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# Commonwealth of Kentucky

# Court of Appeals

NO. 2009-CA-001765-ME

M.G. APPELLANT

v. APPEAL FROM ESTILL CIRCUIT COURT
HONORABLE THOMAS P. JONES, JUDGE
ACTION NO. 09-AD-00002

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; AND S.A.G., AN INFANT APPELLEES

AND NO. 2009-CA-001827-ME

G.B. APPELLANT

v. APPEAL FROM ESTILL CIRCUIT COURT
HONORABLE THOMAS P. JONES, JUDGE
ACTION NO. 09-AD-00002

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; AND S.A.G., AN INFANT APPELLEES

AND NO. 2009-CA-001834-ME

G.B. APPELLANT

APPEAL FROM ESTILL CIRCUIT COURT
v. HONORABLE THOMAS P. JONES, JUDGE
ACTION NO. 08-AD-00004

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; K.D.B., AN INFANT;
T.L.B., AN INFANT; AND D.L.B.,
AN INFANT APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON AND KELLER, JUDGES; BUCKINGHAM,[1] SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: This case involves three appeals of separate orders terminating the parental rights of the parents of four children. Appellant G.B. is the biological mother and R.B. is the biological father of three of the children: K.D.B., T.L.B., and D.L.B. The Estill Circuit Court entered orders on

[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 Kentucky Revised Statutes (KRS) 21.580.

August 26, 2009, terminating the parental rights of G.B. and R.B. as to those three children. Appellant G.B. appealed from the orders, but R.B. did not. Appellant G.B. and Appellant M.G. are the biological parents of S.A.G. The Estill Circuit Court also entered orders on August 26, 2009, terminating their parental rights as to S.A.G. Appellant G.B. and Appellant M.G. filed separate appeals from those orders. Appellant G.B and Appellant M.G. allege the court erred in terminating their respective parental rights. We disagree and thus affirm.

Following a routine home visit by a state worker in January 2005, T.L.B. and D.L.B were removed from the residence occupied by G.B. and R.B., who was G.B.'s husband. The district court found that substantial environmental risks factors, including animal feces on the floor and exposed wires, made the residence unsafe for the children. G.B. and R.B. both stipulated to neglect of the children.

At the time the two children were removed, G.B. was pregnant with K.D.B. When K.D.B. was born, that child was placed in state custody due to ongoing sanitary problems with the home and the parents' lack of preparations to take the baby home and care for it properly. G.B. and R.B. separated shortly after the birth of K.D.B. although they have never divorced.

G.B. later gave birth to S.A.G. Although G.B. and R.B. were married at the time, paternity testing showed that M.G. is S.A.G.'s biological father. S.A.G. was removed from the custody of G.B. and M.G. in November 2006 because neither parent was able to provide proper care.

G.B. contends that it was error to remove the children from her custody and terminate her parental rights because she did not have legal counsel at the initial district court hearing where she admitted to neglect and because there was insufficient proof to terminate her parental rights. M.G. argues that termination of his parental rights regarding S.A.G. was improper because there was never a finding that he neglected the child and because there was insufficient proof regarding his progress in completing his case plan so as to enable the child to be returned to him.

When we review a termination of parental rights action, we will affirm unless the trial court's decision was clearly erroneous or lacking in clear and convincing evidence. *M.P.S. v. Cabinet for Human Resources,* 979 S.W.2d 114, 116 (Ky. App. 1998). We must determine whether the trial court's decision was "supported by substantial evidence." *M.E.C. v. Commonwealth,* 254 S.W.3d 846, 850 (Ky. App. 2008).

As it relates to G.B. and S.A.G., on November 20, 2006, a state worker inspected the home following a domestic dispute and found it unsuitable and unsafe for S.A.G., then three-months old. There were clear signs of a domestic disturbance, including holes in the wall, and the child was very dirty with blackheads on his face and chin. Further, the child's sleeper was filthy, and there were many dirty baby bottles with clabbered milk in them, no suitable baby bed, and inappropriate stage II baby food. The child was removed from the home at that time.

G.B. was thereafter put on a case plan with the Cabinet in an effort to have the child returned to her custody. Ultimately, the Cabinet felt her efforts were lacking or unsuccessful, and termination of her parental rights was sought in the circuit court. Evidence at the termination hearing supported the petition to terminate. G.B. failed to take the child to scheduled appointments for treatment of a club foot, failed to maintain a sanitary and hazard free home, and missed visitation periods with the child. G.B. also failed to complete the mandated parenting assessment in a timely manner, was unable to complete any domestic violence counseling, made little to no progress in obtaining her GED, and did not complete birth control education. The trial court acknowledged the tasks she had completed or attempted, including finding steady employment, but found "no reasonable expectation of improvement in parental care and protection[.]" Having reviewed the record, we conclude that the trial court's decision was supported by substantial evidence.

