

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000074-ME

R.A.

APPELLANT

v.

APPEAL FROM LEWIS CIRCUIT COURT
HONORABLE JEFFREY L. PRESTON, JUDGE
ACTION NOS. 09-J-00026, 09-J-00027, 09-J-00028,
09-J-00029, AND 98-J-00089

CABINET FOR HEALTH AND FAMILY
SERVICES/COMMONWEALTH OF
KENTUCKY; D.A., L.E., C.E., A.S., K.S.,
(MINOR CHILDREN); D.A., C.E., H.S.,
(FATHERS)

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: MOORE, NICKELL, AND STUMBO, JUDGES.

MOORE, JUDGE: R.A., Mother, appeals the Lewis Circuit Court's order denying her any contact or visitation with three of her five children, D.A., L.E., and C.E.

After thorough review of the record, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

R.A., Mother, has five children: A.S., K.S., D.A., L.E., and C.E. At the time the original petition in this case was filed in April 2009, the children's ages ranged from two years old to twelve years old. A.S. and K.S. are currently in the custody of their father. D.A. is also currently in the custody of her father. L.E. and C.E. are committed to the Cabinet of Health and Family Services with the goal of adoption.

In April 2009, L.E., age four, was found by the Vanceburg Police wondering unsupervised at a gas station. According to the Petition, L.E. was seen wondering in the road at a red light intersection and was almost struck by a vehicle. The Petition stated that the child was dirty and unkept and that the parents were not providing a stable home. An investigation revealed that prior to April 2009, there had been sixteen investigations of Mother relating to child welfare and domestic violence. Additionally, the children reported to have been living from a van and motel rooms from state to state and had not been in school since December 2008. The children were placed in the custody of the Cabinet pursuant to emergency orders stating the children were dirty, neglected, had not been attending school, and were in danger because they were not receiving proper care. In early May 2009, a Temporary Removal Hearing was held and it was determined that the children would remain in the custody of the Cabinet. In the Cabinet's custody, the children reported sexual abuse by L.E. and C.E.'s father against his two children.

Both of the children underwent forensic examinations which produced physical evidence of sexual abuse. Mother admitted to the allegations of neglect outlined in the Petition at a July 2009 Adjudication Hearing which resulted in D.A., L.E., and C.E. remaining with the Cabinet and A.S. and K.S. getting placed with their father. D.A. was later placed with her father. L.E. and C.E. were placed in permanent custody of the Cabinet in March 2010.

Mother and the children initially had supervised visitation. However, the visits became hard to manage because they caused anxiety and behavioral problems with the children. The court held a hearing in December 2009 in which it heard the opinion of a mental health professional regarding continuing visitation. The hearing resulted in the family court ordering Mother to have no contact with any of the children, and all visitation was suspended.

In September 2010, Mother filed a motion for visitation in which she requested visitation and that the no contact order be lifted. The Court held a hearing on this motion in April 2011, in which it ordered a Comprehensive Assessment and Training Services (CATS) Assessment in order to determine the best interests of the children. In September 2011, it was advised that CATS testing was not available to this case because Mother had not maintained regular visitation with her children. A visitation hearing was held in January 2012 in which Mother and her therapist testified as to the progress Mother has made since this matter began. Mother has been part of the Safe Harbor Domestic Violence Shelter's program since July 2009. She has attended groups there and worked with a

therapist. She has taken parenting classes, found a job, and maintains an apartment. Mother's therapist, Becky Fields, testified that Mother is very dedicated to getting to see her children again.

Mother's counsel then recommended Ms. Kelly Conley, a mental health professional, to evaluate her case for visitation. All of the parties agreed to the evaluation by Ms. Conley. Ms. Conley is a licensed counselor with a Master's Degree and has experience providing therapy to children. Ms. Conley conducted interviews with Mother, all of the children as well as their caregivers about the children's current placement and the possibility of visitation with Mother. Her report was filed in July 2012 and she testified to it at a hearing in November that same year. Ms. Conley recommended supervised visitation between Mother, A.S., and K.S., who reported they would like contact with their Mother. It was also recommended by Ms. Conley that no contact or visitation should occur between Mother and D.A., who felt very strongly about not wanting to see Mother. Ms. Conley also recommended that no contact or visitation should occur between Mother, L.E. and C.E.

Ms. Conley recommended continuing no contact or visitation by Mother with three of her five children, D.A., L.E., and C.E. In her report, Ms. Conley stated that D.A. is in counseling for Post Traumatic Stress Disorder (PTSD) and anxiety attacks because of the time spent in Mother's care. D.A.'s caregiver told Ms. Conley that when visitation with Mother was occurring initially, that D.A. would have stomach and headaches and bed wetting following the visits.

