

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001045-ME

L.V.

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE KATHY STEIN, JUDGE
ACTION NO. 16-AD-00265

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
and P.W.V., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, J. LAMBERT, AND THOMPSON, JUDGES.

LAMBERT, J., JUDGE: L.V., *pro se*, appeals the Fayette Circuit Court's decision to terminate her parental rights to P.W.V. We affirm.

L.V. (the Mother) and W.W. (the Father) are the parents of P.W.V. (the Child), born in 2009 in Comanche County, Oklahoma. The parents were

stationed there in the military together. When things did not work out with the Father, the Mother moved herself and the Child to the Mother's home state of Kentucky, where they have remained ever since. The Father was residing in Arkansas at the time of the termination hearing. He has had no contact with the Child since 2009 although he paid child support up until the termination proceedings.

In June 2015, the Cabinet for Health and Family Services received a referral that a neighbor in the family's apartment complex had sexually assaulted the Child. During the Child's subsequent interview at the Child Advocacy Center, the Child revealed that the Mother often left her alone in the apartment. The Mother, when confronted with this information, admitted that she had left the Child on one occasion. The Mother insisted that she felt it was safer to lock the Child in the apartment rather than leave her with a babysitter or in child care. The sexual abuse allegations were not substantiated.

Because of the Mother's admission, the Cabinet drafted a prevention plan, which included eight items for her to complete (among which were mental health and parenting assessments).¹ The Mother refused to sign the plan, stating that she wished to speak first with an attorney. The Cabinet then filed a petition to

¹ The Mother had made multiple referrals, mostly of physical abuse, against the Child's daycares and schools. The Mother also subjected the Child to daily examinations of her genital area to ensure herself that the Child's hymen was intact.

have the Child determined to be dependent, neglected, or abused (DNA) based upon the Mother leaving the Child without adult supervision. Furthermore, the Child experienced a significant number of tardies (42) and unexcused absences (24) in the previous school year. The Cabinet also sought emergency custody of the Child. The Child was determined to be DNA; she was placed in the custody of the Cabinet in August 2015.

Over the course of the next year, the parties worked together to reunify the family, but the Mother remained resistant to treatment. Although she completed the parenting classes and a mental health assessment (after which the Mother was diagnosed as suffering from adjustment disorder and anxiety disorder and found in need of “intense mental health therapy”), the Mother did not believe that she needed mental health treatment. The various therapists with whom she had contact would all later testify that the Mother failed to make any significant progress in achieving her prevention plans² objectives.

In August 2016, the Cabinet changed its permanency goal for the Child to adoption rather than reunification. The following month a petition for termination of parental rights (TPR) was filed. A warning order attorney was

² A second prevention plan, this time with nine items, was drafted for the Mother in March 2016. The Mother initially refused to sign it, but her attorney was later able to obtain the Mother’s signature.

appointed for the Father, and a guardian ad litem (GAL) was appointed for the Child.

The Fayette Circuit Court held a hearing on February 8, 2017. The Cabinet presented seven witnesses who testified to the facts stated above. The Father testified via telephone from Arkansas. He stated that after retiring from military service he obtained employment in law enforcement. He also stated that his relationship with the Child consisted of two visits and several telephone calls. He has paid \$600 per month in child support since his daughter's birth, even after she was taken into foster care. The Mother had assured him that the situation was temporary and that the Child would be returned to the Mother "soon." The Father was not interested in obtaining custody of the Child.

The Mother called two witnesses, namely, her therapist Cheryl Elam from Therapeutic Villages, and herself. Ms. Elam stated that her focus with the Mother was on parenting skills and that the Mother met those goals. Ms. Elam further testified that she was not qualified to provide the type of therapy recommended by the assessment completed by the Mother in early 2016. The Mother refused to follow up with the referral made by Ms. Elam with a colleague who could provide the type of therapy the Mother needed.

In her own defense, the Mother testified that she had substantially complied with her case plan and was not in need of further intervention. She

maintained that she was only ever acting in the Child's best interests when she made the multiple referrals, performed the genital examinations on the Child, and continued to collect child support after the Child was removed from her care.³ The only assistance the Mother believed she needed from the Cabinet and her therapists was the type necessary to rebuild her relationship with the Child once the Child was returned to the Mother's care.

