

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-002126-ME

N.D.

APPELLANT

v.

APPEAL FROM MCCRACKEN FAMILY COURT
HONORABLE CYNTHIA E. SANDERSON, JUDGE
ACTION NO. 12-AD-00063

O.G., A MINOR CHILD;
W.A., CUSTODIAN;
G.G., BIOLOGICAL FATHER

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, CHIEF JUDGE; JONES AND VANMETER, JUDGES.

ACREE, CHIEF JUDGE: N.D. (Mother) appeals the McCracken Family Court's November 13, 2012 order denying Mother's petition for voluntary termination of her parental rights. We affirm.

Mother and Appellee G.G. (Father) are the natural parents of O.G. (Child), a female child born on October 9, 2007. At some point following Child's birth, the

parties divorced and Mother was awarded custody of Child. Then, on November 10, 2011, Mother, by means of an agreed order, relinquished custody of Child to her paternal grandmother, W.A. (Grandmother).¹

On September 11, 2012, Mother filed her petition seeking voluntary termination of her parental rights. Father and Grandmother opposed the petition. A hearing was held on November 9, 2012, after which the family court entered an order denying Mother's petition. As grounds, the family court concluded termination of Mother's parental rights was not in Child's best interest. The family court noted that Father and Grandmother could not financially support Child without either Mother's assistance or the state's intervention and assistance. The family court refused to render Child financially dependent upon the state when Mother is able-bodied and capable of providing Child with needed financial support. Mother moved to alter, amend, or vacate the family court's order pursuant to CR² 59.05, which the family court denied. Mother promptly appealed.

In reviewing a decision granting or denying a petition to terminate parental rights, "the appellate court must . . . apply the clearly erroneous standard of appellate review." *Commonwealth, Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). Under this review standard, we will not interfere with the trial court's findings "unless the record is devoid of substantial evidence to support them." *Id.*

¹ Father was incarcerated at the time Mother and Grandmother entered into the agreed order.

² Kentucky Rule(s) of Civil Procedure

Mother argues the family court erred when it denied her voluntary-termination petition. Mother insists that she abandoned Child, as she has not seen Child in well over a year and does not desire to maintain a relationship with her. Mother also claims the mandates of KRS³ 625.090(2) have been satisfied, thereby entitling her to terminate the relationship. However, KRS 625.090(2) is inapposite. KRS 625.090(2) identifies the criteria pertinent to *involuntary* terminations of parental rights. A petition for *voluntary* termination of parental rights, such as the one filed by Mother, is controlled by KRS 625.040, *et seq.*

Mother further claims termination was proper because, during the termination hearing, all the parties agreed that it was in Child's best interest that Mother's rights be terminated. This statement is not borne out by the record in this case. While it is apparent that Father and Grandmother thought Mother's continued involvement with Child, however limited, would be less than ideal, they both expressed clear opposition to Mother's petition during the termination hearing. This brings us to Mother's last argument.

Mother faults the family court for placing what Mother views as undue emphasis on financial matters while downplaying other relevant factors, such as the wishes of the parents. We are not persuaded. KRS 625.042(5) directs that, in considering a petition for voluntary termination, "[t]he best interests of the child shall be considered paramount, including but not limited to matters relating to child support." We are cognizant that the "best-interests" standard defies precise

³ Kentucky Revised Statute(s)

definition. It is a question of fact to be decided by the family court taking into consideration all of the evidence presented, and all relevant factors and circumstances affecting the particular child before the family court. In this regard, while the wishes of a child's parent are naturally pertinent to the family court's decision, they are neither controlling nor binding on the family court. Again, it is what is in the best interest of the child, not the best interest of a parent, that ultimately guides the family court's decision. Furthermore, KRS 625.042(5) makes clear that child support and other financial matters are an important component of the best-interests determination.

In the case before us, during the termination hearing, Father testified he is disabled and his disability benefits are not sufficient to support Child. Father claimed that if the family court terminated Mother's parental rights, he would have to seek state aid. Grandmother also expressed her belief that Mother has an obligation to pay child support and help provide for Child's upbringing. The family court concluded it was in Child's best interests to be financially supported by both parents. The family court further found that cutting off valuable and essential resources to Child would not serve her best interests.

The family court, in making its best-interests decision, weighed all the evidence presented, including the wishes of Mother and Father, Mother's relationship, or lack thereof, with Child, and the amount of monetary support needed to ensure Child's essential needs are met. The family court ultimately concluded it was not in Child's best interests to terminate Mother's parental rights.

The family court's finding is supported by substantial evidence, and we will not disturb it. *T.N.H.*, 302 S.W.3d at 663.

In sum, we find the family court made findings of fact supported by substantial evidence, and appropriately applied the relevant law. Mother has presented no viable grounds to disturb the family court's order. Accordingly, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Heather L. Jones
Paducah, Kentucky

BRIEF FOR APPELLEE, W.A.:

Ashley R. Wiggins
Paducah, Kentucky