

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-001889-ME

M.L.T.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LUCINDA CRONIN MASTERSON, JUDGE
ACTION NO. 12-AD-00204

K.H.;
S.D.H.;
N.M.T., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, JONES, AND KRAMER,¹ JUDGES.

JONES, JUDGE: This is a termination of parental rights case. On appeal M.L.T., the Biological Father, asks us to reverse the Fayette Family Court's decision terminating his parental rights to N.M.T. (Child). Biological Father asserts that reversal is mandated because the lower court's decision is not supported by

¹ Judge Joy A. Kramer, formerly Judge Joy A. Moore.

substantial evidence. We disagree. Having reviewed the record, we conclude that the family court based its decision on substantial evidence of record, and therefore, we AFFIRM.

I. Background

Child was born on October 6, 2010, to Biological Father and Biological Mother. Biological Mother and Biological Father were not married at the time of Child's birth. Biological Mother was unable to care for Child following birth and Biological Father's paternity had not yet been established. As such, within a few days of birth, Child was placed with Adoptive Parents, relatives of Biological Mother.

In November 2010, the family court determined that Child was a neglected child and awarded custody to the Adoptive Parents. At that time, Biological Father maintained that he was not Child's father and testing was undertaken to establish paternity. In June 2011, the results of the testing came back establishing Biological Father's paternity. Thereafter, he filed a custody action. Biological Father filed several motions as part of the custody proceeding seeking timesharing with Child, but the court did not grant them because Biological Father was unable to successfully complete any of the court-ordered tasks such as drug testing, substance abuse assessment, and domestic violence assessment.

In September 2012, Adoptive Parents filed a petition for adoption seeking to terminate Biological Mother and Biological Father's legal and parental

rights with respect to Child. Biological Father was served with the petition and filed an answer to it.²

On July 31, 2013, the family court conducted a hearing at which Biological Father and Adoptive Parents testified. Adoptive Parents testified that Child had lived with them since her birth. They further testified that Biological Father had never seen Child, inquired about her well-being, or provided any support for her. They further testified that they were able to care for Child financially and to provide her with a supportive and loving home environment.

Throughout his testimony, Biological Father was noncompliant and changed his testimony frequently. Biological Father refused to state where he was employed, though he claimed to have been employed for three months. Biological Father stated during various testimonies that he did not have to complete a domestic violence assessment despite a court order, that he had completed an assessment but had no proof, and that he had stopped the assessment when he was incarcerated. Biological Father also reported that he had completed a drug and alcohol assessment, but failed to offer proof. At the termination hearing it was determined that Biological Father had not been drug testing on Phase I,³ had a positive drug test for cocaine in March 2013, and had not drug tested at all since

² The Warning Order Attorney attempted to locate Biological Mother, but was unable to do so. She is not a part of this appeal.

³ Phase one of drug testing last four to six weeks and consists of three (3) urine drug/alcohol screens, three (3) counseling sessions, a weekly court session, maintenance of court approved full-time employment and housing, begin making arrangements for payment of court obligations, weekly meeting with drug court staff, indication of initial understanding of substance abuse treatment, enrollment in a self-help (12-step) program, and remaining drug free for at least thirty (30) days before moving to phase two.

May 2013. Biological Father's testimony also revealed a long criminal history including convictions for possession of drugs, domestic violence, possession of drug paraphernalia, and an additional assault charge. Biological Father had also been convicted for felony possession of a controlled substance in the days immediately prior to the hearing. Biological Father also failed to present any evidence that he had provided any financial support for Child.

II. Standard of Review

This Court shall only disturb a family court's decision to terminate a person's parental rights if clear error occurred. If there is substantial, clear, and convincing evidence to support it, the decision stands. KRS 625.090(1); *Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). The clear and convincing standard does not demand uncontradicted proof. All that is needed “is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinary prudent-minded people.” *M.P.S. v. Cabinet for Human Res.*, 979 S.W.2d 114, 117 (Ky. App. 1998) (citation omitted).

III. Analysis

Termination of a party's parental rights is proper upon satisfaction, by clear and convincing evidence, of a three-part test. First, the child must have been found to be an “abused or neglected” child, as defined by KRS 600.020. *See* KRS 625.090(1)(a). Second, termination must be in the child's best interest. KRS 625.090(1)(b). Third, the family court must find at least one ground of parental

unfitness. KRS 625.090(2). Biological Father's argument on appeal focuses exclusively on steps one and two.

With respect to step-one, Biological Father asserts that the family court relied exclusively on the prior dependency action to find that Child was an "abused or neglected" child. Biological Father maintains that this was a substantial error with respect to him because his paternity was not established until after that proceeding had concluded.

Having reviewed the entire record in combination with the family court's findings of fact, we are not convinced that the family court erred in determining that Biological Father had "abused or neglected" Child. A child is abused or neglected when the child's health or welfare is harmed or threatened with harm when:

- (a) His or her parent, guardian,...continuously or repeatedly fails or refuses to provide essential parental care and protection for the child considering the age of the child...; abandons or exploits the child;... does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being

KRS 600.020(1).

The family court correctly relied on evidence that Biological Father had never seen Child, had not ever provided Child with any care, and had failed to pay child support for Child. Other than filing a custody action, Biological Father took no action whatsoever to establish a relationship with or even minimally

support and care for Child. We find no error on the family court's part in concluding that Biological Father abandoned Child.

Next, Biological Father argues that the family court incorrectly concluded that termination of Biological Father's parental rights was in Child's best interests. To this end, Biological Father argues that the family court failed to recognize that he was denied any opportunity to develop a parental bond with Child through even limited supervised interactions from the beginning and when he pursued reunification once he established paternity, he "faced overwhelming tasks that were clearly well beyond his financial ability to achieve."

In evaluating the child's best interest, the family court is statutorily required to consider numerous factors, including "[t]he efforts and adjustments the parent has made in [his] circumstances, conduct, or conditions to make it in the child's best interest to return [her] to [her] home within a reasonable period of time, considering the age of the child." KRS 625.090(3)(d). Of course, that is not the only statutory factor that must be taken into account. Others include: mental illness or intellectual disability; acts of abuse or neglect towards any child in the family; reasonable efforts made by the Cabinet to reunite the child with the parents; the child's physical, emotional, and mental health, and the possible improvement of the child's welfare should termination occur; and the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to so do. KRS 625.090(3).

Having reviewed the record, we do not find any error on the family court's part. The family court concluded that Biological Father had failed to make even modest efforts toward completing the mandatory requirements necessary for him to obtain supervised visitation with Child. Furthermore, Biological Father remained obstinate, refusing to identify where he was employed or to provide basic information to substantiate his claims regarding support payments. The record also substantiates the family court's findings with respect to Biological Father's criminal history, including a conviction shortly before the termination hearing. Likewise, the family court considered that Adoptive Parents were the only caregivers Child had ever known and that Biological Father had failed to establish even a minimal relationship with Child in the three years since her birth.

In short, there is ample evidence in the record to support the family court's best-interest decision, and we decline to interfere. *D.G.R. v. Com., Cabinet for Health & Family Servs.*, 364 S.W.3d 106, 112 (Ky.2012) (“[T]he trial court has substantial discretion in determining the best interests of the child under KRS 625.090(1)(b) and (3).”).

IV. Result

For the foregoing reasons, we affirm the September 23, 2013, judgment of the Fayette Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Rhonda S. Melton
Georgetown, Kentucky

BRIEF FOR APPELLEE:

Rachel D. Yavelak
Lexington, Kentucky