

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2014-CA-000397-ME

N.S.M.R.

APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT  
HONORABLE RICHARD A. WOESTE, JUDGE  
ACTION NO. 13-AD-00019

CABINET FOR HEALTH AND  
FAMILY SERVICES,  
COMMONWEALTH OF KENTUCKY;  
H.R., FATHER; AND J.R., AN  
INFANT

APPELLEES

AND

NO. 2014-CA-000398-ME

N.S.M.R.

APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT  
HONORABLE RICHARD A. WOESTE, JUDGE  
ACTION NO. 13-AD-00020

CABINET FOR HEALTH AND  
FAMILY SERVICES,  
COMMONWEALTH OF KENTUCKY;  
H.R., FATHER; AND J.R., AN  
INFANT

APPELLEES

N.S.M.R.

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT  
HONORABLE RICHARD A. WOESTE, JUDGE  
ACTION NO. 13-AD-00021

CABINET FOR HEALTH AND  
FAMILY SERVICES,  
COMMONWEALTH OF KENTUCKY;  
H.R., FATHER; AND H.R., AN  
INFANT

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: DIXON, JONES, AND VANMETER, JUDGES.

VANMETER, JUDGE: N.S.M.R. (Mother) appeals from the February 21, 2014, judgments of the Campbell Family Court terminating her parental rights to her three children, H.D.M.R., J.A.R.M.R., and J.A.R. For the following reasons, we affirm.

H.D.M.R., J.A.R.M.R., and J.A.R. were born in 2005, 2007, and 2010 respectively. Mother does not know the identity of the children’s three different biological fathers. On September 20, 2011, the Cabinet for Health and Family Services became involved with Mother and her children as a result of the school system filing a petition alleging dependency, based on H.D.M.R.’s twenty-two

unexcused absences or tardies while in Mother's care and custody. Essentially, H.D.M.R. had been absent since the beginning of school in 2011. The concern was that Mother was not meeting the child's educational needs.

On October 5, 2011, Mother admitted H.D.M.R. was dependent. This case came before the family court for a disposition hearing in November 2011, during which Mother's history of serious mental health problems was addressed. Following the hearing, the court incorporated the Cabinet's recommendations for Mother into its disposition order including that Mother send H.D.M.R. to school on time, participate in therapy and follow through on medications as prescribed, remain drug and alcohol free, submit to drug screens as requested by the Cabinet, complete in-home family preservation program, and complete parenting classes.

The Cabinet monitored H.D.M.R.'s attendance and by December 6, 2011, H.D.M.R. had six more unexcused absences from school. As a result, the Cabinet filed a neglect petition against Mother regarding all three children based on Mother's failure to send H.D.M.R. to school, failure to take prescribed medication, and self-mutilating and erratic behavior. Mother had reported to the Cabinet that she had burned her palm with a cigarette and punched a hole in the wall of her residence. The Cabinet expressed concern about Mother's mental health.

The family court issued emergency custody orders placing all three children in the Cabinet's custody. In January 2012, custody of the children was given to a maternal cousin in Ohio. At a disposition hearing the next month, the court found Mother's situation had improved and she had resumed taking her medication. The

court returned the children to her care and essentially re-adopted the case plan from November 2011, except now Mother was also to participate in the UK Tapp program.

In May 2012, the family court held a review hearing during which it found that Mother had missed her mental health appointments, had stopped taking her medication, and H.D.M.R. had missed extra days of school. The court returned the children to the Cabinet's custody, and the children have remained in foster care ever since.

The next year was a difficult one for Mother. On May 24, 2012, police took her to the hospital after she attempted to commit suicide. Hospital records show that Mother has a history of suicide attempts. Upon discharge, her diagnoses were drug overdose, suicide attempt, depression and alcohol intoxication.

Shortly thereafter, Mother moved to Ohio. Hospital records from Ohio show that Mother presented at an emergency room on October 9, 2012 complaining of symptoms of PTSD evidenced by flashbacks, extreme anxiety, nightmares, depression, occasional thoughts of suicidal ideation, paranoia and belief that the television is talking to her. That same month, Mother started working with a therapist in Ohio but soon began missing her appointments. The record shows the therapist urged Mother to attend therapy sessions but had difficulty contacting Mother due to the fact that Mother kept changing her phone number.

In December 2012, Mother entered a substance abuse treatment facility in Ohio. The recommended treatment was long-term inpatient treatment. Mother left

the facility in January 2013. Following a review hearing in March 2013, the court ordered Mother to cooperate with the Cabinet, complete a CATS assessment, sign appropriate releases of information, submit to random drug screens as requested by the Cabinet, engage in supervised visitation, seek and maintain stable mental health counseling by a qualified mental health provider, complete parenting classes, see a psychiatrist for medication, and take all medication as prescribed.

