

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001574-ME

D.A.C.

APPELLANT

v.

APPEAL FROM CAMPBELL FAMILY COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 13-AD-00032

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; AND A.P.B., AN INFANT

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, NICKELL AND THOMPSON, JUDGES.

THOMPSON, JUDGE: D.A.C. (mother) appeals the termination of her parental rights to A.P.B. (child).

Child was born on January 14, 2009, to mother and P.S.B. (father). In February 2009, mother and father were both charged with drug offenses and child

and his siblings were removed from the home by the Cabinet for Health and Family Services.

On May 26, 2009, the family court adjudicated child was dependent. Father admitted child was dependent. The family court found dependency as to mother because she was in jail. On June 30, 2009, father received custody upon the Cabinet's recommendation because he was not incarcerated and was cooperating with the Cabinet.

On July 1, 2009, mother pled guilty to two counts of first-degree trafficking in a controlled substance and one count of trafficking in a simulated substance. On October 12, 2009, mother was granted shock probation and placed at Chrysalis House for in-patient drug treatment, conditioned on her completing treatment. In December, she was terminated from the program and then readmitted after three days. The circuit court did not revoke her probation for this violation.

Meanwhile, the Cabinet closed its dependency case following father's completion of the case plan. Subsequently, mother sought and received joint custody and visitation with child at Chrysalis House.

Child remained with father until father was jailed for a probation violation in August 2010 and subsequently sentenced to five-years' incarceration. The Cabinet initiated a new dependency action, took custody of child and temporarily placed him with a relative. After that relative tested positive for drugs, the Cabinet temporarily placed him with mother at Chrysalis House. After mother admitted to relapsing, mother was moved back into a more intense in-patient

program at Chrysalis House and child was placed with another relative. In October 2010, mother left Chrysalis House for another in-patient program at the Vision of Life Center. In November 2010, mother left the Vision of Life Center, was allowed to re-enter Chrysalis House in mid-December and began having supervised visits with child.

By April 2011, mother progressed to having weekend visitation with child and the Cabinet planned to return child to mother based on her progress. In May 2011, the relative could no longer care for child, and child was temporarily placed with mother. Mother completed the first phase of her Chrysalis House program and, as part of the aftercare portion of the program, was placed in a sober living apartment and obtained employment.

In December 2011, mother relapsed and voluntarily relinquished placement of child. Child was placed in foster care. Mother was discharged from Chrysalis House for failing to complete the aftercare portion of the program.

In January 2012, mother was arrested for violating her probation and admitted she failed to complete her substance abuse program, obtain employment and pay restitution. On February 24, 2012, the circuit court referred mother to the drug court program rather than revoking her probation, but ordered her to remain incarcerated until release upon discretion of the drug court.

The drug court placed mother at the Wrap House. In September 2012, mother tested positive for heroin and was arrested for a probation violation. Subsequently, her probation was revoked and she remained incarcerated at Pee

Wee Valley until November 2012, when she was released into the Brighton Recovery Center for Women under the supervision of the drug court.

On March 27, 2013, the family court changed the goal to adoption, finding that child, now four years old, had many placements, needed stability, neither parent paid child support and mother stipulated that the goal should be changed to adoption. On August 5, 2013, the Cabinet filed a petition for involuntary termination of parental rights.

In October 2013, mother left the Brighton Recovery Center for Women, electing to return to incarceration at Pee Wee Valley. She was then placed in an in-patient program at the Dismas House.

The trial was held on April 14, 2014. Father appeared and consented to the termination of his parental rights. Mother opposed termination. Social worker Lynn Young and mother testified.

Young testified about mother's criminal history, mother's failure to make progress due to recurring relapses, how these relapses resulted in child's removal from mother's care and child's progress in foster care. The Cabinet introduced certified copies of mother's convictions and treatment records. Young testified mother had a pattern of doing well during in-patient programs but then relapsing every time she was placed in a less restrictive setting. Mother was given all possible services, including drug treatment, parenting classes and therapy but this pattern continued. Young kept in contact with mother, saw her in April 2013

and October 2013 and advised mother to contact her when she was released, but mother failed to do so. Young testified that even if able to maintain sobriety, mother would not be able to be reunited with child for six months to a year after her release from incarceration.

Young testified child had a series of placements from the time the Cabinet became involved; child was placed with father, a relative, mother, another relative, mother, short-term foster care and, for the past two years, in a foster-to-adopt placement. Child was removed from mother's care at Chrysalis House in 2010 and placed with a relative because of mother's relapse. Child entered foster care in December 2011 after mother relapsed again. Young investigated further relative placements in April 2012, but they failed to cooperate. Child had not seen mother for over a year.

Child showed improvement following placement in the foster-to-adopt home. His anxiety lessened following therapy and placement. He is now settled in his foster home and bonded with the foster family which includes an adopted child. He attends preschool and is now developmentally on target. Child is likely to be adopted following termination of parental rights.

