

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-000731-ME

V.J., MOTHER

APPELLANT

v. APPEAL FROM MCCRACKEN FAMILY COURT
HONORABLE CYNTHIA E. SANDERSON, JUDGE
ACTION NO. 10-AD-00027

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
C.L.J., A CHILD; J.E.J. JR., A CHILD; AND
N.J.J., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: KELLER, LAMBERT, AND STUMBO, JUDGES.

KELLER, JUDGE: V.J. (Mother) appeals, *pro se*, from the McCracken Family Court's order terminating her parental rights to her three sons: J.E.J., born May 18, 2003; C.L.J., born July 1, 2005; and N.J.J., born April 13, 2008. Although it is not clear, it appears that Mother is arguing that the family court's order was not

supported by sufficient evidence to warrant termination. The Cabinet for Health and Family Services (the Cabinet) argues that there was substantial evidence to support the court's determination. Having reviewed the record, we affirm.

FACTS

The Cabinet became involved with this family in the fall of 2008, following receipt of complaints of lack of parental supervision. On March 18, 2009, the children entered into the care of the Cabinet because of alleged domestic violence between the parents; parental inattention to the children's needs; placement of the children with inappropriate caregivers; and the behavior exhibited by the children due to parental neglect. Following a hearing on April 16, 2009, the family court found that the children were neglected and, on May 21, 2009, the children were committed to the Cabinet for placement in foster care. One year later, the court entered an order changing the goal from family reunification to adoption.

On November 12, 2010, the Cabinet filed a petition for involuntary termination of the parental rights of Mother and J.E.J. (Father) to their children, and the family court held a hearing on March 18, 2011. We summarize the relevant testimony from the hearing below.

Trish Estes (Estes), an investigative worker with the Cabinet, testified that she first responded to calls regarding the family in October 2008 after a report of lack of supervision was made by police officers. Specifically, the children were reported playing in the roadway while Mother was asleep and not supervising

them. Estes testified that the report was substantiated as a result of the lack of supervision.

Estes further testified that there were concerns about the children's education. Specifically, there were concerns regarding the children not attending school, one child had an individualized education plan (IEP)¹ but was not getting his educational needs met, and the parents withdrew the eldest child from school because he was allegedly being bullied. There were also concerns regarding Mother not appropriately disciplining the children and not developing appropriate discipline techniques.

Estes also testified that she made a referral to the Family Preservation Program and to First Steps. Both programs made efforts to provide services to the family. Family Preservation was forced to close the case due to the failure of the parents to cooperate. Additionally, the parents refused the First Steps referral altogether.

Estes testified that she filed a petition seeking removal of the children in January 2009, and the court ordered services and left the children in the home. Thereafter, Estes prepared the case to be transferred to an ongoing worker. However, in March 2009, the Cabinet received a report that Father was selling prescription drugs out of the home and leaving the children with an inappropriate

¹ The Individuals with Disabilities Education Act (IDEA) requires each child with a disability to receive an IEP to meet his or her unique needs. 20 U.S.C. § 1414.

caregiver. Estes testified that the caregiver's parental rights to her own children had been terminated.

During the same time period, Mother filed a domestic violence petition against Father, and Father filed a domestic violence petition against Mother. Father later requested dismissal of his petition against Mother. In Mother's petition, she alleged that Father threatened her by telling her he would hurt her if she did not give him her pills. She also alleged that she was afraid of Father and felt that he would beat her, kill her, and take the children away. On March 18, 2009, the children entered into the care of the Cabinet.

Ann Veatch (Veatch), a social service aide, testified that she supervised the parents' visits with their children for approximately one year. Veatch testified that the parents had visits with the children approximately two times per month. According to Veatch, Mother did not have much control over the children and at times did not seem like she wanted much to do with the children. Veatch further testified that Father was the more nurturing parent.

Duane Holland (Holland), a social services clinician for the Cabinet, testified that he was assigned as the ongoing social worker for the family and that Estes transferred the case to him. Holland testified that a part of Mother's case plan required her to take parenting and domestic violence classes. According to Holland, Mother completed the parenting class, and Mother told him in January 2010 that she had completed the domestic violence class. Holland later learned that Mother had not even started the domestic violence class.

Additionally, Holland testified that, at the visitations he had supervised, Mother was not involved with the children. According to Holland, Mother often took a “back seat” and was unable to control the children.

Holland further testified that Mother was living in a homeless shelter and Father was in jail. Holland testified that he could not state with certainty the number of different addresses the parents have had since the children had entered foster care because it had been too many. He also stated that the parents’ marriage was unstable; that Mother receives disability benefits; and that he believes, for reasons other than poverty alone, Mother was unable to provide for the children. Finally, Holland testified that he would not feel comfortable returning the children to Mother or Father.

Mother testified that she never missed a visitation with her children. She also testified that she is living at the Merryman House and that the children would be able to live with her there. Mother further testified that she is taking classes at the Merryman House, but was unable to state what she has learned in those classes.

