

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-001448-ME

B.R. AND C.R.

APPELLANTS

v. APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE DURENDA LUNDY LAWSON, JUDGE
ACTION NO. 10-AD-00041

C.H.

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, CHIEF JUDGE; CLAYTON AND DIXON, JUDGES.

DIXON, JUDGE: B.R. (Stepfather) and C.R. (Mother) appeal from an order of the Laurel Circuit Court dismissing their petition to involuntarily terminate the parental rights of C.H. (Father) to H.H. (Child). We affirm.

In June 2004, Child was born out-of-wedlock to Mother and Father, and the couple ended their romantic relationship shortly thereafter. Father last

visited Child in June 2006, at Child's second birthday party. Mother married Stepfather in December 2008.

In September 2010, Mother and Stepfather filed a petition for termination of parental rights and adoption. Father filed a response opposing the petition and moved the court to establish parenting time. The court held an evidentiary hearing and rendered a final order denying termination on July 12, 2011. The court made findings of fact, including:

2. [Father] paid child support to [Mother], although it was not ordered by any court, consistently paying \$300.00 to \$400.00 a month for several months after the parties separated.
3. From the date of the child's birth, [Father] has maintained health insurance on the child. [Mother] used the health insurance provided by [Father], including using the insurance after she filed this termination action.
4. While [Father] has not visited the child since his second birthday, he explained his reasons for not doing so. [Father] shopped for Christmas presents for his son, however was unable to deliver same to the child. [Father]'s mother regularly visits with the child and he stays abreast of the child's activities through his mother. [Father] expressed his desire to visit with his son and has moved the Court to grant parenting time.

The trial court concluded that Mother and Stepfather failed to establish grounds for termination by clear and convincing evidence. The court dismissed their petition, and this appeal followed.

The trial court's findings of fact are entitled to great deference on appeal; accordingly, this Court applies the clearly erroneous standard of review. Kentucky

Rules of Civil Procedure (CR) 52.01; *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998). Where the record contains substantial evidence to support the trial court's findings, we will not disturb them on appeal. *Id.*

Parental rights “can be involuntarily terminated only if there is clear and convincing evidence that the child has been abandoned, neglected, or abused by the parent whose rights are to be terminated, and that it would be in the best interest of the child to do so.” *Cabinet for Health and Family Services v. A.G.G.*, 190 S.W.3d 338, 342 (Ky. 2006); Kentucky Revised Statutes (KRS) 625.090.

Mother and Stepfather contend they presented sufficient evidence to establish abandonment as a basis for terminating Father's parental rights. They assert that Father voluntarily chose not to have a relationship with Child; as a result, they contend Stepfather has been the sole father in Child's life. Mother and Stepfather cite a report authored by their expert witness, Dr. David Feinberg, who interviewed Mother, Stepfather, and Child. Although Dr. Feinberg did not interview Father, he concluded stepparent adoption was in Child's best interest.

“Generally, abandonment is demonstrated by facts or circumstances that evince a settled purpose to forego all parental duties and relinquish all parental claims to the child.” *O.S. v. C.F.*, 655 S.W.2d 32, 34 (Ky. App. 1983). Payment of support is a significant factor to be considered in the abandonment determination. *Hafley v. McCubbins*, 590 S.W.2d 892, 894 (Ky. App. 1979).

Furthermore, for a biological parent's separation from his child to support a finding

of abandonment, the separation “must be willful and harsh.” *Kantorowicz v. Reams*, 332 S.W.2d 269, 271-72 (Ky. 1960).

Mother and Father presented conflicting evidence regarding Father’s absence from Child’s life, and the trial court had broad discretion when weighing the evidence and assessing the credibility of the witnesses. CR 52.01. Father established that he had always maintained health insurance for Child, and the court found his testimony credible regarding his attempts to give Child Christmas gifts, and his mother’s involvement in Child’s life. The court also received a report from Child’s Guardian Ad Litem, which concluded termination was not in Child’s best interest. Although Mother and Stepfather are obviously dissatisfied with the way the trial court weighed the evidence and determined the credibility of testimony, we are not persuaded the court committed clear error in denying the petition to terminate Father’s parental rights.

“The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life.”

Santosky v. Kramer, 455 U.S. 745, 753-54, 102 S. Ct. 1388, 1394-95, 71 L. Ed. 2d 599 (1982). In the case at bar, Father opposed the irretrievable destruction of his parental rights to Child, and the court chose to believe the evidence presented by Father that termination was not in Child’s best interest. The trial court was the finder of fact; accordingly, judging the credibility of witnesses and weighing the

evidence were tasks exclusively within the province of the trial court. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). We are satisfied that substantial evidence supported the court’s findings, and we conclude the evidence failed to demonstrate Father intended “to forego all parental duties and relinquish all parental claims to the child.” *O.S.*, 655 S.W.2d at 34.

For the reasons stated herein, we affirm the order of the Laurel Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANTS:

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