

RENDERED: SEPTEMBER 6, 2013; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2013-CA-000175-ME

R.R.

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE SQUIRE N. WILLIAMS, JR., JUDGE  
ACTION NO. 11-AD-00025

CABINET FOR HEALTH AND FAMILY  
SERVICES, COMMONWEALTH OF KENTUCKY;  
CABINET FOR HEALTH AND FAMILY  
SERVICES, COMMONWEALTH OF KENTUCKY,  
AS NEXT FRIEND OF A.R.P.; A.R.P.; AND A.R.

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CAPERTON, DIXON AND STUMBO, JUDGES.

DIXON, JUDGE: R.R. (“Father”) appeals from a judgment of the Franklin Circuit Court terminating his parental rights, as well as those of the biological mother, to A.R.P. (“Child”). Finding no error, we affirm.

The Cabinet initiated dependency proceedings against A.P.

(“Mother”), Child’s biological mother, shortly after Child’s birth in May 2010.

Mother had ongoing substance abuse problems, and her parental rights had been terminated as to two prior-born children. Child was subsequently committed to the Cabinet as a neglected child. The Cabinet placed Child in a foster home with a family that had previously adopted one of Child’s half-siblings. Mother advised her Cabinet case worker, Martha Carlisle, that Father was a potential biological father of Child. Father was incarcerated at the time Child was born, and Carlisle advised him that Mother had identified him as a potential father. Father was released in April 2011; however, he failed to contact the Cabinet as Carlisle had instructed. Carlisle unsuccessfully tried to contact him by telephone and mail. In June 2011, the permanency goal in the dependency case was changed from reunification to adoption. Father subsequently contacted Carlisle when his paternity was established during child support proceedings in Fayette Circuit Court. Carlisle advised Father that adoption was the permanency goal for Child and that contact with Father was not in Child’s best interest. In August 2011, Father was sentenced to seven years’ imprisonment for trafficking in cocaine.

In November 2011, the Cabinet filed a petition to terminate the parental rights of Mother and Father. During the course of the termination proceedings, Mother and Father were each represented by appointed counsel. Prior to the final hearing, Father moved to dismiss the termination petition on due process grounds. Father alleged that he had not been represented by counsel

during the underlying dependency case, as required by *R.V. v. Commonwealth*, 242 S.W.3d 669 (Ky. App. 2007). The court denied Father's motion and set the case for a final termination hearing.

Father testified on his own behalf at the termination hearing. Father stated that he had never had any contact with Child, and he acknowledged that his earliest potential parole date was September 2013. The circuit court concluded that it was in Child's best interest to terminate the parental rights of Father and Mother. Father now appeals, alleging he was deprived of due process because he was not represented by counsel during the underlying dependency proceedings.

Pursuant to KRS 620.100, an indigent custodial parent is entitled to appointed counsel in dependency proceedings. *Id.* at 672. In *R.V., supra*, our Court explained:

[T]he parental rights of a child may not be terminated unless that parent has been represented by counsel at every critical stage of the proceedings. This includes all critical stages of an underlying dependency proceeding in district court, unless it can be shown that such proceeding had no effect on the subsequent circuit court termination case.

*Id.* at 673. Father opines that, because he was not represented in the underlying dependency case, the trial court erred by terminating his parental rights. We disagree.

In *R.V.*, the custodial parents were represented by appointed counsel during the dependency proceedings; however, the court discharged the attorneys once the disposition order was rendered. *Id.* at 670. As a result of the discharge, the parents

appeared without counsel at the subsequent permanency hearing where the goal was changed from reunification to adoption. *Id.* By depriving the parents of representation at the permanency hearing, the court denied the parents due process. *Id.* at 672.

During the dependency case at issue here, Father had been identified only as a potential parent and paternity had not been established. Father had never met Child or exercised custodial supervision of Child. The Cabinet initiated the dependency proceeding against Mother and neglect was substantiated against her. The dependency case had concluded by the time Father's paternity was established in a collateral child support proceeding in Fayette County. Father admitted that he had been aware he was potentially Child's father, but he chose not to contact the Cabinet until after he received the results of the DNA test. Unlike the parents in *R.V.*, Father was not a custodial parent and had no legal standing to be a party to the dependency case; consequently, he was not deprived of due process.

Father was represented by counsel in the termination proceedings, and he testified on his own behalf. Following the final hearing, the court made a separate finding of neglect as to Father pursuant to KRS 625.090(1)(a)2.

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); KRS 625.090. The trial court's findings of fact

are entitled to great deference; accordingly, this Court applies the clearly erroneous standard of review. 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.*

We conclude that Father's due process argument as to the underlying dependency case is without merit. Although Father has not challenged the sufficiency of the evidence on appeal, our review of the record indicates the decision to terminate Father's parental rights was supported by substantial evidence.

For the reasons stated herein, the judgment of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Max H. Comley  
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Jerry M. Lovitt  
Lexington, Kentucky