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Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001272-ME

F.E.J. AND J.B.T.

APPELLANTS

APPEAL FROM TRIGG CIRCUIT COURT
v. HONORABLE CLARENCE A. WOODALL, III, JUDGE
ACTION NO. 12-AD-00003

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY AND
C.L.T., A MINOR CHILD

APPELLEES

AND

NO. 2014-CA-001273-ME

F.E.J. AND J.B.T.

APPELLANTS

APPEAL FROM TRIGG CIRCUIT COURT
v. HONORABLE CLARENCE A. WOODALL, III, JUDGE
ACTION NO. 12-AD-00004

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY AND
K.R.T., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: JONES, STUMBO AND VANMETER, JUDGES.

STUMBO, JUDGE: F.E.J. (hereinafter referred to as Mother) and J.B.T.

(hereinafter referred to as Father) appeal from the orders of the Trigg Circuit Court which terminated their parental rights to two of their children, C.L.T. (hereinafter referred to as Child 1) and K.R.T. (hereinafter referred to as Child 2).¹ We find no error and affirm.

Mother and Father have never been married. Mother has five children in total, but Father is only the biological father of Child 1 and Child 2. All children were originally removed from Mother's care in 2009. Child 1, Child 2, and another child were later returned to Mother's care. Child 1 and Child 2 are twins and were both born on September 24, 2009. An emergency custody order was entered on July 12, 2011, and both children were removed from the parents' home and placed with the Cabinet. The order was based upon a complaint that the children were being left in car seats for extended periods of time. The children were examined by a doctor who described them as pale. They were also less than the third percentile on weight, tenth percentile on height, nonverbal at 21 months old, and walking like a 12-month old. Both children also had dry patches of skin which were consistent with the use of restraints. Both were also dehydrated and

¹ As this case involves minor children, we will not use the names of the parties involved.

malnourished. Finally, both children had calluses on their backs due to being restrained in the car seats.

An adjudication hearing was held on November 1, 2011, and the Trigg District Court found the allegations contained in the complaint had been proven and that the children had been neglected. The court ordered that the children remain with the Cabinet. Mother and Father were also charged with first-degree criminal abuse, a class C felony. After the filing of the criminal charges, the Cabinet received only limited cooperation from the parents. Mother attended a couple of parenting classes, but did not make any significant improvement. Mother also began attending therapy sessions, but voluntarily quit going. In addition, during supervised visits, the children showed no attachment to Mother and Father.

Mother and Father were also living with Father's mother in a single-wide trailer with three bedrooms. The social workers described the living conditions as cramped with little space for the children to play. The Cabinet requested that Mother and Father find other accommodations and even set them up with housing through the Housing Authority. Mother and Father only stayed in the Housing Authority housing for a few months before moving back into the trailer. The Cabinet offered this housing multiple other times, but it was declined.

On March 13, 2012, the Trigg District Court found that reasonable efforts had been made to reunify the family, but that such efforts had failed. The court then accepted the Cabinet's recommendations that the permanency plan be

changed from reunification to adoption. Then, on April 28 and 29, 2014, a two-day trial was held regarding the criminal charges. At the end of the trial, Mother and Father were convicted of third-degree criminal abuse, a class A misdemeanor.

On May 15, 2014, a hearing was held in the Trigg Circuit Court regarding the termination of Mother and Father's parental rights to Child 1 and Child 2. Two social workers who were involved in this case testified regarding the condition of the children at their removal from the parents' custody, the improvements the children made in foster care, and the parents' lack of cooperation with the Cabinet. Mother and Father did not testify at the hearing. On July 9, 2014, the trial court entered an order and judgment terminating Mother and Father's parental rights to Child 1 and Child 2. This appeal followed.

The standard for review in termination of parental rights cases is set forth in *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116-17 (Ky. App. 1998). Therein, it is established that this Court's standard of review in a termination of parental rights case is the clearly erroneous standard found in Kentucky Rules of Civil Procedure (CR) 52.01, which is based upon clear and convincing evidence. Hence, this Court's review is to determine whether the trial court's order was supported by substantial evidence on the record. And the Court will not disturb the trial court's findings unless no substantial evidence exists on the record. *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky. App. 1986).

Furthermore, although termination of parental rights is not a criminal matter, it encroaches on the parent's constitutional right to parent his or her child, and therefore, is a procedure that should only be employed when the statutory mandates are clearly met. While the state has a compelling interest to protect its youngest

citizens, state intervention into the family with the result of permanently severing the relationship between parent and child must be done with utmost caution. It is a very serious matter. *V.S. v. Commonwealth, Cabinet for Family Services*, 194 S.W.3d 331, 335 (Ky. App. 2006).