As it relates to G.B. and the other children, there had been some improvement such as retaining suitable employment, yet the children remained in jeopardy. G.B. stated she was not sure she needed parenting classes. One child had exhibited sexual behavior, yet G.B. planned to have that child sleep with another child of the opposite sex if the children were returned to her. Further, there was testimony that G.B. was sporadic in her visits with the children and that G.B. had never attended and completed the domestic violence classes that she was required by her case plan to attend. Also, there was testimony that G.B. had not

completed additional requirements of her case plan that included completing her GED and consulting with the local health department concerning birth control. The trial court found "no reasonable expectation of significant improvement in the parents' conduct in the immediately foreseeable future[.]" Again, we reviewed the record and conclude that the trial court's decision was supported by substantial evidence.

G.B also contends that her rights to due process were violated because she does not know if a lawyer was appointed to represent her at the initial hearing in district court where she stipulated the children were neglected as defined in Kentucky Revised Statutes (KRS) 600.020. As we have noted, there were two termination cases: one involving the three children G.B. had by R.B. and one involving the child G.B. had by M.G.

District court records clearly list an attorney for the hearing in Estill County, and her own testimony affirmed the fact that she had counsel. The case involving S.A.G., however, began in the Clark County District Court. Her testimony regarding that case is cloudy. At one point she could not remember whether or not she had counsel. At another point she was just unable to remember the name of her lawyer. She also testified that someone told her she had an attorney but that he rarely "showed up."

It is not sufficient to rely on a lapse of memory to mount a due process violation challenge. The circuit court found the necessary elements to terminate her parental rights. The findings and orders of that court are silent

regarding whether or not she was represented by counsel at the initial hearing in the district court. Had there been a question regarding her representation, it was incumbent on G.B. to request a specific finding from the circuit court. *See Vinson v. Sorrell,* 136 S.W.3d 465, 471 (Ky. 2007). She did not do so.

Regarding the parental rights of M.G. to S.A.G., as we have noted, the child was removed from the home and placed in state custody on November 20, 2006. Although he was assisted by Cabinet for Health and Family workers, M.G. was not able to prove paternity by DNA testing until June 4, 2007. He was then given a case plan to follow in an effort to have the child returned to his custody. By that time, however, the district court had already made a finding that the child was neglected. M.G. contends that it was improper to terminate his parental rights as he was never before the district court and there was no finding that he had neglected the child.

KRS 600.010(g) provides that the protections of the juvenile code "belong to the child individually." When a neglect action is filed in the district court, the subject is the child. *See* KRS 620.070(1). The district court determines whether the child is neglected. KRS 625.090(1). There is nothing that requires the neglect be attributed to any specific person. The circuit court found S.A.G. was a neglected child pursuant to KRS 600.020(1). The question of who were the biological parents had no bearing on the neglect determination.

Following a determination that M.G. was not satisfactorily progressing in the completion of his case plan, an action was filed to terminate his

parental rights to S.A.G. The circuit court ultimately found termination of parental rights was in the best interest of the child. Having reviewed the record, we conclude there was sufficient evidence to support this conclusion. *See M.E.C. v. Commonwealth,* 254 S.W.3d 846, 850 (Ky. App. 2008).

The court reviewed M.G.'s progress toward insuring a safe and sanitary environment for the child and found him lacking. He failed to complete parenting assessment and also parenting classes. Although he was prepared to maintain adequate housing, he was unable to exhibit appropriate parenting skills during visitation sessions with the child. Further, there was evidence that M.G. failed to complete the Comprehensive Care assessment that was also a part of his case plan. Again, there was sufficient evidence to support the determination of the circuit court, and this court will not interfere. *Id.*

While G.B. and M.G. claim to have made progress, the fact is the trial court found that over the last few years their efforts fell much short. There was sufficient evidence before the trial court to warrant termination of the parental rights of each parent. As in the case of *V.S. v. Com., Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky. App. 1986), "[t]he proof in this case lies in past performance. The risks are too great to experiment further with the children's future."

The orders of the Estill Circuit Court terminating the parental rights of G.B. regarding the children T.L.B., D.L.B, and K.D.B., and G.B. and M.G. regarding S.A.G., are affirmed.

ALL CONCUR.

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