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Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000381-ME

A.T.

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE TIMOTHY NEIL PHILPOT, JUDGE
ACTION NO. 15-AD-00335

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY; N.R., FATHER;
AND M.R., A MINOR CHILD

APPELLEES

AND

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v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE TIMOTHY NEIL PHILPOT, JUDGE
ACTION NO. 15-AD-00337

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY N.R., FATHER;
AND M.A.R., A MINOR CHILD

APPELLEES

AND

NO. 2017-CA-000384-ME

A.T.

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE TIMOTHY NEIL PHILPOT, JUDGE
ACTION NO. 15-AD-00338

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY; E.T., FATHER;
N.R., FATHER; AND J.L.S., A MINOR CHILD

APPELLEES

AND

A.T.

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE TIMOTHY NEIL PHILPOT, JUDGE
ACTION NO. 15-AD-00339

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY; N.R., FATHER;
AND M.I.R., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, D. LAMBERT, AND TAYLOR, JUDGES.

JONES, JUDGE: These consolidated appeals arise from five orders of the Fayette Circuit Court terminating A.T.’s parental rights of her five minor children.

Following an extensive review of the record and applicable law, we AFFIRM the orders of the Fayette Circuit Court.

I. BACKGROUND

A.T. (“Mother”) is the biological parent of the five children at issue in these appeals. Child 1 was born in July of 2008, Child 2 was born in June of 2009, Child 3 was born in October of 2010, Child 4 was born in October of 2012, and

Child 5 was born in April of 2014 (hereafter, collectively referred to as the “Children”). N.R. (“Father”) was the legal father of all children. Father is the biological father of all children except for Child 4, whose biological father is E.T.¹ Child 1, Child 2, and Child 5 all suffer from Townes-Brocks syndrome, a hereditary disorder which has caused them numerous health complications.² Child 1 and Child 2 both have impaired hearing and deformed thumbs due to their Townes-Brocks syndrome. In addition to suffering from hearing loss, Child 5 has undergone multiple surgeries due to the Syndrome.

In April of 2014, the Cabinet for Health and Family Services (the “Cabinet”) received a referral of educational neglect regarding Child 1 and Child 2, who were in kindergarten and preschool at the time. The referral alleged that Child 1 and Child 2 had not been attending school. When a social worker questioned Mother about Child 1 and Child 2’s absences from school, Mother stated that she did not want them to be around other children due to their kidney problems and heightened risk of contracting an illness. Mother also indicated that she did not like the school that Child 1 and Child 2 were attending and was looking to send them to a different school. The Cabinet continued to monitor Child 1 and Child

¹ Mother and Father were married when all Children were born. At some point after the Cabinet had filed for termination of Mother and Father’s parental rights, Mother revealed that Father was not Child 4’s biological father and that she believed that Child 4’s biological Father was E.T. E.T. was located, submitted to a paternity test, and was determined to be Child 4’s biological father. E.T. was adjudged to have abandoned Child 4 and his parental rights were terminated by the same order that terminated the parental rights of Mother and Father. As E.T. has not appealed that order, we do not discuss facts and testimony solely related to E.T. in this opinion.

² WebMD describes Townes-Brocks syndrome as “an autosomal dominant genetic disorder characterized by absence of the anal opening (imperforate anus), abnormal ears associated with hearing impairment and thumb malformations. Abnormalities in the feet, heart, and kidneys also occur frequently.” <http://www.webmd.com/children/townes-brocks-syndrome>.

2's school attendance. At the end of the 2013-14 school-year, Child 1 had forty-seven unexcused absences and twenty-six unexcused tardies; Child 2 had thirty-four unexcused absences and one unexcused tardy.

In September of 2014, the Cabinet filed non-removal Dependency, Neglect, and Abuse (“DNA”) petitions for the Children. The petitions noted the poor school attendance of Child 1 and Child 2, which had continued into the following school year. The Cabinet indicated that, upon receiving the educational neglect referral, it had contacted KVC in-home services to start assisting Mother and Father in their home. The petitions alleged that Mother was generally uncooperative – while Mother had agreed to work with KVC, each time KVC attempted to do a home visit Mother would not be at home and Mother would not respond to messages, causing KVC to close their services. The petitions stated that the Cabinet had been in touch with Father, who was generally clueless about the situation with the Children. Further, the Cabinet noted that Mother had an extensive history with child protective services in Texas, some of which concerned Child 1, Child 2, and Child 3.³ On September 8, 2014, Father stipulated to educational neglect and the court appointed a guardian *ad litem* (“GAL”) and a Court Appointed Special Advocate (“CASA”) for the Children.

