

RENDERED: JULY 21, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000273-ME

J.P.

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NO. 15-AD-00018

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF KENTUCKY;
J.W.R.M., A CHILD

APPELLEES

NO. 2016-CA-000274-ME

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v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE TIMOTHY E. FEELEY, JUDGE
ACTION NO. 15-AD-00019

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF KENTUCKY;
J.M.M., JR., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, J. LAMBERT, AND STUMBO, JUDGES.

DIXON, JUDGE: J.P. (“Mother”) appeals from two separate judgments of the Oldham Circuit Court terminating her parental rights to J.W.R.M. and J.M.M., Jr. (“Children”).¹ Finding no error, we affirm.

In June 2013, the court entered adjudication orders finding the Children (then ages 2 and 3) were dependent because their parents left them unsupervised in a locked bedroom without air conditioning, even after the parents had agreed to comply with the Cabinet’s safety plan. After approximately seven months in the Cabinet’s custody, the court returned the Children to their Mother’s care. The Cabinet’s case remained active, and Mother was ordered to continue cooperating with the Cabinet. Thereafter, during a home visit, Mother admitted to the case worker that other adults in the home had recently been smoking marijuana in a bedroom while the Children were in the house. The following month, the Cabinet filed a report with the court and requested a review hearing to address concerns regarding Mother’s ability to protect the Children from harmful situations. The court held a review hearing on March 6, 2014, and entered orders returning the Children to the Cabinet’s custody due to Mother’s failure to properly

¹ The parental rights of J.M.M., Sr., the father of the Children, were involuntarily terminated, and he did not appeal from that judgment.

supervise and protect the Children. The Cabinet provided Mother with a case plan, which required her to complete a psychological assessment with Dr. Sally Brenzel and maintain stable housing and employment. Mother moved from her residence in April 2014, and she did not advise the Cabinet of her new address for seven months. In November 2014, Mother gave birth to her third child, T.G., and she informed the Cabinet she was living with her boyfriend and his mother in LaGrange, Kentucky.² Mother moved again in April 2015, and she did not inform the Cabinet of her new address until the day of trial. In August 2015, the Cabinet filed a petition to terminate parental rights.

A bench trial was held on January 14, 2016, and the court heard testimony from the Cabinet's case worker, Katrina Holcombe; Susie Miller, the foster mother; Dr. Brenzel; and Mother. The circuit court rendered findings of fact and conclusions of law, which detailed Mother's inability to provide a safe and stable home for the Children. At the time of the trial, the Children were ages six and four, and they had been in foster care for nearly two years. The court specifically found the statutory requirements for termination had been met and that it was in the Children's best interests to terminate Mother's parental rights.³

² In August 2015, T.G. was placed in the permanent custody of the paternal grandmother as a result of the court's finding of neglect.

³ The court recited several factors pursuant to KRS 625.090 to support its decision: The Children were abused or neglected as defined by KRS 600.020(1); Mother continuously failed to provide essential parental care for the Children; For reasons other than poverty alone, Mother continuously failed to provide for the Children's essential food, clothing, shelter, medical care or education; Mother failed to make reasonable efforts to change her conduct so the Children could return home; The Children had been committed to the Cabinet for fifteen of the most recent twenty-two months preceding the filing of the petition; The Cabinet made reasonable efforts to reunite the family; The welfare of the Children improved in the Cabinet's custody.

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 & Family Servs. v. A.G.G.*, 190 S.W.3d 338, 342 (Ky. 2006); KRS 625.090. The trial court’s findings of fact are entitled to great deference; accordingly, this Court applies the clearly erroneous standard of review. CR 52.01; *M.P.S. v. Cabinet for Human Res.*, 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.*

On appeal, Mother challenges the sufficiency of the evidence supporting the court’s decision to terminate her parental rights. Mother takes issue with the Court’s reliance on the Cabinet’s evidence, and she relies on her own testimony to support her contention she complied with the Cabinet’s case plan.

The case worker for the Cabinet, Katrina Holcombe, testified regarding Mother’s failure to comply with the Cabinet’s requirement to maintain stable housing and employment. Mother relocated on more than one occasion without advising the Cabinet of her address for months at a time. Mother also held several different jobs during the pendency of the case, and she had been working at Walmart for eight months prior to the trial. Mother did not provide any financial support to the Children while they were in foster care, aside from a holiday gift or snacks during visitation. Further, Dr. Brenzel testified her assessment indicated

Mother lacked the ability to make significant changes in her behavior because she engaged in relationships that included substance abuse, domestic violence, instability, and financial dependence. Despite Mother's argument to the contrary, we have carefully reviewed the record and conclude substantial evidence supported the court's determination it was in the Children's best interests to terminate Mother's parental rights.

Mother also raises two unpreserved errors: 1) she was deprived of due process at the March 2014 hearing because the Cabinet did not file a second removal petition; and 2) the trial court impermissibly relied on a report from the Children's guardian *ad litem* (GAL).

It is well settled, "if a party has not preserved the question he is asking an appellate court to review, it can only be reviewed as palpable error on appeal, which requires a finding of manifest injustice to prevail." *Fischer v. Fischer*, 348 S.W.3d 582, 589 (Ky. 2011).

"The fundamental requirement of procedural due process is simply that all affected parties be given the opportunity to be heard at a meaningful time and in a meaningful manner." *Hilltop Basic Res., Inc. v. County of Boone*, 180 S.W.3d 464, 469 (Ky. 2005) (internal quotation marks and citation omitted). The Children were returned to Mother's custody on January 9, 2014. On February 19, the Cabinet requested a hearing date to review ongoing concerns about Mother's inability to protect the Children from harmful situations. On its calendar order, the trial court set a hearing for March 6, and attached a copy of the report detailing the

Cabinet's concerns. Mother was represented by retained counsel throughout the underlying proceedings, and there is no indication in the record Mother did not receive notice of the hearing or that she was denied the opportunity to participate. Under the circumstances, we are not persuaded the Cabinet's failure to file a second removal petition constituted palpable error.

Finally, Mother contends her right to due process was infringed when the court relied on the report of the GAL in its findings of fact. In *Morgan v. Getter*, 441 S.W.3d 94, 119 (Ky. 2014), a child custody case, the Kentucky Supreme Court concluded it was erroneous for a court to rely on the investigation and report of a GAL without allowing the parties an opportunity for cross-examination. In the case at bar, the GAL's report summarized the testimony at trial and recommended termination of parental rights. The trial court's findings of fact mentioned the report only once, simply noting the GAL's recommendation. There is nothing in the record that indicates the court actually relied on the GAL's report as the basis for terminating parental rights; rather, the court clearly rendered its own detailed findings of fact that were supported by the testimony and evidence presented at trial. Under the facts presented here, there was no palpable error.

For the reasons stated herein, we affirm the judgments of the Oldham Circuit Court in each of these appeals.

ALL CONCUR.

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