

RENDERED: FEBRUARY 11, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001176-ME

C. M., MOTHER

APPELLANT

v.

APPEAL FROM HART CIRCUIT COURT
HONORABLE JOHN DAVID SEAY, JUDGE
ACTION NO. 09-AD-00014

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; M. C. P., A MINOR CHILD
AND C. M. P., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; STUMBO, JUDGE; LAMBERT,¹ SENIOR
JUDGE.

LAMBERT, SENIOR JUDGE: C.M. is the biological mother of the two children,

M.C.P and C.M.P. Her parental rights were terminated and the children were

¹ Senior Judge Joseph E. Lambert 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.

declared wards of the state. She appeals from that determination and upon review of the record, we affirm the judgment of the Hart Circuit Court.

A jury found C.M. guilty of one count of incest and one count of rape in the third degree and sentenced her to serve 10 years. The biological father of the children who are the subjects of this appeal petitioned for a voluntary termination of his parental rights which was granted by the Hart Circuit Court. After attempting to work with C.M.'s family, particularly the children's aunt, as an alternative placement of the children, the Cabinet for Health and Family Services determined that it was in the best interest of the children for the mother's parental rights to be terminated also, and for the children to become wards of the state.

C.M. argues that the Cabinet failed to act in good faith and did not exercise ordinary care when considering the children's aunt for placement. C.M. refers to the Cabinet's decision to no longer consider the aunt as a potential placement of the children as capricious. We disagree. The Cabinet initially did consider placement of the children with the aunt. During the period of evaluation however, three events formed a pattern the Cabinet determined not to be in the best interest of the children.

At one point, the aunt took one of the children and the child's grandmother to the Hart County Jail. The child stayed in the car with another adult while the aunt and grandmother visited C.M. Additionally, the aunt's oldest niece

provided a cell phone to one of the children in order for the child to call the grandmother. There was at the time, a no contact order in place prohibiting such communication. The third event involved the aunt driving past a site with the children in the vehicle where much of the sexual abuse had taken place.

Testimony indicated this caused a significant setback in the emotional health of at least one of the children.

The standard used to decide the termination of parental rights is the best interest of the child. Kentucky Revised Statute (KRS) 625.100(1). C.M. acknowledges that placement with a relative is an option and not a requirement. *M.E.C. v. Commonwealth of Kentucky, Cabinet for Health and Family Services*, 254 S.W.3d 846, 852 (Ky.App. 2007); *R.C.R. v. Commonwealth*, 988 S.W.2d 36, 40 (Ky.App. 1999). In fact, the Cabinet tried placement with the aunt and it was during that time the three events previously detailed occurred. The aunt clearly was unable to successfully juggle the interests of herself, her sister, her mother and the children. She failed to be able to control the environment and place the best interests of the children at the forefront. We are not sure anyone could have accomplished such a Herculean task in the situation her sister's acts and decisions had created.

We will not reverse the judgment of the circuit court unless we believe substantial evidence is lacking to support the trial court's decision. *V.S. and H.S. v. Commonwealth of Kentucky, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky.App. 1986). Here, it was clear that the aunt was unable to

place the best interest of the children foremost. That failure occurred repeatedly.

The burden is upon C.M. to show the trial court's determination was clearly erroneous. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (1998).

She has not met that burden and we therefore affirm the decision of the Hart Circuit Court

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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