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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2011-CA-001082-ME

D.C.R. APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE DONNA DELAHANTY, JUDGE
ACTION NO. 10-AD-500338

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; D.M.C.; AND Q.C.C. APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, STUMBO, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: D.C.R. appeals from the May 18, 2011, Jefferson Circuit Court, Family Court Division's order terminating his and D.M.C.'s parental rights to their minor child, Q.C.C. Because we hold that the family court's findings are supported by substantial evidence, we affirm.

D.C.R. and D.M.C. are the biological parents of minor child Q.C.C. The child was born on September 10, 2001. Beginning as early as 2008, D.C.R. failed to have any contact with Q.C.C. On April 18, 2008, the Cabinet for Health and Family Services (Cabinet) filed a verified dependency action alleging that Q.C.C. was an abused or neglected child, within the meaning of Kentucky Revised Statutes (KRS) 600.020(1), due to educational and medical neglect. At that time, the child was permitted to remain in D.M.C.'s custody as long as she was compliant with court orders. On July 31, 2008, D.M.C. stipulated that Q.C.C. was abused or neglected within the meaning of KRS 600.020(1). At that time, the family court continued all prior orders and also ordered that D.C.R. have no contact with the child pending further orders of the court.

On October 16, 2009, the Cabinet filed another verified dependency action alleging that Q.C.C. was an abused or neglected child, within the meaning of KRS 600.020(1), due to educational and medical neglect. This action was taken after the child was found alone and unclothed from the waist down in a vehicle parked outside a motel room where D.M.C. had been arrested for endangering the welfare of a minor. The Cabinet's petition also alleged that D.M.C. had failed to administer Q.C.C.'s medications and failed to have him attend school, both in violation of current court orders. Q.C.C. was then placed in the care of the Cabinet on October 22, 2009, where he has remained to the present date. D.M.C. again stipulated that Q.C.C. was an abused or neglected child within the meaning of KRS 600.020(1) on January 28, 2010.

On December 7, 2010, the Cabinet filed a petition seeking the involuntary termination of both D.C.R.'s and D.M.C.'s parental rights to Q.C.C. A bench trial was held on April 27, 2011. The family court subsequently issued its findings of fact and conclusions of law and corresponding order terminating parental rights, which were entered on May 18, 2011. This appeal follows.

Court-ordered termination of parental rights is governed by KRS 625.090(1), which permits termination when:

> (a) 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;
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> 2. The child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding; or
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> 3. The parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that physical or sexual abuse, neglect, or emotional injury to the child named in the present termination action is likely to occur if the parental rights are not terminated; and
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> (b) Termination would be in the best interest of the child.

KRS 625.090(2) further requires that the family court find, by clear and convincing evidence, the existence of one or more of ten criteria which, in relevant part to this appeal, include:

> (a) (t)hat the parent has abandoned the child for a period of not less than ninety (90) days;
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> . . .

> (e) (t)hat the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;
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> . . .
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> (g) (t)hat the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child; [or]
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> . . .
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> (j) (t)hat the child has been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights.

"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." *Rowland v. Holt*, 253 Ky. 718, 726, 70 S.W.2d 5, 9 (1934).

When reviewing a family court's termination of parental rights, this Court employs the clearly erroneous criteria of Kentucky Rules of Civil Procedure 52.01 and we will not disturb the family court's findings if they are supported by substantial evidence. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114

(Ky. App. 1998)(*citing V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky. App. 1986)).

In the case presently before us, the family court's judgment terminating parental rights contained very thorough findings including the following: 1) that D.C.R. had abandoned Q.C.C.; 2) that D.C.R., for a period of not less than six months, continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for Q.C.C. and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child; 3) that D.C.R., for reasons other than poverty alone, had continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for Q.C.C.'s well-being and that there was no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child; and 4) that Q.C.C. has been in foster care under the supervision of the cabinet for fifteen of the most recent twenty-two months preceding the filing of the petition to terminate parental rights.

A great portion of the evidence introduced at trial related to the mental health and stability of D.C.R. The evidence established that D.C.R. suffered from mental illness which made him delusional and affected his ability to function on a daily basis without ongoing treatment. As a result, the family court found that D.C.R. "will need significant therapeutic intervention before [Q.C.C.] could be safely placed in his care, if ever." The family court further concluded that D.C.R.

had engaged in a pattern of conduct which had rendered him unable to care for Q.C.C., including his failure to seek treatment for his mental illness in a timely manner.

D.C.R. argues that the family court erred in terminating his parental rights on the basis of his alleged limited insight into his mental health needs and his mental health instability. In support of this argument, D.C.R. cites to *D.S. v. F.A.H.*, 684 S.W.2d 320 (Ky. App. 1985), in which a panel of this Court held that there was insufficient evidence to support a finding of abandonment or neglect when a mother voluntarily placed her child with the paternal grandparents while seeking psychiatric treatment for mental health issues and while remaining in contact with the child. D.C.R.'s situation is clearly distinguishable from that in *D.S.* Where the parent in *D.S.* was actively seeking help for her mental health issues, D.C.R. has consistently refused to acknowledge any mental health issues or the need for additional treatment and/or medication. Additionally, the parent in *D.S.* maintained contact with the minor child, whereas in this case, D.C.R. had little or no contact with Q.C.C. since at least 2008. Accordingly, we can only conclude that the family court's findings regarding D.C.R.'s mental health are supported by substantial evidence and therefore were not improperly considered in the termination of D.C.R.'s parental rights.

D.C.R. further argues that the family court erred in finding that D.C.R. abandoned the child and that there would be no reasonable expectation of improvement in D.C.R.'s parental care. We disagree. As the family court noted,

D.C.R.'s own testimony was sufficient to support both findings. D.C.R. testified that he knew Q.C.C. was being abused or neglect by D.M.C. in 2008 but chose not to appear in court to state his concerns for the child for fear of being arrested. He further testified that he had no contact with, and failed to provide any support for, Q.C.C. from at least 2008 forward. D.C.R. failed to attempt to have any contact with the child or comply with court orders. As he testified, D.C.R. believed that Q.C.C. was not being cared for, and was even being abused, while in the care of D.M.C., but failed to do anything about it. We conclude that the family court's findings on this issue are clearly are supported by substantial evidence.

We also note the family court's finding that Q.C.C. was in the care of the Cabinet for fifteen of the twenty-two months preceding the filing of the termination petition is not challenged by D.C.R. This, coupled with the family court's other findings necessary under KRS 625.090(1), are sufficient to affirm the family court's termination of D.C.R.'s parental rights. KRS 625.090(2)(j).

For the foregoing reasons, the May 18, 2011, findings of fact and conclusions of law of the Jefferson Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Richard H. Shuster
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BRIEF FOR APPELLEE, CABINET FOR HEALTH AND FAMILY SERVICES:

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