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Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000919-ME

B. S. C. APPELLANT

v.

APPEAL FROM KENTON FAMILY COURT
HONORABLE CHRISTOPHER J. MEHLING, JUDGE
ACTION NO. 13-AD-00136

CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY; AND A. E. D., CHILD APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, CHIEF JUDGE; KRAMER[1] AND THOMPSON, JUDGES.

ACREE, CHIEF JUDGE: B.S.C. (Mother) appeals from the May 16, 2014 judgment of the Kenton Family Court involuntarily terminating her parental rights. Mother contends the family court failed to recognize that she has made sufficient

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

parental adjustments that would enable her to safely parent her child in the foreseeable future. We find the family court did not overlook Mother's parental progress and weighed all factors relevant to termination. We affirm.

I. Facts and Procedure

Mother is the natural parent of A.D., born January 29, 2013 (Child). When Child was seven weeks old, Mother overdosed on heroin while caring for Child. The Cabinet for Health and Family Services intervened, removed Child from Mother's care, and initiated a dependency, neglect, and abuse action. Since then Child has resided continuously in foster care.

The family court adjudged Child neglected on May 9, 2013, and scheduled a disposition hearing for July 17, 2013. Mother failed to appear for disposition and the family court issued a bench warrant for her arrest. After considering the evidence presented at the disposition hearing, the family court found Mother had failed to consistently visit with Child and, when she did visit, she displayed hostility toward the Cabinet case worker. The court ordered Mother to submit to random drug screens and to pay $206.50 per month in child support. Mother has yet to pay any amount of child support and has not provided any essential care since she lost custody of Child.

The Cabinet filed a petition for involuntary termination of Mother's parental rights on August 28, 2013. Mother was subsequently arrested on the outstanding bench warrant and was brought before the family court in late October 2013. The family court found Mother in contempt for failure to appear at the

disposition hearing and sentenced her to 180 days incarceration. When arrested, Mother tested positive for cocaine, opiates, benzodiazepines, and THC.

A few weeks later, the family court entered an order for conditional release permitting Mother to enter an inpatient drug treatment program at Crossroads Christian Recovery Center for Women in Richmond, Indiana. Mother successfully completed the program on March 2, 2014, and immediately transitioned to the Sober Living Program (Victory House), which is a companion outpatient program offered through Crossroads.

The termination hearing was held on April 4, 2014. Mother testified she was currently living in a halfway house where she would remain for at least six months. While there, Mother was required to work a full-time job, pay rent, save money, attend church three times per week, and attend Alcoholics Anonymous meetings. Two days prior to the hearing, she obtained employment. Mother had not relapsed since entering the halfway house and produced numerous negative drug tests to substantiate her claim; she was drug testing weekly. She described the Crossroads program as faith-based and testified it was different from other treatment programs. She claimed it had provided her with the tools necessary to go forward and be a good parent.

Wendy Cannon, Executive Director of Crossroads, echoed Mother's sentiments. Cannon testified that Mother has embraced the full responsibility for her actions, wants to right the circumstances she created, and wants to have another chance to parent Child. Cannon, who was in contact with Mother almost every

day, observed tremendous growth in Mother, and testified Mother had demonstrated she was serious about treatment. It was Cannon's opinion that Mother was capable of making the reasonable and necessary changes in her life in the near future to make reunification feasible.

Mother admitted she was a drug addict and had been for at least ten years. Her drug of choice was cocaine. Mother had successfully completed at least two other drug-treatment programs. She was unable to maintain sobriety, relapsing after completing each program.

Mother did not have stable housing. Prior to incarceration, she was shifting her residence every few months. Additionally, Mother had not held a job from 2007 until just before the hearing.

In addition to Child, Mother is the natural parent of four other children. Mother abandoned one child when he was very young. Another tested positive for cocaine at birth. Mother's rights to these two children have been involuntarily terminated. The basis for termination was Mother's inability to maintain stability and sobriety. In 2012, the remaining two children were committed to the permanent custody of Hamilton County (Ohio) Job and Family Services upon findings by the Hamilton County Juvenile Court that, among other things, Mother was unable to protect the children and provide for their needs, and Mother was unable to show that she can maintain sobriety and had relapsed numerous times. The children reside in foster care in Hamilton County, Ohio; Mother has had little to no contact with them.

Mother has not seen Child since May 2013. She made no attempt to visit Child before her incarceration in October 2013. Mother did not know Child's weight, whether Child was developmentally on target, or whether Child was walking or talking.

Mother testified that, while at Crossroads, she attempted to contact her social worker – Layne Eichelberger – numerous times, without success and that this frustrated her. Eichelberger's testimony was not in accord.

