

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-001493-ME

A.L.B.

APPELLANT

v.

APPEAL FROM CAMPBELL FAMILY COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 12-AD-00014

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF
KENTUCKY; AND B.J.G.,
AN INFANT

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

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

ACREE, CHIEF JUDGE: Appellant, A.L.B., appeals the Campbell County Family Court's August 8, 2013 order terminating his parental rights. Finding no error, we affirm.

I. Facts and Procedure

A.L.B., an African-American, has never met the child at the center of this case. The child's mother, a Caucasian, initially identified a different man, another Caucasian, as her child's father. The child, however, is biracial. Because Mother was a drug addict, the Cabinet for Health and Family Services deemed the child at risk of neglect. The Cabinet placed the child in foster care not long after its birth. Eventually, the Cabinet moved to terminate Mother's parental rights. It was then that Mother gave a sworn statement naming A.L.B. as the child's father. At that time, A.L.B. was incarcerated, serving a five-year sentence for dealing heroin and cocaine.

A.L.B. was released from prison on June 28, 2012, but made no effort to contact the Cabinet or the biological mother until a social worker located him that September. DNA testing later confirmed A.L.B.'s paternity and the Cabinet attempted to meet with him regarding the custody of his child. But A.L.B. did not meet with the Cabinet until February 2013 and, after the Cabinet developed a case plan to reunify him with his child, A.L.B. did not comply with the plan goals.

Eventually, the Cabinet petitioned to terminate A.L.B.'s parental rights. The family court conducted hearings on the petition on February 25, 2013, and June 14, 2013. At the June hearing, the court heard testimony from Ohio social worker Susan Neuhaus who testified that although A.L.B. had taken advantage of some services made available through his case plan, he still had not met many of its goals. Specifically, Neuhaus noted that A.L.B. attended most of

their scheduled meetings, but had missed two since his release from prison.

Overall, Neuhaus assessed him as “mostly compliant” with that facet of his case program.

However, Neuhaus also testified that A.L.B. has not complied with the goal of his case plan that he attend mental health therapy. Neuhaus described this aspect of the plan as critical to his growth and development as both a parent and a person. She described how her conversations with A.L.B. regarding his childhood issues triggered strong emotional reactions, after which he often became sad or angry. A.L.B. also admitted that attending parenting classes also made him feel angry when he finished each class because the sessions reminded him of his childhood abuse.

Neuhaus also told the court that A.L.B. has not been able to find long-term housing, nor has he provided any records of his attendance at drug treatment meetings, or any parenting programs. Further, Neuhaus stressed that despite her insistence, A.L.B. has yet to provide any support for the child, failing even to send cards or notes at holidays or the child’s birthday. Ultimately, Neuhaus expressed serious doubts regarding A.L.B.’s ability to care for a child. Neuhaus’ doubts stemmed not only from A.L.B.’s financial struggles, but also his reluctance to work through his serious psychological issues as a prerequisite to developing parenting skills.

At the hearings, the Cabinet also presented evidence on a host of issues, suggesting A.L.B.’s lack of parental fitness. Specifically, the Cabinet

described the severe abuse A.L.B. suffered during childhood. This abuse contributed to serious mental health issues, including bipolar disorder, post-traumatic stress disorder, delusions, and intermittent psychotic episodes. For those issues, A.L.B. is prescribed up to thirteen different medications and intense therapy. But A.L.B. has resisted therapy, even though he admitted to feeling significant anger toward his former abusers, “stressing easily,” and needing to “go off by himself” at times when he feels agitated.

A.L.B.’s psychological issues also result in intermittent bouts of anger, depression, and suicidal ideation. He has been hospitalized several times – as recently as February 2013 – to prevent self harm. On cross-examination, A.L.B. admitted to several previous suicide attempts. Still, A.L.B. has failed to schedule and keep regular appointments with a counselor to address these issues.

Aside from his mental health issues, A.L.B. also admitted to lifelong substance abuse, including cocaine, ecstasy, mescaline, and marijuana. Although A.L.B. testified to his prior involvement in drug treatment programs in prison, he denied current involvement in recovery programs. Instead, he described his recovery efforts as attending occasional recovery meetings, and being loosely affiliated with Narcotics Anonymous. A.L.B. is not currently working through his substance issues with a sponsor, nor does he utilize the “12 Steps” recovery plan of Narcotics Anonymous. Despite this, records show that A.L.B. has passed several recent drug screens, and he insists that he no longer uses drugs.

A.L.B. also testified that he is unemployed, has not achieved financial independence, and lacks stable housing. A.L.B. believes he cannot work due to his severe mental health issues. He lives with his brother, and elderly father, acting as their caretaker. Because he cannot work, A.L.B. has no income, and is awaiting the results of his pending claims for disability benefits. In the meantime, A.L.B. relies solely on food stamps and contributions from his father and from his brother whose source of income is his own disability benefits.

A.L.B. conceded that he is barely capable of sustaining himself, and that he did not have suitable bedding, furniture or other items needed to care for a small child. A.L.B. also identified other issues regarding his housing situation, including his father's simultaneous battles with drug addiction and cancer as well as his brother's descent into paranoid schizophrenia.

A.L.B. concedes he has had no contact with the child since its birth, characterizing himself as a "stranger" in the child's life. He testified he had long suspected he was the father, beginning when he heard Mother was pregnant. Moreover, he recounted joking with jailhouse acquaintances as far back as 2010 regarding his paternity. But despite his suspicions, he took no steps to confirm his paternity because he "was not actually sure he was the father."