The circuit court entered its Findings of Fact and Conclusions of Law on May 1, 2017. Its Order Terminating Parental Rights was entered the same date. The Mother's attorneys withdrew from representation shortly thereafter. The Mother filed her notice of appeal, *pro se*, and continues to represent herself throughout this appeal. The Father did not appeal from the order terminating his parental rights.

On appeal, the Mother argues that the circuit court erred in its findings and in entering its order of termination. She avers that the delays attributed to her (which resulted in the Child's extended stay in foster care) were merely caused by her asserting her constitutional right to have counsel guide her through the process. The Mother also argues that the manner of taking the Child into custody was

³ Keeping the child support, the Mother contended, was necessary to retain her "stable living conditions" required by the prevention plan.

needlessly traumatic, that the GAL prevented communication with the Child, and that the Cabinet failed to pursue a family placement rather than foster care.⁴

We disagree. “A [family] court has broad discretion to determine whether a child has been either abused or neglected.” *C.J.M. v. Cabinet for Health & Family Servs.*, 389 S.W.3d 155, 160 (Ky. App. 2012). The family court’s decision will not be disturbed unless the decision was not based upon substantial evidence. *M.E.C. v. Comm., Cabinet for Health and Family Serv.*, 254 S.W.3d 846, 851 (Ky. App. 2008). The trial court’s findings regarding the weight and credibility of the evidence shall not be set aside unless clearly erroneous. Kentucky Rules of Civil Procedure (CR) 52.01. On the other hand, the trial court’s application of the law to those facts is subject to *de novo* review. *K.H. v. Cabinet for Health & Family Servs.*, 358 S.W.3d 29, 30-31 (Ky. App. 2011) (citation omitted). We can discern no error either in the circuit court’s findings or in its application of the law. *Id.*

The Cabinet based its petition for TPR on KRS 625.090(2)(e), (g), and (j).⁵ The pertinent parts of that statute read:

⁴ The Mother does name specific family members that would have accepted custody of the Child. The Father did not consider himself a suitable candidate. And in a letter submitted to the circuit court, the Child’s adult sister (who lives in Maryland) stated that she could not accept custody but would like to maintain a relationship with the Child.

⁵ KRS 625.090(2)(j) was amended effective July 14, 2018, to read: “fifteen (15) cumulative months out of forty-eight (48) months.” This change does not affect the outcome of our decision.

(2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:

...

(e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;

...

(g) That the parent, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child.

...

(j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights.

The trial court need only find that one of the Cabinet's alleged grounds be supported by clear and convincing evidence. KRS 625.090(2). At the TPR hearing, the Cabinet's proof clearly supported the circuit court's findings of those three grounds for termination. The Mother by her own admission had left the Child (at that time six years old) alone in their apartment while the Mother went to socialize. Even though the Mother said it was a single event, the Child had reported that it was a frequent occurrence. The Mother suffered from mental health issues, for which she refused to seek or complete necessary treatment. By continuing to assert that she is not in need of this therapy, the Mother effectively assured the circuit court that there was no reasonable expectation for improvement. And the Child's fifteen-month placement in foster care at the time of the petition speaks for itself.

We agree with the Commonwealth that the circuit court's findings as to the statutory prerequisites had the support of substantial evidence. Therefore, there was substantial compliance with the "clear and convincing" evidence standard enunciated in *Santosky v. Kramer*, 455 U.S. 745, 769, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); accord *J.E.H. v. Department for Human Resources*, 642 S.W.2d 600, 603 (Ky. App. 1982). We have "reviewed the circuit court's (1) neglect and abuse determination; (2) finding of unfitness under KRS 625.090(2); and (3) best-interests determination. In light of our review, we agree with

counsel's estimation and perceive no basis warranting relief on appeal.” *A.C. v. Cabinet for Health & Family Servs.*, 362 S.W.3d 361, 372 (Ky. App. 2012).

The order of the Fayette Circuit Court terminating the Mother’s parental rights is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

L.V., *Pro Se*
Lexington, Kentucky

BRIEF FOR APPELLEE:

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