

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-000088-ME

A.K.R.-A.-R.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE TIMOTHY NEIL PHILPOT, JUDGE
ACTION NO. 10-AD-00048

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY, IN RE I.P.Q.-R., A CHILD;
AND M.A.R.-A JR., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, STUMBO, AND THOMPSON, JUDGES.

CLAYTON, JUDGE: This is an appeal of the termination of the Appellant's
parental rights. Based upon the foregoing, we affirm the decision of the Fayette
Circuit Court.

FACTUAL BACKGROUND

Appellant is the mother of two children, M.A.R-A, Jr. (born August 15, 2007) and I.P.Q-R (born on December 27, 2005). On June 21, 2008, the Cabinet for Health and Family Services (the Cabinet) filed a petition to remove custody of both children from the Appellant alleging that they were physically abused and had been left with caretakers who were inappropriate. Emergency custody orders were taken out and the children were removed from Appellant's care on that day.

On June 23, 2008, the court granted temporary custody to the Cabinet and the children were placed in foster care. On July 9, 2008, an adjudication hearing was held and the children were found to be neglected, so custody remained with the Cabinet. On November 18, 2009, the court found that the children should be made eligible for adoption, finding that further reasonable efforts were not necessary pursuant to Kentucky Revised Statutes (KRS) 610.127. On May 5, 2010, the Cabinet filed a termination of parental rights action and Appellant was appointed a warning order attorney (WOA) since her address was unknown. The WOA filed a report on June 24, 2010, setting forth that his letter to Appellant was returned undelivered and a trial was set for July 26, 2010.

On July 30, 2010, Appellant was appointed counsel and the trial was rescheduled to September 13, 2010. At trial, various witnesses testified on behalf of the Cabinet and the Appellant testified on her own behalf. The court ordered that a Comprehensive Assessment and Testing Service Assessment be made of the

family. On November 22, 2010, the appointed *guardian ad litem* filed a supplemental report supporting her prior recommendation that Appellant's rights be terminated. On December 13, 2010, the court entered findings of fact and conclusions of law terminating Appellant's parental rights of both children. The Appellant then filed this appeal.

STANDARD OF REVIEW

Kentucky Rules of Civil Procedure (CR) 52.01 provides that “[f]indings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses.” *J.M.R. v. Commonwealth, Cabinet for Health and Family Services*, 239 S.W.3d 116, 120-121 (Ky. App. 2007). Findings are considered to be clearly erroneous if they are manifestly against the weight of the evidence. *Frances v. Frances*, 266 S.W.3d 754, 756 (Ky. 2008); *Wells v. Wells*, 412 S.W.2d 568, 571 (Ky. 1967). With this standard in mind, we review the trial court's decision.

DISCUSSION

The Cabinet presented evidence through several witnesses. Its first witness, Tonya Campbell, had been a social worker on the case when the children were removed from the Appellant. Campbell testified that one child had burns, cuts and scratches, and that when asked about them, he stated that his mother had burned him. Campbell also testified that Appellant had left the children with four inappropriate caretakers in one week.

Vanessa Gonzalez also testified on behalf of the Cabinet. Gonzalez was the social worker assigned to the case at the time of the termination hearing. She set forth that Appellant had been determined to be negligent and that reasonable efforts had been made to reunite the family, but that the permanent plan for the children should be adoption since no further efforts were deemed to be reasonably necessary. Gonzalez testified that Appellant suffered from mental health issues including depression, major depressive disorder with suicidal ideations and borderline personality disorder. Other evidence supporting termination was Appellant's failure to comply with drug testing and a domestic violence order that was issued to the Appellant's mother.

While various treatment programs and options were offered to Appellant through the Cabinet, there was evidence that she did not complete them prior to the court's ruling. The Cabinet also entered evidence that the children had maintained residence in one foster home since June of 2008, and that their foster parents were eligible and interested in adopting them. The court also found that Appellant's transient lifestyle as well as her inability to care for the children financially in the foreseeable future indicated her rights should be terminated.

After a final report filed by the *guardian ad litem*, the trial court determined that Appellant's parental rights should be terminated. We do not find the court's findings to be clearly erroneous. As set forth above, there has been a finding of abuse and neglect by the Appellant with both children. She has not completed the programs offered for reunification in a timely manner and she failed

to show at the hearing that she could support her children. In fact, the court found that she had not paid the child support for the children that she had been ordered to pay.

While Appellant contends that her mother should have been a foster parent for the children, grandparents do not have standing to intervene in a termination of parental rights action. *Commonwealth, Cabinet for Health and Family Services v. L.J.P.*, 316 S.W.3d 871, 875-876 (Ky. 2010). Thus, we find that the trial court did not err in terminating Appellant's parental rights. The decision of the Fayette Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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