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Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001395-ME

J.T.B., SR. APPELLANT

v.

APPEAL FROM FAYETTE FAMILY COURT
HONORABLE JO ANN WISE, JUDGE
ACTION NO. 12-AD-00219

CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY; AND J.C.T.B., JR., A MINOR CHILD APPELLEES

AND

NO. 2013-CA-001488-ME

B.S.A. APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE JO ANN WISE, JUDGE
ACTION NO. 12-AD-00219

CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY; AND J.C.T.B., JR., A MINOR CHILD APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CHIEF JUDGE; MAZE AND THOMPSON, JUDGES.

MAZE, JUDGE: J.T.B., Sr. and B.S.A. (collectively "appellants") appeal from the July 30, 2013, findings of fact and conclusions of law of the Fayette Family Court and corresponding order entered on the same date. That order terminated appellants' parental rights of their minor child, J.C.T.B., Jr. Because we hold that substantial evidence exists on the record to support the trial court's order, we affirm.

Minor child, J.C.T.B., Jr., was born to appellants on September 2, 2010. On November 2, 2010, the child was admitted to the University of Kentucky Hospital for "failure to thrive." At that time, it was discovered that the child had four old rib fractures and a right femur fracture. Neither parent could explain the injuries. As a result of the unexplained injuries, the child was placed into the custody of the Cabinet for Health and Family Services ("CHFS") on November 6, 2010, and appellants were charged with criminal abuse. J.T.B., Sr. entered a plea of no contest to criminal abuse, second degree, and served seven months in prison. B.S.A. entered a plea of guilty to facilitation of criminal abuse and received shock probation.

On October 1, 2012, CHFS filed a petition for the involuntary termination of appellants' parental rights. The guardian ad litem (GAL) filed his

report on March 11, 2013, in which he suggested termination of appellants' parental rights, upon proof of the allegations made in the petition. A hearing was held on April 9, 2013. On April 23, 2013, B.S.A. filed a closing argument in which she argued that CHFS had not met its burden and requested that their petition to terminate her rights be denied. The trial court's findings of facts and conclusions of law were entered on July 30, 2013, in which the trial court found that the child was an abused and neglected child, and that it would be in the best interests of the child if appellants' parental rights were terminated. An order terminating appellants' parental rights was entered concurrent with the trial court's findings of fact and conclusions of law. These appeals followed.

We review a trial court's termination of parental rights under a clearly erroneous standard of review, which requires clear and convincing evidence. *M.E.C. v. Com., Cabinet for Health and Family Services*, 254 S.W.3d 846 (Ky. App. 2008). "Hence, this Court's review is to determine whether the trial court's order was supported by substantial evidence on the record." *Id.* at 850. Therefore, we "will not disturb the trial court's findings unless no substantial evidence exists on the record." *Id.*

Appellants argue that the decision of the trial court was clearly erroneous because CHFS did not establish the grounds necessary for termination by clear and convincing evidence. We disagree. The grounds necessary to terminate a parent's rights are set out in Kentucky Revised Statues (KRS) 625.090, which requires the trial court to find, from clear and convincing evidence, that the

child has been adjudged an abused or neglected child and that termination would be in the best interest of the child. KRS 625.090 (1). "The trial court has broad discretion in determining whether the child fits within the abused or neglected category and whether the abuse or neglect warrants termination." *C.H. v. Cabinet for Health and Family Services*, 399 S.W.3d 782, 788 (Ky. App. 2013) (citation omitted). In addition, the trial court must find, by clear and convincing evidence, the existence of one or more of the following:

> (a) That the parent has abandoned the child for a period of not less than ninety (90) days;
>
> (b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;
>
> (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;
>
> (d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;
>
> (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;

(f) That the parent has caused or allowed the child to be sexually abused or exploited;

(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;

(h) That:

1. The parent's parental rights to another child have been involuntarily terminated;

2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and

3. The conditions or factors which were the basis for the previous termination finding have not been corrected;

> (i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect; or
>
> (j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights.

KRS 625.090(2). "Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent-minded people." *M.L.C.*, 411 S.W.3d at 765 (citation omitted).

The evidence presented to the trial court included copies of appellants' criminal convictions; the child's juvenile records; testimony of CHFS social worker Mary Lindon; and testimony of CHFS social worker Vanessa Dennis. The evidence and testimony indicated that appellants both pled guilty to criminal abuse of the child; that reasonable efforts were made to prevent removal of the child from the home; that appellants failed to pay child support or otherwise support the child, either financially or emotionally; that appellants failed to comply with drug screenings; that J.T.B. had incurred drug-related charges; and that J.T.B. failed to comply with anger management recommendations. Overall, the evidence indicated that appellants' were both given treatment and reunification plans with which they continuously failed to comply. In addition, evidence indicated that the

child had been in the same foster home since removal from appellants in 2010, and that he was happy, healthy, and well-adjusted.

In support of its order terminating appellants' parental rights, the trial court made findings with respect to subsections (a), (b), (d), (e), (g), and (j) of KRS 625.090(2). That is, the trial court found that appellants had abandoned the child for not less than ninety days; that appellants had inflicted, or allowed to be inflicted, serious physical injury to the child; that the parents had been convicted of criminal charges related to physical abuse of the child, and that such is likely to occur again; that appellants had failed to provide essential parent care and protection for a period of six months or more and there was no expectation of improvement; that appellants had failed to provide essential food, clothing, shelter, medical care, or education for a period of six months or more and there was no expectation of improvement; and that the child had resided in foster care for more than fifteen of the most recent twenty-two months.

Although the trial court only needed to find the existence of one of the ten findings of KRS 625.090(2), the trial court herein found six of them. It is our holding that CHFS presented clear and convincing evidence to support these findings. The most obvious of these findings, that appellants had inflicted, or allowed to be inflicted, serious physical injury to the child, was clearly supported by appellants' guilty pleas in the criminal proceedings relating to the child's injuries. This finding alone would have satisfied the requirements of KRS 625.090(2). The fact that appellants claim a lack of knowledge as to the source of

the child's injuries is irrelevant. Their guilty pleas, combined with the fact that the child was in their care when he sustained his injuries, is proof sufficient to convince ordinary prudent-minded people that appellants, at a minimum, allowed the injuries to be inflicted. *See M.L.C.*, 411 S.W.3d at 765. In addition, there was sufficient testimony that appellants had continuously failed to provide for the child or otherwise comply with their reunification plans in any manner that would suggest an expectation of improvement. Given the sufficient evidence presented, combined with the trial court's discretion in determining whether termination is warranted, we find no error with the trial court's order. *See C.H.,* 399 S.W.3d at 788. Accordingly, appellants' argument is without merit.

Appellants further argue to this Court that their due process rights were violated when the trial court failed to render a decision within thirty days of the hearing pursuant to KRS 625.090(6). We disagree. KRS 625.090(6) states that the trial court "shall enter findings of fact, conclusions of law, and a decision as to each parent-respondent within thirty (30) days." KRS 625.090(6). This 30-day requirement, however, was not created as a means to ensure due process for parents, but rather as a means to expedite permanency for children. This goal has been continuously encouraged by various forms of law, including the Adoption and Safe Families Act of 1997 (AFSA). 42 U.S.C. § 675(5)(c)(2000). Appellants have failed to cite to any legal authority which supports their argument that the 30-day requirement is a means of ensuring due process for the parent-respondents. Accordingly, their argument is without merit.

For the foregoing reasons, the July 30, 2013, order of the Fayette Family Court is affirmed.

ALL CONCUR.

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