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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001227-ME

M.C.

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE JOAN L. BYER, JUDGE
ACTION NO. 12-AD-500093

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
H.J.C., A CHILD;
AND B.N.B., MOTHER

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MAZE, MOORE, AND VANMETER, JUDGES.

MAZE, JUDGE: M.C. (Father) and B.N.B. (Mother) are the natural parents of H.J.C., who was born in February of 2003. On December 15, 2003, H.J.C. and a sibling were removed from Mother's custody. The Cabinet's neglect petition

alleged that Mother had left the children with a maternal uncle for at least ten days and had not returned. The petition further alleged that Mother had a long history of drug abuse and leaving her children with relatives for extended periods of time and that previously had two other children removed. At the temporary removal hearing on December 17, 2003, the court placed the children in the custody of a paternal grandmother. The court also directed Mother to undergo random drug screens, to have an evaluation and treatment for substance abuse, and to have supervised visitation with the children. The court also directed that the parents establish paternity of the children, which was done.

In February of 2004, the Cabinet filed a second dependency petition because the paternal grandmother was no longer able to care for the children, Mother was still undergoing drug treatment, and there were no other relatives available. On the same date, the temporary removal hearing was waived and the children were placed in the temporary custody of the Cabinet. On March 4, Mother entered a written stipulation that the children were dependent. Thereafter, on March 8, 2005, the Family Court gave custody of H.J.C. and her sibling to Father. The court's order provided that there was to be no contact between the children and Mother pending further order of court, and that all parties cooperate with the Cabinet and all service providers.

Four years later, on March 18, 2009, the Cabinet filed a third petition regarding H.J.C. and her sibling after a juvenile cousin, O.W., was indicted for sexually abusing H.J.C. According to the petition, O.W. was released from

custody with an order that he have no contact with his victim and no unsupervised contact with any child under 13 years old. In spite of this order, the Father allowed O.W. to have supervised contact with H.J.C.

At the temporary removal hearing on March 24, 2009, the Family Court ordered that H.J.C. remain in Father's custody, that H.J.C. attend in-home counseling, that H.J.C. have no contact with O.W., that all parties cooperate with the Cabinet and all treatment and service providers, and that all prior consistent orders be continued. The trial court again found that H.J.C. was an abused or neglected child based upon Father's entry of a stipulation to allowing the contact with O.W.

On August 26, 2010, Father filed a Domestic Violence Petition against Mother, alleging that on August 22 she had shown up intoxicated at his residence and, when asked to leave, threw something at the door. On September 2, 2010, the Family Court issued a Domestic Violence Order (DVO) directing that Mother remain at least 500 feet away from Father and H.J.C.

Subsequently, on December 15, 2010, the Family Court removed H.J.C. and placed her in the temporary custody of the Cabinet. The Cabinet's petition alleged that Father had allowed Mother to move into the home in violation of the DVO. The petition further alleged that Father was disciplining H.J.C. with a belt, and that H.J.C. did not have a bedroom and had been whipped on three different occasions for refusing to sleep with her 14-year old brother. Finally, the

petition alleged that Father had allowed H.J.C. to come into contact with O.W. in violation of court orders.

At the temporary removal hearing on December 20, 2010, the Family Court ordered that H.J.C. would remain in the custody of Father on the condition that he maintain strict compliance with all court orders. The Family Court further ordered that Mother was to have no contact with H.J.C., that there was to be no corporal punishment of H.J.C. by anyone, that H.J.C. was to attend every counseling appointment and that Father was to follow all recommendations of service providers.

However, on January 11, 2011, the Family Court granted the motion by H.J.C.'s guardian *ad litem* to remove her from her Father's custody and place her in the temporary custody of the Cabinet. H.J.C. has remained in the custody of the Cabinet since that date. On March 15, 2011, Father entered a written stipulation to neglect, admitting that he had allowed contact between H.J.C. and Mother in violation of prior court orders. The Family Court entered orders requiring that Father attend a parenting assessment, submit to random drug screens as requested by the Cabinet, and fully cooperate with H.J.C.'s treatment and the Cabinet's case plan. The court further ordered that Mother have no contact with H.J.C. as set out in the DVO, and that all parties cooperate with the Cabinet and all treatment and service providers.