During mother's testimony, she admitted to using illegal substances for nearly twenty years and being an alcoholic and drug addict. Mother admitted she had an extensive criminal history relating to drugs and alcohol abuse, including trafficking, use and possession of drugs, and DUIs, but had never completed both the in-patient and aftercare portions of treatment at any facility. Mother admitted

to failing to pay any child support for more than two years even though employed during part of this time.

Mother testified she was now capable of caring for child because she acknowledged she was an addict, had focused on her recovery, and made the necessary changes to remain clean and sober. She testified she maintained sobriety since September 12, 2012, her longest period of sobriety, and she wanted another chance to be reunited with her son. Mother testified she was scheduled to complete her treatment program in August 2014, thought she would be released at that time, but at the latest would serve out her sentence in November 2014. Following her release, she planned to live with a paramour in Lexington and obtain employment. She testified she had changed and would be capable of caring for child after she completed her sentence, and it would be best for child to be placed with her because he still knew her.

Mother also suggested that a relative placement would be better for child than termination. Mother testified she repeatedly attempted to contact Young about relative placement, but Young failed to return her calls and those of her mother, daughter and sister who had been calling for months to be considered as potential placements for child. Mother acknowledged child had very limited prior contact with these relatives.

On August 25, 2014, the family court terminated mother's parental rights, finding by clear and convincing evidence as follows: (1) child was neglected by mother; (2) mother was incapable of caring for child's needs due to

alcohol and drug abuse, a twenty-year addiction and associated criminal difficulties that included incarceration, and being in and out of in-patient rehabilitation programs multiple times; (3) mother failed to make sufficient progress toward goals for the safe return of child resulting in child remaining in foster care for fifteen of the most recent twenty-two months, including being unsuccessful in treating her substance abuse despite being given access to many different programs, leaving every program prior to completion due to a string of relapses; (4) mother abandoned child for more than a ninety-day period and last saw child over a year ago; (5) mother failed to care for child for more than six months, due to her addiction and criminal difficulties; (6) mother repeatedly failed to provide essential care for child and is not expected to improve in the immediately foreseeable future due to her substance abuse history; (7) it is in child's best interest that termination occurs due to progress in current placement; (8) the Cabinet has made reasonable efforts to cure the problem but it does not appear mother can improve her situation to ensure child would be returned to her within a reasonable period of time; and (9) mother has failed to show by a preponderance of evidence that the child would not be neglected if returned to her care.

Mother appealed. However, her attorney was unable to find any meritorious issue to address on appeal and noted different rulings on her evidentiary challenges would not change the outcome. Consequently, she followed the process established in *Anders v. California*, 386 U.S. 738, 744, 87 S.Ct. 1396, 1400, 18 L.Ed.2d 493 (1967), and adopted by our Court as applicable in termination cases in

A.C. v. Cabinet for Health & Family Servs., 362 S.W.3d 361, 367-372 (Ky.App. 2012), by asking to withdraw from representing mother. We ordered the motion to withdraw be passed to the panel and that mother be permitted to proceed *pro se* and file a supplemental brief if desired within thirty days. Mother has not filed any pleading. Having fully reviewed the record, we determine the family court properly made factual findings to support its determination by clear and convincing evidence that child was abused or neglected and termination was in his best interest pursuant to Kentucky Revised Statutes (KRS) 625.090.

A family court has a great deal of discretion in determining whether a child is neglected and whether the neglect warrants termination. *M.P.S. v. Cabinet for Human Res.*, 979 S.W.2d 114, 116 (Ky.App. 1998). A family court's decision to terminate parental rights must be based upon clear and convincing evidence, which we review under the clearly erroneous standard. *D.J.D. v. Cabinet for Health and Family Services*, 350 S.W.3d 833, 836 (Ky.App. 2011). "Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent-minded people." *W.A. v. Cabinet for Health & Family Services, Commonwealth*, 275 S.W.3d 214, 220 (Ky.App. 2008). We defer to the family court's ability to assess the credibility of witnesses. *Commonwealth v. Anderson*, 934 S.W.2d 276, 278 (Ky. 1996) (internal citations omitted). If there is clear and convincing evidence to support the finding of

neglect, any of the listed grounds for termination relied upon and termination would be in the child's best interest, we must affirm.

There was clear and convincing evidence on each ground for termination. Mother's repeated failure to complete drug treatment and maintain sobriety, associated criminal convictions and incarceration, resulted in an inability to parent child. Consequentially, child was neglected. Mother's failure to make progress in establishing sobriety resulted in her being incapable of caring for child, child's prolonged placement in foster care, mother abandoning child and mother failing to provide essential care for child.

Mother asked for yet another chance to make the progress that was lacking over the course of the child's life, claiming she had finally achieved long-term sobriety. However, under the circumstances, the family court was entitled to believe she would ultimately be unsuccessful and was not obligated to give her another opportunity.

Accordingly, we affirm the Campbell Family Court's termination of D.A.C.'s parental rights to A.P.B.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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