M.E.C. v. Commonwealth, Cabinet for Health and Family Services, 254 S.W.3d 846, 850 (Ky. App. 2008).

Kentucky Revised Statute (KRS) 625.090 sets forth the factors a circuit court must consider before it involuntarily terminates parental rights.

(1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that:

(a) 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;

2. The child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding; or

3. The parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that physical or sexual abuse, neglect, or emotional injury to the child named in the present termination action is likely to occur if the parental rights are not terminated; and

(b) Termination would be in the best interest of the child.

(2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:

(a) That the parent has abandoned the child for a period of not less than ninety (90) days;

(b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;

(c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;

(d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;

(e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;

(f) That the parent has caused or allowed the child to be sexually abused or exploited;

(g) That the parent, for reasons other than poverty alone, has 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 child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;

(h) That:

1. The parent's parental rights to another child have been involuntarily terminated;

2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and

3. The conditions or factors which were the basis for the previous termination finding have not been corrected;

(i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect; or

(j) That the child has 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.

- (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.

KRS 625.090.

The trial court in this case made detailed findings of fact which supported its decision to terminate Mother and Father's parental rights. The court's findings also met the multiple requirements set forth in KRS 625.090. We have reviewed the record in this case and find that the trial court's findings were supported by substantial evidence and are not clearly erroneous. In addition, because the parents

put forth no evidence at the termination hearing, there is no evidence to conflict with the trial court's findings.

The trial court found that Child 1 and Child 2 had been adjudged as neglected on November 1, 2011, and that both parents had been convicted of criminal charges related to the physical abuse and neglect of the children. This meets the requirement set forth in KRS 625.090(1)(a).

The trial court also found that it would be in the children's best interest that Mother and Father's parental rights were terminated as required by KRS 625.090(1)(b). The trial court considered the factors listed in KRS 625.090(3) when determining the children's best interests and made the following findings:²

- (a) While [Mother] has apparently been diagnosed with "borderline personality disorder" this was not certified by a qualified mental health professional. Nevertheless, based upon testimony and records considered, [Mother] has been consistently unable to care for the immediate and ongoing physical or psychological needs of this child or any of her children once they are at least one year old.
- (b) [Mother and Father] have abused this child and his twin sibling and older half-sibling.
- (c) Since placement with the Cabinet, the Cabinet did make reasonable efforts to reunite the child with [Mother and Father] prior to filing of the Petition.
- (d) While Mother did make some efforts to change her conduct, until the jury's verdict, she had been generally uncooperative with the Cabinet and it would not be in the child's best interest to return to Mother's home, considering the child's age.
- (e) The physical, emotional, and mental health of this child has improved since removal from the home and would continue to improve if termination is ordered.

² The findings made by the trial court for both children are identical. The only difference between the two sets of findings is the changes in the male and female pronouns. We will quote from the findings made regarding Child 1, a male.

(f) [Mother and Father] have been financially unable to pay a reasonable portion of substitute physical care and maintenance for the child.

Evidence supporting these findings was presented at the termination hearing and was not contradicted by the parents. These findings are not clearly erroneous.

Finally, the court found that pursuant to KRS 625.090(2):

(a) That both [Mother and Father], for a period of not less than six months prior to the filing of the Petition have continuously or repeatedly failed or refused to provide or have been substantially incapable or [sic] providing essential parental care and protection for the child and there is no reasonable expectation of improvement in parental care and protection considering the age of the child.

(b) That both [Mother and Father], other than for reasons of poverty alone, have continuously or repeatedly failed to provide or are incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parents' conduct in the immediately foreseeable future, considering the age of the child.

These two findings are also supported by the evidence in this case. The children were removed from Mother and Father's care on July 12, 2011. The petition for termination of parental rights was filed on August 10, 2012. The parents were offered multiple services and parenting classes by the Cabinet, but they refused to cooperate. The children were in the custody of the Cabinet from July of 2011 through the termination of parental rights in May of 2014. The parents' lack of completion of their case plan prevented them from having more than minimal visitation and contact with the children. The parents were only

allowed supervised visitation with the children every other weekend. No evidence regarding the parents' financial situation was entered into evidence; however, when the children were removed from their care, they were malnourished, in the lower percentiles of weight and height, could not walk properly, and were nonverbal. The trial court's findings pursuant to KRS 625.090(2) are supported by substantial evidence and are not clearly erroneous.

Based on the foregoing, we affirm the judgment of the trial court.

ALL CONCUR.

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