At the permanency hearing on January 24, 2012, the Cabinet announced that the plan for H.J.C. was changed from reunification with Father to

adoption. In March 2012, the Cabinet filed petitions for involuntary termination of Mother and Father's parental rights. The court appointed a guardian *ad litem* for H.J.C. and counsel for both Mother and Father. The termination action was tried before the court without a jury on May 24, 2013.

Thereafter, on June 13, 2013, the trial court entered findings of fact with respect to both parents and concluded that termination of their parental rights was justified under Kentucky Revised Statute (KRS) 625.090. On the same day, the court entered a separate order terminating their parental rights. Mother has not appealed the findings or the termination order with respect to her. Father now appeals the termination of his parental rights to this Court.

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). An individual's parental rights "can be involuntarily terminated only if there is clear and convincing evidence that ... it would be in the best interest of the child to do so." *Cabinet for Health and Family Services v. A.A.G.*, 190 S.W.3d 338, 342 (Ky. App. 2006).

KRS 625.090(1) provides for 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." There is no question that H.J.C. has been previously adjudicated to be neglected. Once the court makes this necessary finding under KRS 625.090(1), the court must then find by clear and convincing evidence of one or more of the grounds under KRS 625.090(2). With respect to Father, the trial court found grounds for termination under sections (2)(e) and (g):

(e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child; [or]

...

(g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;

Father takes issue with the trial court's findings on these grounds, noting that he had consistently supported H.J.C. until her removal from his custody in 2011. He further points out that the Cabinet never set a support order for him following H.J.C.'s removal. Consequently, the Father argues that it was unreasonable for the trial court to find that he failed or refused to provide essential care for the child.

As an initial matter, we note that a parent's obligation to support his child exists independently from his obligation to pay support pursuant to a court

order. *See* KRS 405.020(2). Having said this, we do question the trial court's observation that Father had not offered any significant financial assistance to meet H.J.C.'s material needs following her removal from the home. There is no indication of any support order in the record or any request by the Cabinet requiring the Father to provide financial support for H.J.C. as part of the reunification or treatment plans. While the lack of specific orders or directives did not relieve Father of his obligation to support H.J.C., we do not believe that his failure to volunteer such payments constitutes a basis for terminating his parental rights.

Nevertheless, the grounds for termination under KRS 625.090(2)(e) and (g) cover a broader range of care and support than mere financial assistance. In addressing these elements, the trial court found that neither parent had been fully compliant with the court's remedial orders or the Cabinet's case treatment plan for H.J.C. The trial court found that Father had repeatedly allowed H.J.C. to have contact with O.W. and Mother in violation of prior court orders.

Following the removal of H.J.C. from his home, the Father declined or failed to complete services intended to keep H.J.C. safe while in his custody. The Cabinet's social worker testified that the Father regularly exercised visitation with H.J.C., but usually for less time than scheduled. In addition, the worker also testified that the Father sometimes slept through parts of the visitation or did not interact with H.J.C. H.J.C.'s therapist testified that she had attempted to work with Father on his parenting skills, but saw little improvement or understanding of

H.J.C.'s medical and psychological needs. Both witnesses testified that they saw little potential for improvement within the foreseeable future. Under the circumstances, this evidence was sufficient to support the trial court's findings under KRS 625.090(2)(e) & (g).

Finally, the Father argues that the trial court erred in finding that termination of his parental rights would be in the best interests of H.J.C. under the factors set out in KRS 625.090(3). We disagree. The Father complains that the Cabinet has not made reasonable efforts at reunification, but the record reflects otherwise. There was evidence that Father suffers from mild mental retardation, although the psychological evaluation could not confirm that this condition necessarily rendered him "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).

However, the Cabinet's social worker testified that, over a period of years, the Father has exercised poor judgment in the care and protection of H.J.C. which has placed the child at risk while in his care. In addition, the Cabinet's worker and H.J.C.'s therapist both testified that the Father failed to make sufficient adjustments in his circumstances, conduct or conditions to make it in H.J.C.'s best interests to return to Father's home within a reasonable period of time. KRS 625.090(3)(d). Although the Father and H.J.C. clearly love each other, the record demonstrates that he is simply unable to provide the support, care and protection H.J.C. needs. The record also clearly demonstrates that H.J.C. has greatly suffered

as a result of Father's inability to meet these responsibilities. Although this situation is truly unfortunate, we cannot find that the trial court clearly erred in its factual findings or conclusions supporting termination of the Father's parental rights.

Accordingly, the order of the Jefferson Family Court terminating the parental rights of M.C. is affirmed.

ALL CONCUR

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