Following a hearing on March 18, 2011, the family court granted the Cabinet’s petition and terminated Mother’s and Father’s parental rights. Mother alone appealed from the court’s ruling. Additional facts are set forth as necessary below.

STANDARD OF REVIEW

The standard of review in a termination of parental rights case is set forth in *M.E.C. v. Commonwealth, Cabinet for Health & Family Services*, 254 S.W.3d 846, 850-51 (Ky. App. 2008) as follows:

[T]his Court's standard of review in a termination of parental rights case is the clearly erroneous standard found in Kentucky Rules of Civil Procedure (CR) 52.01, which is based upon clear and convincing evidence. Hence, this Court's review is to determine whether the trial court's order was supported by substantial evidence on the record. And the Court will not disturb the trial court's findings unless no substantial evidence exists on the record.

Furthermore, although termination of parental rights is not a criminal matter, it encroaches on the parent's constitutional right to parent his or her child, and therefore, is a procedure that should only be employed when the statutory mandates are clearly met. While the state has a compelling interest to protect its youngest citizens, state intervention into the family with the result of permanently severing the relationship between parent and child must be done with utmost caution. It is a very serious matter.

(Citations omitted).

ANALYSIS

On appeal, Mother argues that the family court erred in terminating her parental rights. As set forth below, we disagree.

Kentucky Revised Statute(s) (KRS) 625.090 governs involuntary termination of parental rights proceedings. This statute permits a family court to terminate parental rights only under limited circumstances. First, the family court must find by clear and convincing evidence that a child is or has been previously

adjudged abused or neglected. KRS 625.090(1)(a). The court must also find by clear and convincing evidence that termination would be in the child's best interest. KRS 625.090(1)(b). Finally, the family court must find by clear and convincing evidence the existence of one or more of the grounds for termination that are enumerated in KRS 625.090(2)(a)-(j).

In its order terminating Mother's parental rights, the family court concluded that the children were abused or neglected children as defined in KRS 600.020(1). The family court also found that Mother had failed to provide essential parental care and protection for the children for a period of not less than six months, and that there was no reasonable expectation of improvement in her parental care and protection considering the ages of the children. KRS 625.090(2)(e). Additionally, the family court found that Mother had continuously or repeatedly failed, for reasons other than poverty alone, to provide the children's necessities and that there was no reasonable expectation of significant improvement in her conduct in the immediately foreseeable future. KRS 625.090(2)(g). The family court further found that the children had been in foster care under the responsibility of the Cabinet for fifteen of the most recent twenty-two months. KRS 625.090(2)(j). Finally, the family court concluded that termination of Mother's parental rights was in the best interests of the children.

Although it is unclear, it appears that Mother is arguing that there was not substantial evidence to support the family court's finding that grounds for

termination existed and that termination of her parental rights was in the best interests of the children.

As set forth above, the family court must find by clear and convincing evidence the existence of one or more of the grounds for termination that are enumerated in KRS 625.090(2)(a)-(j). First, we believe that there was substantial evidence to support the family court's finding that, pursuant to KRS 625.080(2)(e), Mother failed to provide essential care and protection for her children for a period of not less than six months, and that there was no reasonable expectation of significant improvement. Specifically, at the hearing, there was testimony that Mother was not supervising the children prior to the children being removed. Additionally, there was testimony that, during supervised visits, Mother was unable to control the children. Additionally, Mother refused to cooperate with the Family Preservation Program and First Steps. Further, since the two years that the children had been placed in foster care, Mother had made minimal efforts to try to complete her case plan.

Furthermore, we believe the record supports the family court's finding that, pursuant to KRS 625.090(2)(g), for reasons other than poverty alone, the mother failed to provide the children's necessities and that there is no reasonable expectation of significant improvement in her conduct. As noted by the family court, Mother did not keep a stable residence, a finding supported by Holland's testimony that, since the children had been in foster care, the parents had lived at too many addresses to list.

Additionally, there was substantial evidence to support the family court's finding that, pursuant to KRS 625.090(2)(g), the children have been in foster care under the responsibility of the Cabinet for fifteen of the most recent twenty-two months preceding the filing of the petition to terminate Mother's parental rights. Specifically, the record reflects that the children entered foster care on March 18, 2009, and the petition was filed on November 10, 2010.

We also believe that there was substantial evidence to support the family court's conclusion that termination of Mother's parental rights was in the best interests of the children. KRS 625.090(3) provides that, in determining the best interest of the child and the existence of a ground for termination, the family court shall consider the following factors:

(c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court;

(d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child[.]

As noted above, in the two years that the children were in foster care, Mother had made minimal efforts to try to complete her case plan. Additionally, Mother did not maintain a stable residence. Based on the preceding, we believe

there was substantial evidence to support the family court's conclusion that termination of Mother's parental rights was in the best interests of the children.

CONCLUSION

For the foregoing reasons, we affirm the order of the McCracken Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

V.J., *pro se*
Paducah, Kentucky

BRIEF FOR APPELLEE:

Dilissa G. Milburn
Mayfield, Kentucky