

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001600-ME

R.N.

APPELLANT

v.

APPEAL FROM CAMPBELL FAMILY COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 11-AD-00060

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; AND J.J.R., AN INFANT

APPELLEES

AND

NO. 2012-CA-001601-ME

R.N.

APPELLANT

v.

APPEAL FROM CAMPBELL FAMILY COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 11-AD-00062

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; AND B.J.R., AN INFANT

APPELLEES

R.N.

APPELLANT

v. APPEAL FROM CAMPBELL FAMILY COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 11-AD-00063

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; AND L.D.N., AN INFANT

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: COMBS, MAZE, AND NICKELL, JUDGES.

MAZE, JUDGE: R.N. brings these consolidated appeals from orders of the Campbell Family Court terminating her parental rights to her three children. She argues that the Cabinet for Health and Family Services (the Cabinet) failed to provide her with the consistent assistance necessary to allow her to meet her goals of reunification with the children. R.N. also contends that the Cabinet failed to present sufficient evidence showing that termination would be in the children’s best interests. We find that there was substantial evidence in the record supporting the statutory elements for termination of parental rights and that the trial court’s findings were not clearly erroneous. Hence, we affirm.

The essential facts of this matter are not in dispute. R.N. is the mother of three children: B.J.R., born November 1995; J.J.R., born January 1998; and L.D.N., born February 2001. The Cabinet has had extensive dealings with R.N. and the children beginning in 2003. In 2003 and 2004, the Cabinet and R.N. executed aftercare plans to address issues of educational neglect, medical neglect, unsanitary living conditions, and drug use in the home. However, R.N. did not fully comply with these plans, and the Cabinet brought its first petition for abuse and neglect in 2004. The children were not removed at that time, but the Cabinet and R.N. entered into a series of prevention plans. The Cabinet also provided support services to R.N. to address these issues.

Nevertheless, these problems continued. After 2005, B.J.R. began developing emotional and behavioral issues, which led to involvement by the Department for Juvenile Justice. However, additional prevention plans and services failed to address the problems, and the Cabinet continued to receive complaints that R.N. was neglecting the children's educational and medical needs. In February 2009, the Cabinet filed a second abuse and neglect petition in February 2009 on behalf of all of the children. Based on this petition and additional incidents of neglect, the children were removed from R.N. and placed in foster care.

The Cabinet continued to provide reunification services and R.N. was mostly cooperative with these efforts.¹ However, R.N. failed to make significant

¹ After the Cabinet and R.N. executed the 2004 prevention plan, the Cabinet helped R.N. with obtaining public assistance such as food stamps, social security disability benefits and medical

progress toward her reunification goals. Problems also continued during R.N.'s visitation with the children. Although the Cabinet's plan called for R.N. to seek employment or obtain disability benefits, she never completed these tasks. R.N. is unable to read and write and thus was unable to fully participate in the Cabinet's case plan with the children.

At the Cabinet's direction, R.N. completed several evaluations, including a psychological evaluation by Dr. James Rosenthal. Dr. Rosenthal found that R.N. has limited intellectual skills with test scores placing her in the range of mild mental retardation. Dr. Rosenthal concluded that R.N.'s limited skills hindered her ability to understand, comprehend and implement the children's treatment plans or to manage the day-to-day struggles which the children will experience.

Based on the lack of progress, the Cabinet filed a motion seeking to waive its further obligation to make reasonable efforts toward reunification. Following a hearing, the trial court entered findings of fact, conclusions of law and an order granting the motion on March 2, 2011. Thereafter, on November 2, 2011,

cards for the children. The Cabinet also referred R.N. to vocational rehabilitation services and training, to family support programs, and the University of Kentucky Targeted Assessment Program (UK TAP) for mental health assessment. Following the 2005 prevention plans, the Cabinet offered R.N. parenting and parenting-support classes and also referred her to a GED program. The Cabinet continued to offer these services to R.N. up to the children's removal from the home. Following removal of the children, the Cabinet continued to refer R.N. to family support services, and for mental health and substance abuse assessments and counseling. The social workers also maintained regular contact with R.N. and the children during this entire period.

the Cabinet filed motions to terminate R.N.'s parental rights to all of the children.²

The trial court conducted hearings on the motions in May and July of 2012.