Reports were filed by the GAL and CASA in October of 2014. Both reports indicated that Mother had taken Child 3 and Child 4 to Texas to visit her

³ Mother has two other biological children, who are not subject to this action. Mother voluntarily terminated her parental rights of those children while in Texas. Additionally, Mother was involved with child protective services in Texas as a victim of neglect and/or abuse multiple times during her childhood.

family. Father was uncertain on what date Mother would return with the children. The reports further stated that both Child 1 and Child 2 had not been wearing their hearing aids at school and that Mother had refused to have Child 1 or Child 2 assessed for special services at their school. The GAL recommended intensive in-home services for the children. CASA additionally recommended that Child 1 and Child 2 be evaluated by their school to see if they have special needs and receive tutoring. Following a disposition hearing with the juvenile court, Father negotiated and began working on a case plan with the Cabinet and KVC resumed in-home services with the family.

Mother was given a case plan by the Cabinet following her return to Kentucky. A review hearing in November of 2014 indicated that Child 1 and Child 2's school attendance had improved and that both Mother and Father were cooperating with the Cabinet and working their case plans. In December of 2014, however, the Cabinet received another referral of neglect regarding Child 2. A KVC worker reported that she had gone to the family's home for a scheduled home visit and found Child 2 recovering from a tonsillectomy. Child 2 was either unable or unwilling to eat, drink, or take her medicine. After some resistance from Mother, the KVC worker and Mother took Child 2 to the emergency room. Child 2 was then admitted to UK Children's Hospital for severe dehydration. When a social worker went to visit Child 2 in the hospital, that worker found Child 2 alone and upset. Hospital employees informed the social worker that Child 2 had been alone at the hospital for several hours. A review report from the Cabinet filed in

January of 2015 indicates that concerns had been raised in addition to the December 2014 incident. KVC had ceased in-home services due to missed appointments by Mother. Mother had also missed appointments with The Nest, which were required as part of her case plan through the Cabinet. Further, Child 1 and Child 2 were continuing to miss school and/or be tardy on a regular basis.

On February 2, 2015, the juvenile court entered an ordering granting emergency custody of all the Children to the Cabinet. The Cabinet was granted temporary custody of the Children on February 5, 2015. On March 9, 2015, the Cabinet filed an amended DNA petition, citing that new information regarding the Children's medical care had come to its attention since the Children had been placed in foster care. The amended DNA petition listed numerous medical appointments that had been missed by Child 1, Child 2, and Child 5 over the past year. These appointments included general pediatrics appointments, as well as audiology, nephrology, cardiology, genetics, pediatric surgery, and plastic surgery appointments. The amended petition additionally stated that Child 1 had been diagnosed with stage 2 kidney disease and that Child 4 was significantly behind on her immunizations. Both Mother and Father stipulated to medical neglect of the Children at a hearing on March 23, 2015.

On May 18, 2015, the juvenile court conducted a review and adopted the recommendations of the Cabinet. The Cabinet's report indicated that Mother and Father had continually been hostile with the Cabinet, occasionally making threats to Cabinet workers. Both parents, however, had been working on new case

plans, which included attending certain parenting classes and completing a court-ordered mental health assessment. The report additionally indicated that all children had adjusted well to their foster placements and were making improvements developmentally. Further review was conducted on October 27, 2015, following completion of Mother and Father's mental health assessment. Noting that the case worker, the Children's therapist, and Dr. Feinberg – who had conducted Mother and Father's mental health assessment – recommended continued removal of the Children due to the continuing risks presented by Mother and Father, the juvenile court changed the goal from reunification to adoption. Additionally, the court ordered that visitation was suspended and that there should be no contact between the parents and the Children. On December 2, 2015, the Cabinet filed a termination of parental rights (“TPR”) petition for each child with the Fayette Circuit Court, seeking to terminate the parental rights of Mother and Father.