In May 2013, the children's guardian ad litem filed a motion for a change of goal due to Mother's failure to cooperate with the case plan put in place by the Cabinet and failure to attend supervised visitation with her children. On June 5, 2013, the court granted the motion of the guardian ad litem, waived the Cabinet's obligation to make reasonable efforts to reunite Mother with the children, and changed the permanency goal to adoption. A week later the Cabinet filed petitions to involuntarily terminate Mother's parental rights to all three children. In November 2013, Mother was again taken to the emergency room by police due to claims of being suicidal. Her diagnoses were alcohol abuse and bipolar disorder.

On January 3, 2014, the family court conducted a hearing on the Cabinet's petitions for involuntary termination. During the hearing, records of Mother's hospital visits, treatment facility admissions, and therapy services were admitted into evidence. The court noted Mother's chronic noncompliance with treating her mental illnesses and her resulting mental instability. The records indicate Mother experienced horrible sexual abuse as a child and has had multiple diagnoses including PTSD, depression, dissociative personality disorder and bipolar. Mother

has been prescribed medications to treat her illnesses but only takes them intermittently. Mother has attempted to commit suicide multiple times and has continued to abuse alcohol.

Mother's records indicate that she has never been employed. She supports herself through the monthly \$600 SSI she receives. The record further shows that Mother voluntarily stopped visiting her children in April/May 2013 and has not seen them since. The social worker assigned to Mother's case for the past two years testified to services offered by the Cabinet and Mother's failure to utilize those services. The social worker testified that she has had difficulty contacting Mother due to Mother's frequent moves and change of phone number. The social worker's last contact with Mother was in September 2013. The social worker testified that in her professional opinion, no additional services could be offered to Mother that would likely bring about the lasting parental adjustment needed in order for her children to be returned to her. Since the children have been in foster care, they have made significant improvements and, in the social worker's opinion, termination of parental rights would be in the children's best interests and would provide them with the stability and permanency they deserve.

The children's therapist also testified to the well-being of the children. The therapist stated that the children have adjusted well to their foster family and the older children have settled into school well. Based on the record and the testimony presented at the hearing, the court entered a judgment terminating Mother's parental rights to all three children. Mother now appeals.

On appeal, Mother objects to the findings of fact made by the family court and claims the court's findings were not supported by substantial evidence. We disagree.

The involuntary termination of parental rights is a scrupulous undertaking that is of the utmost constitutional concern. *See M.L.B. v. S.L.J.*, 519 U.S. 102, 119–20, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996). The U.S. Supreme Court has unequivocally held that a parent has a “fundamental liberty interest” in the care and custody of his or her child. *See, e.g., Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). This fundamental interest “does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State....” *Id.* at 754–55, 102 S.Ct. 1388. Therefore, “[w]hen the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.” *Id.*

The Commonwealth's TPR [termination of parental rights] statute, found in KRS<sup>1</sup>] 625.090, attempts to ensure that parents receive the appropriate amount of due process protections. KRS 625.090 provides for a tripartite test which allows for parental rights to be involuntarily terminated only upon a finding, based on clear and convincing evidence, that the following three prongs are satisfied: (1) the child is found or has been adjudged to be an abused or neglected child as defined in KRS 600.020(1); (2) termination of the parent's rights is in the child's best interests; and (3) at least one of the termination grounds enumerated in KRS 625.090(2)(a)-(j) exists.

*Cabinet for Health & Family Servs. v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014).

In the present case, the court determined as follows:

The children were abused and neglected as defined in KRS 600.020(1); Mother, for a period of not less than six

---

<sup>1</sup> Kentucky Revised Statutes.

(6) months, has continuously or repeatedly failed or has refused to provide or has been incapable of providing essential parental care and protection for the children and there is no reasonable expectation of improvement in parental care and protection, considering the age of the children; Mother, for reasons other than poverty alone, 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 children's well-being and there is no reasonable expectation of significant improvement in the parental conduct in the immediately foreseeable future, considering the age of the children; the children subject of this action have 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; Mother has committed acts of abuse or neglect as defined in KRS 600.020(1) toward another child in the family; termination of parental rights is in the best interest of the children; the Cabinet is best qualified to receive custody of the children.

Due to Mother's behavior, the court concluded that Mother cannot provide a safe, stable home for the children and is simply unable to parent. Mother has been given a fair opportunity to comply with the reasonable case plan set in place by the Cabinet but Mother quit the plan. The court acknowledged the tragic circumstances of this case and the fact that Mother's mental health status is undoubtedly related to the abuse she suffered as a child. However, the fact remains that Mother did not comply with the mental health treatment she needs and her children are not receiving the protection and stability they need.

Accordingly, the family court terminated Mother's parental rights and granted the Cabinet custody of the children and authority to place the children for



adoption. Based on our review of the record, we believe Mother was afforded fundamentally fair procedures during this unfortunate and heartbreaking process. We do not believe the family court's decision to terminate her parental rights was erroneous and therefore uphold its decision.

For the foregoing reasons, the judgments of the Campbell Family Court are affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

E. Ashley Bellamy  
Wilder, Kentucky

BRIEF FOR APPELLEE:

Cynthia Kloeker  
Florence, Kentucky

*GUARDIAN AD LITEM* FOR  
CHILDREN:

Brenda Bonecutter  
Newport, Kentucky