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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-000195-ME

A. J. A.

APPELLANT

v.

APPEAL FROM BOYD CIRCUIT COURT
HONORABLE C. DAVID HAGERMAN, JUDGE
ACTION NO. 16-AD-00010

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; AND W.D.H., JR. (A
MINOR CHILD)

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, COMBS, AND D. LAMBERT, JUDGES.

COMBS, JUDGE: Appellant, A.J.A. (Mother), appeals from an order of the Boyd Circuit Court terminating her parental rights to her minor child. After our review of the record and the pertinent law, we affirm.

On February 3, 2016, the Appellee, Cabinet for Health and Family Services, Commonwealth of Kentucky (Cabinet), filed a Petition for Involuntary Termination of Parental Rights in the interest of W.D.H., Jr., a male, born in 2004. Appellee, W.H., is the child's biological father. He has not appealed. At the time the Petition was filed, the child was in a psychiatric residential treatment facility and had been in foster care since June 19, 2013, for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the Petition.

The court appointed a Guardian *Ad Litem* (GAL) to represent the child, a GAL to represent the father, who was incarcerated, and counsel for Mother. The final hearing was conducted on November 23, 2016. Mother was present and represented by counsel. Father attended by phone and his GAL was present -- as was the GAL for the child. Ms. Kelli Scott, the social worker, testified on behalf of the Cabinet, and both parents testified. The court interviewed the child following the hearing.

On January 5, 2017, the trial court entered Findings of Fact and Conclusions of Law and Order Terminating Parental Rights and Order of Judgment. Based on "clear and convincing evidence," the court made findings of fact as summarized below.

The child is presently placed in a psychiatric residential treatment facility. This is his fourth removal and entry into foster care. He has been in care since June 13, 2013. After Mother was released from jail in October 2015, she did not contact the Cabinet about the child until April 2016 -- approximately six

months after her release from jail and two months after the filing of the Petition.

The court found that Mother had “failed and refused to provide an updated address until shortly before the first scheduled final hearing. [Mother] was requested to maintain contact with the worker and her child as well as stable and appropriate housing, which she failed to do for extended periods of time.” By the time of the final hearing, Mother had visited the child twice. The court also found as follows:

Although [Mother] has been employed, her testimony was that she had been employed as a supervisor at a restaurant and had taken a pay cut because she was unable to handle the stress of her job. The minor child has special needs due to his behaviors and her prior history with the Cabinet, included in the certified juvenile records, shows her inability to handle the stress of these behaviors as well. [Mother] has a history of having poor judgment in her relationships and in the choice of partners. Both [Mother] and her previous partner physically abused the child. In spite of this, [Mother] testified that she had not inquired into the background of her current paramour, who is involved with drug court, and did not believe his past was relevant.

In addition, the trial court found that both Mother and the child’s father have:

failed to protect and preserve the fundamental right of [the child] to a safe and nurturing home....

neglected the needs of their child....

...

for a period of not less than six (6) months ...
continuously or repeatedly failed or refused to provide or have been substantially incapable of 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.

...

for reasons other than poverty alone ... 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 well-being of [the child] and there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child.

The court found that Mother had failed to maintain court-ordered child support payments; that the child had been in foster care under the Cabinet's responsibility for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the Petition; and that the Cabinet had rendered or attempted to render reasonable services in an effort to keep the family together since the child had been in foster care. The court stated that it had considered the Cabinet's reunification services and "other factors in KRS^[1] 625.090(2)(a) through (j)" and that it had concluded that termination of parental rights would be in the best interest of the child.

By accompanying Order Terminating Parental Rights and Order of Judgment entered on January 5, 2017, the trial court terminated the parental rights of Mother and of the child's father. On January 28, 2017, Mother timely filed a Notice of Appeal to this Court.

¹ Kentucky Revised Statutes.

On appeal, Mother contends that the trial court erred in terminating her parental rights. She attacks as erroneous the court's findings that there is no reasonable expectation for improvement in her parental care. She also believes that termination of her parental rights is not in the child's best interest. In essence, Mother re-argues her case.

In *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204 (Ky. 2014), our Supreme Court explained that:

KRS 625.090 provides for a tripartite test which allows for parental rights to be involuntarily terminated only upon a finding, based on clear and convincing evidence, that the following three prongs are satisfied: (1) the child is found or has been adjudged to be an abused or neglected child as defined in KRS 600.020(1); (2) termination of the parent's rights is in the child's best interests; and (3) at least one of the termination grounds enumerated in KRS 625.090(2)(a)-(j) exists.

Id. at 209. The standard governing our review is whether the trial court's findings are clearly erroneous. CR² 52.01.

The trial court has a great deal of discretion in an involuntary termination of parental rights action. ... [F]indings of fact of the trial court will not be disturbed unless no substantial evidence exists in the record to support its findings. 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.

C.A.W. v. Cabinet For Health & Family Services, Commonwealth, 391 S.W.3d 400, 403 (Ky. App. 2013) (citations and internal quotation marks omitted).

² Kentucky Rules of Civil Procedure.

The first prong of the test is not at issue here. As to the second prong -- the child's best interests, the trial court is required to consider the six factors enumerated in KRS 625.090(3):

- (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.

In the case before us, the court found that the child was an abused or neglected child. It also found that Mother and a previous partner had physically abused the child. The court found that the Cabinet had made or attempted to make reasonable reunification efforts. The court considered Mother's inability to handle the stress of the child's behaviors as shown by her inability to handle the stress of a

recent job as well as her history of poor judgment in relationships and the fact that her current paramour was involved in drug court. In addition, the trial court found that Mother had failed to make child support payments.

Our review of the testimony presented at the hearing assures us that the court's findings have a substantial evidentiary foundation. We conclude that the court properly considered the applicable factors in determining the child's best interest and that the second prong of the test is satisfied. *See K.H.* at 212 (“While the family court's written order did not specifically address each factor, its findings lead us to believe that each factor was properly considered.”).

The third prong of the tripartite test requires that **at least one** of the termination grounds enumerated in KRS 625.090(2)(a)-(j) exists. Pursuant to the statute, the trial court found that the child had been in foster care for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the Petition. KRS 625.090(2)(j). That one factor is sufficient to satisfy the test.

The Order Terminating Parental Rights and Order of Judgment entered by the Boyd Circuit Court on January 5, 2017, is hereby affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Rhonda M. Copley
Ashland, Kentucky

BRIEF FOR APPELLEE:

Mary Hall Sergent
Ashland, Kentucky