

RENDERED: NOVEMBER 9, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000066-ME

G.D.

APPELLANT

v. APPEAL FROM FLOYD CIRCUIT COURT
HONORABLE DWIGHT S. MARSHALL, JUDGE
ACTION NO. 14-AD-00020

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF KENTUCKY; AND
R.W.M.D.

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, DIXON, AND STUMBO, JUDGES.

DIXON, JUDGE: G.D. (“Mother”) appeals from a judgment of the Floyd Circuit Court terminating her parental rights¹ to R.W.M.D. (“Child”). Finding no error, we affirm.

¹ The father, J.L.D. (“Father”) consented to the voluntary termination of his parental rights.

Child was born March 31, 2012, while Mother was incarcerated. The Cabinet initiated neglect proceedings, alleging Child was at risk for harm because Mother and Father were both incarcerated and awaiting trial on charges of criminal child abuse and murder of their young nephew in September 2011.² Father was subsequently convicted on the charges and received a life sentence. In February 2016, Mother entered a guilty plea to four counts of first-degree criminal abuse and received a fifteen-year sentence.

Once the criminal case was resolved, Mother stipulated to neglect at the adjudication hearing in Child's juvenile case. In April 2016, the Cabinet filed a petition to terminate the parental rights of Mother and Father.

The court held a bench trial in August 2016. In addition to the Cabinet's social worker, the court heard testimony from Mother and from Mother's therapist.

The Cabinet's social worker explained Mother refused to cooperate with the Cabinet during the first two years of the case, based on the advice of her criminal attorney. In 2014, at Mother's request, the Cabinet created a safety plan for Mother and encouraged her to complete any classes available to her in jail. The social worker acknowledged she made little contact with Mother regarding her

² Mother and Father had custody of Mother's sister's four children. The indictments alleged the four children were abused and suffered physical injuries, leading to the death of one of the children.

case plan. The social worker explained, because of Mother's continued incarceration and severity of the charges, there were no additional services the Cabinet could provide that would have allowed Child to safely return to Mother's care.

Mother was paroled in May 2016. She testified she moved to Chrysalis House to continue her treatment for post-traumatic stress disorder and battered woman's syndrome. Mother asserted she made positive changes in her life and submitted certificates to the court from treatment programs she completed. Mother testified she had been battered and controlled by Father, which had rendered her unable to protect her nephew from abuse. At the time of the trial, Mother was not employed, although she believed she would soon obtain a job through a placement program at Chrysalis House. Mother admitted she had never provided parental care or necessities for Child because of her incarceration.

In its findings of fact and conclusions of law, the court specifically found the statutory requirements for termination had been met and that it was in Child's best interest to terminate Mother's parental rights.³ The court emphasized

³ The court recited several factors pursuant to Kentucky Revised Statutes (KRS) 625.090 to support its decision: The Child was previously adjudged to be abused or neglected; Mother continuously failed to provide essential parental care for Child; For reasons other than poverty alone, Mother continuously failed to provide for Child's essential food, clothing, shelter, medical care or education, with no reasonable expectation Mother's conduct would improve in the immediate future; and Child had been in foster care for more than fifteen months preceding the filing of the petition.

Child was more than four years old and had been in foster care since birth. The court further noted, although Mother was released on parole after serving four and one-half years, she had received a fifteen-year prison sentence for her role in the abuse of children that were in her care. Mother 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); 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. 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.*

Mother contends the court erred by finding the Cabinet made reasonable efforts to reunite her with Child. According to Mother, she did not receive a fair opportunity for reunification because the Cabinet refused to help her.

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[.]”

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 social worker testified Mother did not cooperate with the Cabinet for two years because of the pending criminal charges. The social worker ultimately provided Mother with a safety plan; however, the social worker had little contact with Mother because there were no other preventive or reunification services available while Mother remained incarcerated for an indefinite amount of time. The trial court found the social worker’s testimony persuasive on this issue, noting only limited services were available while Mother was incarcerated. We conclude the court’s determination was supported by substantial evidence.

We have carefully considered the arguments raised by Mother and conclude they are without merit. The record indicates the court made specific factual findings and applied the statutory factors set forth in KRS 625.090(2)-(3) to conclude termination of parental rights was in Child’s best interest. After careful review, we conclude substantial evidence supported the court’s decision to terminate Mother’s parental rights.

For the reasons stated herein, the judgment of the Floyd Circuit Court
is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jimmy C. Webb
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BRIEF FOR APPELLEE:

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