On August 23, 2012, the trial court entered findings of fact, conclusions of law and orders terminating R.N.'s parental rights. After reviewing the evidence of record, the trial court found that each of the children was abused or neglected; and that for reasons other than poverty alone, R.N. had failed to provide the children with adequate care, supervision, food, clothing, shelter and education or medical care necessary for their well being. The trial court further found that R.N. had failed to make sufficient progress toward reunification despite extensive services and support provided by the Cabinet over a nine-year period. The court also noted that the children had been in foster care for more than fifteen of the most-recent twenty-two months. Based on these findings, the trial court concluded that termination of R.N.'s parental rights would be in the best interests of each of the children. R.N. now appeals from these orders.

On review of an order terminating parental rights, we ask whether the trial court's findings were clearly erroneous. *Cabinet for Families and Children v. G.C.W.*, 139 S.W.3d 172, 178 (Ky. App. 2004). The trial court's factual findings will not be disturbed unless there exists no substantial evidence in the record to support them. *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky. App. 1986). Kentucky Revised Statutes (KRS) 625.090 provides for

² The Cabinet also filed petitions to terminate the parental rights of the fathers of each of the children. They were constructively served by warning order attorney, but did not personally appear. The court appointed counsel to represent their interests in this proceeding. The trial court terminated their respective parental rights based upon abandonment. Any issues relating to termination of the fathers' parental rights are not presented in this appeal.

the involuntary termination of parental rights upon the court's finding that clear and convincing evidence establishes that “a child is or has previously been adjudged, abused or neglected, and that termination is in the child's best interest. Then, the circuit court must find the existence of one or more of ten specific grounds set forth in KRS 625.090(2).” *See also M.E.C. v. Commonwealth, Cabinet for Health and Family Services*, 254 S.W.3d 846, 851 (Ky. App. 2008).

R.N. argues that the evidence did not support termination of her parental rights under this standard. R.N. concedes that she suffers from a lack of cognitive abilities which limits her ability to effectively parent the children. However, she cites to *D.S. v. F.A.H.*, 684 S.W.2d 320 (Ky. App. 1985) in support of her argument that a mental illness or mental retardation, standing alone, is not sufficient to terminate a parent’s rights. That case is substantially different from the case presented here.

First, *D.S. v. F.A.H.* was decided under different (now repealed) termination statutes than KRS 625.090. Under present law, in determining the best interest of the child and the existence of a ground for termination, the court may consider mental illness or intellectual disability, as certified by a qualified mental health professional, to the extent that the condition renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time. KRS 625.090(3)(a).

Furthermore, unlike the mother in *D.S. v. F.A.H.*, R.N. failed to make significant progress toward reunification with the children. R.N. points to the

undisputed evidence that she cooperated and did well with the Cabinet's plans, but would regress when the Cabinet's services were discontinued. Given this fact and Dr. Rosenthal's diagnosis of mild mental retardation, R.N. contends that the Cabinet was obligated to provide her with sustained and consistent support services prior to seeking termination of her parental rights.

However, the record clearly refutes this assertion. The Cabinet did provide R.N. with extensive support over a nine-year period. Although R.N. made good faith efforts to cooperate with the Cabinet's plans, she and the children would regress whenever the Cabinet reduced those services. Despite consistent assistance, R.N. could not meet the children's basic needs or her responsibilities as a parent. R.N.'s children suffered greatly from neglect and developed significant emotional, behavioral and medical issues as a result. Moreover, the trial court found no reasonable likelihood that the situation would improve. We find substantial evidence in the record to support the trial court's findings terminating R.N.'s parental rights.

Termination of parental rights is almost always a difficult and regrettable situation, and is particularly so where a parent like R.N. has tried to comply but was simply unable to meet most of the Cabinet's directives. But while we place a high value on the continuance of the parent-child relationship, the needs of the children cannot be placed on hold indefinitely. In this case, the trial court properly granted the Cabinet's motion to involuntarily terminate R.N.'s parental rights.

Accordingly, the orders of the Campbell Family Court are affirmed.

ALL CONCUR.

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