

RENDERED: MARCH 20, 2015; 10:00
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000631-ME

J.L.M.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE TIMOTHY NEIL PHILPOT, JUDGE
ACTION NO. 13-AD-00147

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; J.M., Jr.; AND A.M.B.

APPELLEES

AND

NO. 2014-CA-000632-ME

J.L.M.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE TIMOTHY NEIL PHILPOT, JUDGE
ACTION NO. 13-AD-00148

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; B-L.M.; AND A.M.B.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, JONES AND VANMETER, JUDGES.

DIXON, JUDGE: J.L.M. (“Father”) appeals from two judgments of the Fayette Circuit Court terminating his parental rights, and the parental rights of A.M.B. (“Mother”),¹ to J.M., Jr. and B-L.M. (“Children”). Finding no error, we affirm.

In October 2011, the Cabinet initiated neglect proceedings against Mother and Father, because the Children had been left in the care of family members for several months.² The Children were placed in the temporary custody of relatives; however, the Children were subsequently removed to foster care in February 2012, after B-L.M. ingested prescription drugs while visiting Father. Although Father had a case plan with the Cabinet, he was non-compliant or failed to make progress toward many of the recommended goals. In February 2013, Father was incarcerated for six months after he threatened to kill the judge and social worker involved in this case.³ In May 2013, the court changed the permanency goal for the Children to adoption; thereafter, the Cabinet filed a petition to terminate the parental rights of Mother and Father.

¹ Mother agreed to the voluntary termination of her parental rights.

² J.M., Jr. was eight years old, and B-L.M. was seventeen months old.

³ As a result of the threats made by Father, the original circuit judge recused from the case, and a special judge was appointed.

Following a hearing, the Court issued specific findings that the statutory requirements for termination had been met and that it was in the Children's best interests to terminate the parental rights of Mother and Father.⁴ The court noted that the Children were doing well in their foster home and emphasized that the Children deserved permanency in a caring home. Father now appeals.

Parental rights "can be involuntarily terminated only if there is clear and convincing evidence that the child has been abandoned, neglected, or abused by the parent whose rights are to be terminated, and that it would be in the best interest of the child to do so." *Cabinet for Health and Family Services v. A.G.G.*, 190 S.W.3d 338, 342 (Ky. 2006). The trial court's findings of fact are entitled to great deference; accordingly, this Court applies the clearly erroneous standard of review. Kentucky Rules of Civil Procedure (CR) 52.01; *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998). Where the record contains substantial evidence to support the trial court's findings, we will not disturb them on appeal. *Id.*

Father contends the court erred by finding the Cabinet made reasonable efforts to reunite him with the Children. According to Father, he did not receive a

⁴ The court recited several factors pursuant to Kentucky Revised Statutes (KRS) 625.090 to support its decision: Father continuously failed to provide essential parental care for the Children; for reasons other than poverty alone, Father continuously failed to provide for the Children's essential food, clothing, shelter, medical care or education, with no reasonable expectation that Father's conduct would improve in the immediate future; the Children were in foster care for at least fifteen of the previous twenty-two months.

fair opportunity to complete his case plan because his caseworker's supervisor was biased toward him.

Pursuant to KRS 625.090(3)(c), in determining the best interests of the child, the court must consider whether the Cabinet utilized reasonable efforts to reunite the family before the petition to terminate was filed. KRS 620.020(11) defines "reasonable efforts" as "the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community . . . to enable the child to safely live at home[.]"

The record clearly indicates that Father failed to fully cooperate with the Cabinet and made minimal progress on his case plan. Father was discharged from counseling for non-compliance and was later arrested for making death threats toward the judge and social worker. Quite simply, the record in this case refutes Father's allegation that he did not have a fair opportunity to complete his case plan. After careful review, we conclude that substantial evidence supported the court's finding that the Cabinet made reasonable efforts to reunite the family.

Father next asserts that the court failed to consider the evidence indicating the Children would not continue to be neglected if returned to his care. To support his argument, Father relies on his own testimony as to positive changes in his life, including his sobriety and his intention to apply for disability benefits.

In this matter, the trial court was the fact-finder, and it was vested with broad discretion to weigh the evidence and assess witness credibility. CR 52.01. The record indicates the court applied the statutory factors set forth in KRS

625.090(2)-(3) and made specific factual findings based on the evidence in the record. At the time of the termination hearing, the Children were ages ten and three, and they had been in foster care for approximately two years. There was ample evidence of Father's history of substance abuse and criminal activity, with the court pointing out that Father was currently on probation for two years in a case involving stolen firearms. Although the court acknowledged Father's testimony regarding positive changes, the court noted that Father was unemployed, did not have his own residence, and had no money to support the Children.

We have fully considered the arguments raised by Father; however, we conclude that substantial evidence supported the court's determination to terminate parental rights. The court rendered specific findings that the statutory requirements for termination were met and that it was in the Children's best interest for Father's parental rights to be terminated.

For the reasons stated herein, the judgments of the Fayette Circuit Court are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Joseph H. Dahlman
Lexington, Kentucky

BRIEF FOR APPELLEE:

Terry L. Morrison
Lexington, Kentucky