The circuit court conducted an evidentiary hearing on January 13, 2017. The Cabinet's case-in-chief included testimony from mental health experts, social workers, and the Children's foster parents. Mother, Father, and E.T. were all present; however, Father chose to voluntarily terminate his parental rights over the children at the hearing.

Dr. Feinberg was the first witness called by the Cabinet. After testifying as to his credentials, Dr. Feinberg was deemed a qualified mental health expert by the circuit court. Dr. Feinberg spoke on his experience evaluating

Mother and Father. He indicated that neither parent had completed all evaluations requested of them and stated that Mother and Father were the “least cooperative family” he had ever dealt with. Dr. Feinberg testified that Mother refused to acknowledge her responsibility in the Children’s maltreatment or in their removal from her care. Further, Dr. Feinberg testified that Mother had various mental health issues, which she refused to address. An IQ test given to Mother had revealed that she had mild or borderline intellectual disabilities. Additionally, Dr. Feinberg noted that Mother was very angry, volatile, had very little impulse control and demonstrated features of an individual with borderline personality disorder. Based on his observations of Mother, Dr. Feinberg testified to his belief that Mother would be unable to change her behavior or learn parenting skills. Accordingly, Dr. Feinberg stated that he believed it was in the Children’s best interests that Mother’s parental rights be terminated.

The Cabinet next called Dana Stanley, a social worker from Texas who had previously worked with Mother. In addition to testifying to Mother’s history with child protective services in Texas as a victim and as related to her two oldest children, Ms. Stanley stated that Texas had been involved with Mother concerning issues with Child 1, Child 2, and Child 3. Ms. Stanley stated Child 1 tested positive for marijuana at birth, causing Texas to become involved. Child 1 was eventually removed from Mother’s care for two months following reports that Mother was leaving her in a hotel room for hours at a time and allegations of drug use. Ms. Stanley testified that Texas became involved with the family again in

2010, when it received reports of abuse and neglect concerning Child 1, Child 2, and Child 3. Due to these reports, the children were removed from Mother and Father's care for approximately eleven months, but were returned to them when Father's mother was granted conservatorship of the children. Additionally, Ms. Stanley testified to her personal interactions with Mother. She stated that while Mother did complete the requirements of her case plans, Mother was generally hostile and aggressive. Further, Mother refused to accept blame for her children's removal and was unable to exhibit understanding of skills taught in her parenting classes.

Next, Rhonda Armijo testified for the Cabinet. Ms. Armijo was the case worker for the Children from August 2014 to December 2015. Ms. Armijo stated that Mother was very resistant to services offered by the Cabinet, Child 1 and Child 2's school, and KVC. Ms. Armijo testified that things improved with the Children while Mother was in Texas and that Mother contacted her upon her return to begin working a case plan. Once Mother returned, however, Ms. Armijo indicated that the situation with the Children began to deteriorate. Additionally, Ms. Armijo stated that Father's mother had moved in with the family in December of 2014. Ms. Armijo stated that Father's mother had caused KVC to cease providing services to the family at one point because KVC workers felt threatened by her. Ms. Armijo testified that the Children's behavior and physical health had dramatically improved once the Children had been placed in foster care. Further, Ms. Armijo indicated that both Mother and Father had been very hostile with the

Cabinet and had made threats of violence against Cabinet workers. These threats had caused the Cabinet to cease hosting visits between Mother, Father, and the Children.

Shay Blackford, the current caseworker for the Children, testified for the Cabinet next. Ms. Blackford stated that the Children's goal had already been changed to adoption when she took over as caseworker; however, she continued working with Mother and Father on their case plans. Ms. Blackford testified that, while Mother was adamant that she had completed all the goals of her case plan, Mother never provided verification of completion of her case plan tasks. Ms. Blackford indicated that all Children were bonded with their foster parents and that she believed it was in their best interest that the Children remain with their foster families. While the Children were in separate families – Child 1, Child 2, and Child 3 were with one family and Child 4 and Child 5 were with a different family – Ms. Blackford stated that the families were located less than five miles apart and that the Children were able to get together once a week for sibling bonding time.