To date, A.L.B. told the court that he has never provided any financial support, gifts, or other contributions to help defray the cost of childcare despite his social worker's insistence that he do so. When asked on cross-examination as to

his plans for caring for the child, he described them vaguely and only in general terms.

Conversely, the court heard testimony from Neuhaus that the child was thriving in his current foster placement. Neuhaus described the child as “incredibly bonded” with his foster family and that the child is “doing great.” Neuhaus confirmed that the child has been in foster care for over three years and that there were no services the Cabinet could offer A.L.B. to return the child in the “immediately foreseeable future.”

After considering the evidence, the court terminated A.L.B.’s parental rights pursuant to KRS¹ 625.090. The court held first that the child was a neglected child, citing a previous adjudication.² Next, the court deemed termination in the child’s best interest, noting that the child was “flourishing in a foster-to-adopt home.” Moreover the court observed that A.L.B. had neither emotional bonds, nor a previous relationship with the child. Finally, the court stressed father’s lack of initiative in asserting his paternity and his utter failure to provide any parental support, even after his paternity was determined, as indicating that termination was in the child’s best interests.

The court cited two statutory grounds for terminating A.L.B.’s parental rights. Applying KRS 625.090(2)(e), that court found A.L.B. was “incapable of providing essential parental care and protection for the child” for at

¹ Kentucky Revised Statutes.

² Case No. 10-J-00402, Campbell County Family Court.

least six months, and that A.L.B.’s failings were not likely to improve given the child’s age. The court also cited 625.090(2)(g) as a second ground for termination, finding A.L.B., “for reasons other than poverty alone, has continuously failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary for the child’s well being and there is no reasonable expectation of significant improvement in the parent’s conduct in the immediately foreseeable future[.]”

A.L.B. appeals the family court’s decision to terminate his parental rights, attacking the sufficiency of the Cabinet’s evidence. We address each of his arguments in turn.

II. Standard of Review

In reviewing a decision granting or denying a petition to terminate parental rights, “the appellate court must . . . apply the clearly erroneous standard of appellate review.” *Commonwealth, Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). Under this review standard, we will not interfere with the trial court’s findings “unless the record is devoid of substantial evidence to support them.” *Id.* A finding supported by substantial evidence is not clearly erroneous. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003) (footnote omitted). Substantial evidence is that which is “sufficient to induce conviction in the mind of a reasonable person.” *Rearden v. Rearden*, 296 S.W.3d 438, 441 (Ky. App. 2009).

Notably, “regardless of conflicting evidence, the weight of the evidence, or the fact that the reviewing court would have reached a contrary finding, due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses because judging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court.” *Moore*, 110 S.W.3d at 354. “Mere doubt as to the correctness of [a] finding [will] not justify [its] reversal[.]” *Id.*

III. Analysis

A.L.B. presents several arguments attacking the propriety of the termination; these arguments may be fairly construed together as challenging the sufficiency of the evidence underlying the family court’s ruling.

A.L.B. claims the family court failed to include a specific finding of fact that the court considered as a factor the Cabinet’s reasonable efforts in reunifying A.L.B. with his child prior to termination. KRS 625.090(3)(c) requires the court to consider the Cabinet’s reasonable efforts in reunifying parent and child prior to termination as one of several factors in its best interest determination. KRS 620.020(11) defines “reasonable efforts” as “remedial and preventative services which are designed to . . . secure reunification of the family and child where appropriate, as quickly as practicable.” Although the family court’s order did not include an explicit finding of fact, the court heard a wealth of testimony

regarding the Cabinet's efforts in reunifying A.L.B. with his child prior to commencing termination proceedings. Specifically, the court heard how the Cabinet attempted to locate A.L.B. for months after his release from prison to confirm paternity. Further, the Cabinet provided testimony that a case plan was developed to facilitate reunification, but A.L.B. failed to pursue its objectives. Further testimony confirmed that A.L.B. did not provide or even attempt to provide any support to the child. He did not obtain suitable mental health treatment for his own very serious psychological issues. Such testimony constituted substantial evidence, and it is apparent from the court's order that the court considered A.L.B.'s lack of initiative in providing for the child and his severe mental illness in arriving at the conclusion that termination was in the child's best interest. We are unpersuaded by this argument.

A.L.B. also claims he was not given enough time to demonstrate his compliance with his case plan and so the court's determination under KRS 625.090(2)(e) was improper. But this argument fails too.

A.L.B. testified that he was aware he was the father when was released from prison in the summer of 2012. But he has yet to provide any support for the child. By the time the second termination hearing occurred on June 14, 2013, A.L.B. had had almost a year to demonstrate a willingness to comply with his case plan. While A.L.B. maintains he should have been given a chance to "show his capability [as a parent] or not," his repeated failure to take even small, incremental steps like obtain counseling, or providing a birthday card for the child,

demonstrate his failure to support the child within the meaning of KRS 625.090(2)(g). Importantly, A.L.B.'s shortcomings are not based on poverty alone, but on his severe mental illness, and what he himself characterizes as an inability to work. Based on A.L.B.'s testimony, the family court properly found that his ability to care for the child is unlikely to improve in the near future, given his lack of income, severe mental health illness, and uncertain housing arrangements.

IV. Conclusion

For the foregoing reasons, the Campbell Family Court's order terminating A.L.B.'s parental rights is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

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