

RENDERED: NOVEMBER 8, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000331-ME

M.C.I.

APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 12-AD-00026

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; AND A.P.T. (A MINOR CHILD)

APPELLEES

AND

NO. 2013-CA-000332-ME

M.C.I.

APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 12-AD-00027

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; AND H.B.T. (A MINOR CHILD)

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: CLAYTON, DIXON, AND MAZE, JUDGES.

DIXON, JUDGE: In this consolidated action, M.C.I. (“Mother”) appeals from two judgments of the Campbell Circuit Court terminating her parental rights¹ to A.P.T. and H.B.T. (“Children”). Finding no error, we affirm.

The Cabinet initiated neglect proceedings against Mother and Father in August 2011, when the Children were ages nine and seven. Mother and Father admitted the Children were neglected. The Children were committed to the Cabinet and placed in a foster home. Mother failed to attend her appointment with Teresa Kramer, her case worker, to establish a treatment plan. Kramer was unable to locate Mother for approximately ten months. The court ultimately changed the permanency goal for the Children to adoption; thereafter, the Cabinet filed a petition to terminate the parental rights of Mother and Father.

The court held a termination hearing and heard testimony from Kramer and from Mother. Mother admitted a lengthy history of drug abuse, noting that an addiction to heroin had consumed her life. Mother acknowledged her criminal record, which included convictions for possession of heroin, possession of morphine, and possession of a forged instrument. At the time of the hearing, Mother was in a residential drug treatment program as a condition of her probation.

¹ The court also terminated the parental rights of the father, J.S.T. (“Father”); however, he is not a party to these appeals.

Mother emphasized that she was doing well in rehabilitation; however, she stated she had not had any contact with the Children since the Cabinet instituted the underlying neglect proceedings. The guardian ad litem for the Children submitted a report recommending termination and noted that the Children wanted to be adopted by their foster family.

The Court issued specific findings that the statutory requirements for termination had been met and that it was in the Children's best interests to terminate the parental rights of Mother and Father.² The court noted that the Children had missed half of a school year because Mother had failed to enroll them in school. Further, Mother had not provided a stable residence for the Children, and she had been in and out of jail due to her lifestyle choices. Mother now appeals.

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

² The court recited several factors pursuant to KRS 625.090 to support its decision: Mother abandoned the Children for more than ninety days; Mother continuously failed to provide essential parental care for the Children; for reasons other than poverty alone, Mother continuously failed to provide for the Children's essential food, clothing, shelter, medical care or education, with no reasonable expectation that Mother's conduct would improve in the immediate future; Mother failed to make reasonable efforts to change her conduct so the Children could return home within a reasonable period of time.

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.*

Mother contends the court erred by finding the Cabinet made reasonable efforts to reunite her with the Children. Mother asserts that Kramer failed to help her with her case plan because Kramer mistakenly believed that reasonable efforts had been waived.

Pursuant to KRS 625.090(3)(c), in determining the best interests of the child, the court must consider whether the Cabinet utilized reasonable efforts to reunite the family before the petition to terminate was filed. KRS 620.020(11) defines "reasonable efforts" as "the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community . . . to enable the child to safely live at home[.]"

The statute requires the Cabinet to exert reasonable efforts before the petition is filed. KRS 625.090(3)(c). Here, Kramer was unable to locate Mother for approximately ten months. Kramer routinely attempted to locate Mother through absent parent searches. Mother's own testimony acknowledged that, after the Children were removed, her heroin addiction intensified. By the time Kramer finally located Mother in the Boone County Detention Center, the Children had been in foster care for nearly one year. Although the petition to terminate parental rights had been filed, Kramer met with Mother and discussed her treatment plan, which required inpatient rehabilitation, parenting classes, and the UK Tap

Assessment. However, Kramer further testified that, once Mother entered residential treatment, Mother missed a scheduled meeting with Kramer, and she did not return Kramer's phone calls.

After careful review, we conclude that substantial evidence supported the court's finding that the Cabinet made reasonable efforts to reunite the family. The record clearly indicates that Mother knew the Children were in foster care, yet she failed to cooperate with the Cabinet or notify the Cabinet of her whereabouts.

Mother next challenges the court's finding that there was no reasonable expectation of improvement in parental care and that termination was in the best interests of the Children. Mother relies on her testimony that she was doing well in the residential treatment program and that she had obtained employment.

KRS 625.090(3)(d) requires the court to consider the progress made by the parent that would enable the child to return home in a reasonable period of time, "considering the age of the child." At the time of the termination hearing, the Children were ages ten and eight, and they had been in foster care for approximately fifteen months. The testimony established that the Children were thriving in the foster home and that they wanted to be adopted by their foster parents. Although Mother emphasizes her progress in the residential treatment program, the record clearly indicates she had not completed the Cabinet's case plan at the time of the termination hearing. After careful review, we conclude substantial evidence supported the court's finding that there was no reasonable

expectation of improvement in parental care and that termination was in the best interests of the Children.

For the reasons stated herein, the judgments of the Campbell Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kirk Pfefferman
Newport, Kentucky

BRIEF FOR APPELLEE:

Cynthia Kloeker
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