Eichelberger testified that she heard from Mother in October 2013 and, after that, Mother made no effort to contact her until March 3, 2014. Despite Mother's laudable progress in obtaining treatment, Eichelberger testified Mother had not demonstrated lasting parental changes. Of particular concern was Mother's history of treatment and relapse. Eichelberger testified she was not confident Mother could *maintain* sobriety, stable housing, and employment. Eichelberger could identify no other services the Cabinet might offer Mother to facilitate reunification.

Child has shown marked improvement while in foster care. She no longer requires a hip brace, is up-to-date on her immunizations, and is walking and talking. Child frequently laughs, smiles, and giggles. She is bonded to and secure with her foster family; they are the only family Child knows.

The family court entered factual findings, legal conclusions, and a judgment on May 16, 2014, terminating Mother's parental rights to Child. The family court found clear and convincing evidence that Child was neglected

consistent with KRS[2] 600.020(1)(a) – (i); that termination was in Child's best interest; and that Mother was unfit to parent Child because: (a) she has previously had her parental rights terminated; (b) she has failed to provide basic necessities for Child; and (c) she has failed to offer essential parental care and protection for Child. Mother appealed.

II. Review Standard

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. Discussion

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. 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

[2] Kentucky Revised Statute

unfitness. KRS 625.090(2). Mother's arguments on appeal focus exclusively on the best-interest factor. We focus our attention there as well.

Mother argues the family court failed to recognize that she has made sufficient parental adjustments that would enable her to safely parent Child in the foreseeable future. She also argues the family court failed to understand that she was unable to financially support Child because she was in the midst of a horrible addiction and was therefore unemployable, even during the course of her recovery program which discouraged employment.

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 [her] 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).

The family court was certainly aware of Mother's progress. Much testimony was presented at the termination hearing on this subject, and the family

court commended Mother for her hard work in its judgment. The family court properly balanced Mother's progress against her history of repeated treatment and relapse, her inability to maintain steady employment and housing, her failure to provide any financial care for Child in over a year, the acts of abuse or neglect toward Mother's other children that resulted in them being removed from her care, and the improvement in Child's well-being since residing in foster care. Ultimately, the scale tipped in favor of termination. 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).").

Mother next argues that it is fundamentally unfair not to allow her time to "regain sobriety" once she promises to do so. Her "patience" argument is, effectively, a plea for policy change – a *requirement* that the family court abate the termination process based on the word of an addict-parent that she will, in earnest, begin the trip to sobriety.

Her rationale begins with a truism – that drugs permeate Kentucky society and culture. She notes that addicts who appear before the family court are often initially non-compliant with Cabinet services and court orders and, human nature being what it is, sobriety is not immediate. Mother argues that, upon deciding sobriety is the correct goal, the addict should be afforded sufficient time to achieve it. The Court's lack of patience, so goes her argument, makes Kentucky's

involuntary termination procedures and practices fundamentally unfair to a parent who is dealing with drug addiction and treatment.

True, it would be an inconsequential burden on our courts to wait patiently for Mother to regain sobriety. In fact, the authority to do so is inherent in the family court's discretion. But dispossessing the family court of such discretion to make abatement mandatory is a legislative prerogative, not a judicial one.

We are not unsympathetic to Mother's circumstances. She was caught in the throes of crushing addiction for many years. However, while her own patience and her hope for patience from the courts may be great, we are troubled that she cannot see the fundamental unfairness in expecting Child to be even more patient. We cannot and will not *require*, for any period of Child's waiting, that Mother's drug addiction alone provide absolution from her failure to provide the most minimal of expectations society imposes and which our legislature has codified by these statutes.

Furthermore, the speed of termination in this case does not strike us as suspect considering Mother's history. She has had her rights to two other children involuntarily terminated and has lost custody of all her children. None of these jarring events prompted Mother to appreciably alter her lifestyle. Additionally, she has sought substance-abuse treatment in the past and yet repeatedly returned to her old ways. When it comes to the welfare of a child, the stakes are simply too high. The family court in this case refused to gamble or risk Child's well-being. We find

no fault with the family court's exercise of its considerable discretion or its ultimate decision to terminate mother's parental rights.

As noted, the family court properly considered all the relevant factors, including Mother's addiction and her battle with it, in ascertaining the course of action which would most further Child's best interest. In the end, Mother has identified no legal grounds which would warrant disturbing the family court's judgment terminating Mother's parental rights.

IV. Result

For the foregoing reasons, we affirm the May 16, 2014 judgment of the Kenton Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Mary M. Salyer
Covington, Kentucky

BRIEF FOR APPELLEE:

Jerry M. Lovitt
Lexington, Kentucky