

RENDERED: NOVEMBER 7, 2014; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-001525-ME

P.R.

APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE TIMOTHY NEIL PHILPOT, JUDGE
ACTION NO. 13-AD-00056

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; J.S.R., A MINOR CHILD;
AND A.B.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MOORE, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: P.R. brings this appeal from an August 6, 2013, order of the Fayette Circuit Court, Family Court Division, involuntarily terminating her parental rights as to her biological child, J.S.R.

J.S.R. was born on October 20, 2011. In May 2012, J.S.R. was placed in the emergency custody of the Cabinet for Health and Family Services, Commonwealth of Kentucky, (Cabinet) following a finding of probable neglect by P.R. The neglect charge stemmed from an incident that occurred at a grocery store. P.R. was stopped before exiting the store on suspicion of shoplifting. She thereupon pulled out a knife towards employees and threatened to stab anyone who approached her. P.R.'s boyfriend had accompanied her to the grocery and was holding J.S.R. during the incident. P.R. also purportedly stated that no one could take J.S.R. from her and that she would "stick" J.S.R. if necessary.

In June 2012, P.R. stipulated to having neglected J.S.R. The Cabinet attempted reunification of P.R. with J.S.R., but P.R. was not cooperative. P.R. failed to complete parenting classes, to take a psychological assessment, to keep in contact with the Cabinet, and to visit J.S.R. at appointed times. Also, P.R. had no stable residence and was living with relatives.

Due to P.R.'s failure to complete the Cabinet's case plan for reunification, the Cabinet sought to involuntarily terminate the parental rights of P.R. in March 2013.¹ After a hearing, the family court rendered an order involuntarily terminating the parental rights of P.R. The family court determined that J.S.R. was an abused or neglected child, P.R. failed to provide essential parental care and protection without reasonable expectation of improvement, P.R.

¹ The Cabinet for Health and Family Services, Commonwealth of Kentucky, also sought to involuntarily terminate the parental rights of J.S.R.'s biological father. He did not appear and had no contact with J.S.R. By order entered August 6, 2013, the biological father's parental rights were involuntarily terminated, and he did not appeal the termination.

failed to provide necessary essentials, P.R. abandoned J.S.R. for more than 90 days, and it was in J.S.R.'s best interests to terminate of P.R.'s parental rights. P.R. brings this appeal.

P.R. contends that the family court erred by involuntarily terminating her parental rights because it was not in J.S.R.'s best interest. P.R. alleges that by terminating her parental rights there is no guarantee that J.S.R. will continue to have visitation with her siblings and grandparents.

The involuntary termination of parental rights is governed by Kentucky Revised Statutes (KRS) 625.090. Under KRS 625.090, the court must find by clear and convincing evidence that the child is abused or neglected and that termination is in the child's best interest. *M.P.S. v. Cabinet for Human Res.*, 979 S.W.2d 114 (Ky. App. 1998). When conducting the best interest analysis, the court must consider the six factors set forth in KRS 625.090(3)(a) – (f). *Cabinet v. K.H.*, 423 S.W.3d 204 (Ky. 2014). KRS 625.090, provides, in relevant part:

(3) In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:

- (a) Mental illness as defined by [KRS 202A.011\(9\)](#), or an intellectual disability as defined by [KRS 202B.010\(9\)](#) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;
- (b) Acts of abuse or neglect as defined in [KRS 600.020\(1\)](#) toward any child in the family;

- (c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in [KRS 620.020](#) to reunite the child with the parents unless one or more of the circumstances enumerated in [KRS 610.127](#) for not requiring reasonable efforts have been substantiated in a written finding by the District Court;
- (d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;
- (e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and
- (f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

We review the family court's findings of fact under the clearly erroneous rule.

In this case, the evidence indicates that J.S.R. was removed from P.R.'s care when she was about nine months old due to neglect, which P.R. admitted. The Cabinet attempted to reunify P.R. and J.S.R. pursuant to a case plan. But, P.R. failed to cooperate and did not meet any of the case plan's goals. P.R. has no stable home environment for J.S.R., no regular employment, and suffers from a mental disorder. P.R. did not regularly visit J.S.R. and has been recently incarcerated. Also, the record reflects that J.S.R. was well-integrated into the home of her foster parents and now identifies the foster parents as her parents. J.S.R. has also met all physical and cognitive developmental targets while with her foster parents. And, the foster parents have allowed J.S.R. regular visits with her

siblings and grandparents. Based upon the evidence as a whole, we cannot say that the family court erred by determining that termination of P.R.'s parental rights was in the best interests of J.S.R.

P.R. also asserts that the Cabinet failed to follow the mandates of KRS 620.090 and 922 K.A.R. 1:140 by placing J.S.R. with foster parents instead of with her maternal great-aunt and great-uncle. We disagree.

The record clearly establishes that the Cabinet considered placement with the maternal great aunt and uncle and to that end, performed a home study. But, the Cabinet found that the maternal great-aunt and great-uncle were unsuitable for placement of J.S.R. for a variety of reasons. Moreover, the evidence indicates that J.S.R. was well-integrated and thriving in the home of her foster parents. Thus, we conclude that the Cabinet sufficiently complied with KRS 620.090 and 922 K.A.R. 1:140 in the placement of J.S.R., notwithstanding that there exists considerable doubt by this Court as to whether P.R. may properly raise the issue of placement of J.S.R. in an involuntary termination of parental rights action.

In sum, we are of the opinion that the family court did not commit error by involuntarily terminating the parental rights of P.R. as to J.S.R.

For the foregoing reasons, the order of the Fayette Circuit Court, Family Court Division, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE CABINET
FOR HEALTH AND FAMILY
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