mother had not stopped using drugs and continued to suffer from mental illness. Tanghe further testified that Mother had no permanent home and was homeless at the time of the involuntary termination hearing. Mother was unemployed during the pendency of her case. Tanghe testified that the children were doing well in foster care and bonded with their foster parents to whom they referred to as mommy and daddy. She testified that the foster parents had likewise bonded with the children and expressed their desire to adopt them.

During her testimony, Mother recognized that she has a drug problem, failed to take her medications and maintain employment. She testified that she discontinues her medications when they make her feel normal but realizes this is a mistake. She admitted that she used drugs one week prior to the involuntary termination hearing and that she must complete a drug rehabilitation program and maintain her sobriety before she can parent her children. Although she testified that she would re-enter the Healing Place immediately following the hearing, she did not re-enter the facility. After the involuntary termination hearing, the family court issued extensive findings of fact and conclusions of law and two orders terminating Mother's parental rights to the children. This appeal followed.

Mother contends that the family court's finding that the children were "abused or neglected" is not supported by clear and convincing evidence. She contends that she stipulated that her children were abused or neglected during the dependency proceeding under the preponderance of the evidence which was insufficient to support termination of her parental rights. Further, she contends that

the Cabinet did not present sufficient evidence to support the finding that the children were neglected or abused. We disagree.

When reviewing a family court's decision to terminate parental rights, we review the decision, to determine if it was based upon clear and convincing evidence, under the clearly erroneous standard set forth in Kentucky Rules of Civil Procedure (CR) 52.01. *K.R.L. v. P.A.C.*, 210 S.W.3d 183, 187 (Ky.App. 2006). “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.” *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 117 (Ky.App. 1998)(quoting *Rowland v. Holt*, 253 Ky. 718, 726, 70 S.W.2d 5, 9 (1934)).

After reviewing the record, we conclude that the family court's finding was supported by substantial evidence. Tanghe testified that Mother was seriously dependant on drugs. Mother testified that she needed to stop using drugs before she could properly parent her children but failed to do so after repeated opportunities. The family court found that the children were abused and neglected because Mother engaged in a pattern of alcohol and drug abuse that rendered her incapable of caring for the immediate and ongoing needs of her children. This finding was supported by clear and convincing evidence and was a proper ground to find abuse or neglect pursuant to KRS 600.020(1)(c).

Moreover, the family court found that Mother's chronic unemployment despite her ability to work and her failure to find stable housing despite the assistance of the Cabinet were sufficient to support its finding that the children were neglected or abused. Under KRS 600.020(1)(d), a parent who continuously or repeatedly fails to provide essential parental care and protection for a child can be adjudged to have neglected or abused their child. Based on these facts, there was sufficient evidence that the Mother continuously or repeatedly failed to provide such care to her children.

While Mother contends that the Cabinet did not establish that there was no reasonable expectation she would continue to abuse drugs, Tanghe, who worked for the Cabinet for ten years and in the Cabinet's drug program for five years, testified that there was no reason to believe that Mother would improve. The record supports her conclusion because Mother made minimal improvement, if any, in getting herself in a position to properly care for her children. She was unemployed and homeless at the time of the hearing, and she used drugs a week prior to the hearing.

Based on the Cabinet's efforts to help Mother reunite with her children and Mother's repeated failures to utilize these opportunities, the family court did not err when it found that Mother's children were abused or neglected as defined in KRS 600.020(1).

Mother next contends that the family court erred when it admitted evidence outside of the record. Specifically, Mother contends that the Cabinet was

permitted to submit revised findings of fact and conclusions of law into the record following the trial. Mother contends that this was impermissible because extraneous facts were used to determine the outcome of the case. We disagree.

During Mother's testimony, she informed the family court that immediately following the hearing she would be entering the Healing Place, and Mother's counsel informed the family court that it would be informed if Mother completed her drug treatment. Thus, Mother's own actions permitted the record to remain open for the submission of additional facts.

Moreover, Mother has not cited any evidence relied upon by the family court which was not in the record prior to the conclusion of the hearing. Although courts should not consider extraneous evidence, such evidence does not necessitate reversal unless relied upon in reaching the court's decision. *Prater v. Cabinet for Human Resources*, 954 S.W.2d 954, 959 (Ky. 1997). Because the family court's findings were based on the evidence introduced at the hearing, we conclude that its failure to strike the revised findings of fact and conclusions of law was not reversible error.

For the foregoing reasons, the two judgments of the Jefferson Family Court terminating Mother's parental rights are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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