Additionally, D.A.'s caregiver stated that prior to court, D.A. has nightmares and is very stressed about upcoming court dates. D.A. related several bad memories of Mother to Ms. Conley and was very clear in the interview about never wanting to see Mother again.

In L.E. and C.E.'s foster parents' interview with Ms. Conley, they stated that when L.E. and C.E. were initially placed with them they were both developmentally delayed, had severe dental problems, and were both constantly sick. When they still had visitation with Mother, they would have tantrums and behave uncontrollably. When Ms. Conley asked L.E. about Mother, L.E. stated "she hit us and kick us, no good memories."¹ When C.E. was asked about Mother by Ms. Conley, C.E. stated "bad touch us." Currently, each of the children are doing very well in the stable environment provided by their foster parents, whom they recognize as "mom" and "dad." Due to their age, Ms. Conley stated that visitation with Mother could be detrimental to their development and recommended that visitation and contact should not be renewed.²

The family court determined that based on the history of this case and its previous findings as well as the findings of the independent mental health professional, Ms. Conley, visitation by Mother with D.A., L.E., and C.E. would seriously endanger their emotional, mental and physical health, and therefore, no contact or visitation should occur. The family court's order also adopted Ms.

¹ The children's statements are quoted as they appeared in the record. Grammatical errors have not been corrected.

² The family court noted that a termination of parental rights action has been filed to terminate Mother's rights in regard to L.E. and C.E.

Conley's recommendations regarding visitation by Mother with A.S. and K.S.

Mother takes issue with and now appeals the portion of the evaluation performed at her request by Ms. Conley adopted in the family court's order denying contact and visitation with D.A., L.E., and C.E.

II. STANDARD OF REVIEW

Mother challenges the findings of the family court herein in her request for relief. The Court of Appeals cannot set aside the findings of the trial court if those findings are supported by substantial evidence. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003).

III. ANALYSIS

Mother challenges the findings of the family court regarding visitation with D.A., L.E., and C.E. Mother's visitation with all five children was suspended in 2009 because the visits were causing anxiety and behavioral issues in the children. She claims that Ms. Conley's testimony does not support the findings of the family court. Mother argues in regards to D.A. that since she herself is not dangerous to D.A., she should be allowed contact with her child. Mother argues in regards to L.E. and C.E. that the evidence, specifically the testimony of Ms. Conley, does not support a finding that visitation would seriously endanger their well being.

Despite Ms. Conley's clear testimony that visitation was not recommended between D.A. and Mother because it would seriously endanger

D.A.'s physical, mental and emotional health, Mother asserts that since she herself is not dangerous, Mother should be granted visitation with D.A.

Ms. Conley's recommendation that visitation should not occur between Mother and D.A. was based on D.A.'s responses in their interview, Ms. Conley's knowledge of the history of this case, including effects of previous visitation by Mother, and her training and education. D.A. was very adamant in the interview with Ms. Conley about never wanting to see Mother again. Ms. Conley directly confirmed in her testimony that it would seriously endanger D.A.'s physical, mental, moral, and emotional health if visitation with Mother was renewed.

While Mother asserts that she herself is not a dangerous person, her children, particularly D.A., was traumatized over the time spent living with Mother. D.A. still deals with physical, mental, and emotional effects of the trauma. This trauma is evidenced by D.A.'s bad memories of Mother, including memories of abuse, nightmares, and current treatment and counseling for PTSD and anxiety attacks. The court denied visitation between Mother and D.A. based on its previous findings within the history of this case, the testimony of mental health professional, Ms. Conley, and the recommendations made in her report. Accordingly, we cannot find that the family court's findings are clearly erroneous regarding Mother's visitation with D.A.

Mother argues next that the evidence does not support the family court's finding that visitation would seriously endanger the well being of L.E. and

C.E. because it is contrary to a statement made by Ms. Conley in her testimony. Ms. Conley did testify that she could not say that visitation by Mother with L.E. and C.E. would seriously endanger their physical, mental, and emotional health; however, she did state that she did not recommend contact or visitation by Mother with L.E. and C.E. because it could be harmful to their mental and emotional health due to their age and based on their previous experience with visitation with Mother. Ms. Conley's report included more details and information from her interview with L.E. and C.E. in regards to their memories of Mother, including memories of abuse. Ms. Conley's testimony in conjunction with her report and the previous findings of the family court in this case support its conclusion that visitation by Mother with L.E. and C.E. would seriously endanger their physical, mental and emotional well being. The Lewis Circuit Court's order denying visitation by Mother with L.E. and C.E. is supported by substantial evidence in the record. Accordingly, we affirm.

ALL CONCUR.

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