The Cabinet next called Lindsey Bertrand to testify. Ms. Bertrand is a therapist for Benchmark Family Services and has been the therapist for Child 1, Child 2, and Child 3 since October of 2015. Child 4 had been recently evaluated and began seeing Ms. Bertrand for therapy a couple weeks prior to the hearing. Ms. Bertrand stated that Child 1, Child 2, Child 3, and Child 4 all have reactive attachment disorder, which is a diagnosis given when a child has difficulty attaching to others due to trauma or changes in caregivers. Ms. Bertrand indicated

that she had seen great changes in each of the children – they were eating better, had less disciplinary problems, a decrease in tantrums, and improved grades.

Finally, the Cabinet called the Children’s foster mothers to testify.

Ms. Grubb, foster mother to Child 1, Child 2, and Child 3, stated that all children had improved greatly and were now on the honor roll at school. Ms. Grubb also indicated that the children were now on a set schedule and were more obedient.

Ms. Love, the foster mother to Child 4 and Child 5, testified that both children had improved since being in her home. She stated that Child 5 was mentally and physically behind for his age when he arrived at her home, but was now on track for a child his age. Both foster mothers stated that the Children had bonded to their families and that they would be seeking to adopt the Children should parental rights be terminated.

Mother testified on her own behalf. Mother stated that she was currently living in Ohio with her new boyfriend, but was willing to move back to Kentucky if her parental rights were not terminated.⁴ Mother testified that she had always complied with her case plan tasks and had complied with the mental health evaluation. Further, Mother testified that she had never had an issue with drug use, had always maintained housing, and was currently employed and able to support herself. Mother acknowledged that Child 1 and Child 2 had missed some school while in her care, but denied that it was as much as the reports from the school indicated. Mother said she would accept some responsibility for the Children’s

⁴ Mother indicated that she and Father had split up during the course of these proceedings. Mother had filed for a divorce, but that action was dismissed for lack of prosecution.

medical neglect. Mother expressed her belief that the Cabinet had not been reasonable in helping her to reunite with the Children. She stated that she had never yelled at or threatened any employee of the Cabinet, but that her passion had been misinterpreted. Mother indicated that she felt she had not had a fair shot and that most of the testimony presented during the hearing had been false.

Finally, the GAL addressed the court. The GAL noted that she had been involved in the case since the Fall of 2014. While the GAL expressed her belief that Mother really wanted to be able to care for the Children as necessary, she indicated that she did not think that Mother was capable of doing so. Accordingly, the GAL took the position that it was in the Children's best interests that Mother's parental rights be terminated.

On February 3, 2017, the circuit court entered separate Findings of Fact and Conclusions of law for each child and separate orders terminating Mother's parental rights of each child. This appeal by Mother followed.

II. STANDARD OF REVIEW

“The trial court has broad discretion in determining whether the child fits within the abused or neglected category and whether the abuse or neglect warrants termination.” *W.A. v. Cabinet for Health and Family Servs.*, 275 S.W.3d 214, 219 (Ky. App. 2008). Accordingly, our review is “confined to the clearly erroneous standard in CR⁵ 52.01 based upon clear and convincing evidence, and the findings of the trial court will not be disturbed unless there exists no substantial

⁵ Kentucky Rules of Civil Procedure.

evidence in the record to support its findings.” *Id.* (citing *R.C.R. v. Commonwealth Cabinet for Human Res.*, 988 S.W.2d 26, 38-39 (Ky. App. 1998)). “Substantial evidence has been conclusively defined by Kentucky courts as that which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person.” *Bowling v. Natural Res. & Envtl. Prot. Cabinet*, 891 S.W.2d 406 (Ky. App. 1994).

III. ANALYSIS

KRS⁶ 625.090 permits a court to involuntarily terminate a parent’s parental rights of a child if the court finds by clear and convincing evidence that a three-pronged test has been satisfied. First, the court must find that the subject child has been abused or neglected, as defined in KRS 600.020(1). KRS 625.090(1)(a). Next, the court must find that at least one of the listed factors in KRS 625.090(2) is present. Finally, the court must consider the factors enumerated in KRS 625.090(3) and determine that it would be in the child’s best interests to terminate parental rights. KRS 625.090(3). Despite a finding of the following, the court may, in its discretion, choose not to terminate parental rights if the parent “proves by a preponderance of the evidence that the child will not continue to be an abused or neglected child as defined in KRS 600.020(1) if returned to the parent.” KRS 625.090(5).

Mother stipulated to medical neglect of the Children and the juvenile court adjudged them to be neglected on March 23, 2015. While this alone would

⁶ Kentucky Revised Statutes.

have been sufficient to meet the first prong of the test under KRS 625.0920, the circuit court went on to make additional findings of neglect in each of the Findings of Fact and Conclusions of Law. The circuit court found that Mother had created a risk of physical or emotional injury to the Children by failing to address her own mental health problems, failing to ensure the Children received proper medical care, and failing to ensure the Children regularly attended school and received the necessary services at school. Further, the circuit court found that Mother did not provide the Children with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for their well-being. This finding was supported by evidence and testimony indicating that the Children had not been attending their medical appointments, had not been attending school regularly, and had not been provided with their hearing aids.

The circuit court found that two of the factors enumerated in KRS 625.090(2) were present. Specifically, the court found that for a period of not less than six months, Mother had failed or refused or was substantially incapable of providing essential parental care and protection for the Children and that Mother had either failed to provide or been incapable of providing essential food, clothing, medical care, or education necessary for the Children's well-being. These findings are supported by the record.

Finally, the circuit court found that it would be in the Children's best interests that Mother's parental rights be terminated. The circuit court noted that Dr. Feinberg had testified that Mother's mental illnesses would render her

consistently unable to care for the immediate and ongoing psychological and physical needs of the Children over an extended period of time. The circuit court found that the Cabinet had made reasonable efforts to reunite the family and had offered or provided all reasonable services to the family, yet despite the Cabinet's attempts to help, Mother had failed, refused, or been unable to make sufficient effort and adjustments to her circumstances to make it in the Children's best interests to return home. Additionally, the circuit court noted that Mother had committed acts of abuse or neglect towards the Children and that the Children were all thriving in their foster homes.

On appeal, Mother contends that termination of her parental rights was against the Children's best interests, as she has a strong bond with each child. Mother also alleges that the Cabinet violated her due process rights by failing to make reasonable efforts to reunite her with the Children. Further, Mother contends that she has proven that the Children would not be abused or neglected if returned to her care. Mother believes that she demonstrated this by testifying to the fact that she has maintained housing, is able to financially support herself, and has completed parenting classes.

While we do not doubt that Mother has a bond with each of the Children, the fact that a bond exists – by itself – is insufficient to make it in the Children's best interests that her parental rights not be terminated. The circuit court considered the factors set forth in KRS 625.090(3) in determining that it was in the Children's best interest that Mother's parental rights be terminated. The

record shows that there is substantial evidence to support this determination. Dr. Feinberg's testimony and the report he submitted to the court as an exhibit indicate that Mother's mental illnesses not only make her currently unable to meet the Children's needs, but make it so that she will be unable to change and adapt her behavior to better care for the Children. The record shows that mother consistently and continually failed to ensure the Children were attending school and either failed or refused to get them the special services they required to accommodate the handicaps caused by the Townes-Brocks syndrome. Further, Mother did not take the Children to their scheduled doctor appointments and, on at least one occasion, failed to take Child 2 to the doctor despite her clear and urgent need for medical treatment. We cannot find that the circuit court erred in finding that it is in the Children's best interests that Mother's parental rights be terminated.

Mother's contention that the Cabinet did not make reasonable efforts to reunite her with the Children is without merit. The Cabinet provided multiple case plans to Mother and offered her numerous services. KVC was placed in the home three times to help assist the family. Each time, however, KVC had to leave the home as Mother would not cooperate with the services. We are unsure what more the Cabinet could have done to try and reunite the family. Mother does not specifically indicate in what ways the Cabinet has failed her, and we cannot find that it did.

Finally, we disagree with Mother's contention that she demonstrated by a preponderance of the evidence that the Children would not continue to be

abused or neglected if returned to her. Throughout the case, Mother refused to accept blame for the Children's maltreatment. It was only during the hearing that Mother finally acknowledged she might be partially responsible for the Children's medical neglect. Mother has refused to engage in mental health services and did not attend all classes as required in her case plan. Taken together, this indicates that Mother is either unwilling or unable to alter her behavior and ensure that the Children are not neglected. Further, we must note that even if Mother had made a showing that the Children would not continue to be abused or neglected if returned to her, the circuit court would still be within its discretion to terminate her parental rights. *See* KRS 625.090(5).

IV. CONCLUSION

Based on the foregoing, we affirm the orders of the Fayette Circuit Court terminating Mother's parental rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

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