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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001937-ME

M.C.B.F.

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE JULIA H. GORDON, JUDGE
ACTION NO. 17-AD-00029

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY; AND B.M.F., A MINOR
CHILD

APPELLEES

AND

NO. 2017-CA-001938-ME

M.C.B.F.

APPELLANT

v. APPEAL FROM DAVIESS CIRCUIT COURT
HONORABLE JULIA H. GORDON, JUDGE
ACTION NO. 17-AD-00030

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF

KENTUCKY; B.B.; AND R.M.F., A
MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

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

LAMBERT, J., JUDGE: M.C.B.F. (the Father, also known as M.C.F.) appeals from the Daviess Circuit Court orders terminating his parental rights to two of his children, namely, R.M.F. (Child One, born in 2011) in Appeal No. 2017-CA-001938-ME, and B.M.F. (Child Two, born in 2013) in Appeal No. 2017-CA-001937-ME. We affirm.

The Children were removed from the Parents' care by emergency order in July 2015; they were initially placed with a relative, but they were moved to foster care in late August of that year when the relative asked to be relieved from caregiving. Between then and the final hearing in October 2017, the Children thrived in foster care while the Parents failed to make significant progress on the court-approved case plans.

J.N.L.B. (the Mother) voluntarily terminated her rights to the Children on September 14 and 15, 2017. In so doing, she agreed that she was "unable to provide the child with the proper and essential parental care and protections." The Mother waived her attendance at the final hearing, although she did appear to testify as a witness for the Cabinet. Furthermore, regarding Child Two, B.B. was a

named party in Action No. 17-AD-00030, because the Mother was married to him at the time of that Child's birth. However, both the Mother and the Father acknowledged that B.B. was not Child Two's parent. B.B. (who was represented by counsel but did not appear at the termination hearing) was deemed by the circuit court to have "abandoned the child and any legal right he may have to assert paternity or obtain custody of the child." B.B. did not appeal that ruling. Consequently, the Mother is not a party to these appeals; and B.B., although named in the notice of appeal in No. 2017-CA-001938-ME, has not participated. The Daviess Circuit Court entered its order terminating the Father's parental rights to the Children on October 27, 2017, and the Father filed his timely notice of appeal. The matter was expedited by Court of Appeals order dated January 2, 2018.

The Father argues that the circuit court lacked clear and convincing evidence upon which to base its termination of his parental rights. We begin by stating our standard of review, namely:

Trial courts are afforded a great deal of discretion in determining whether termination of parental rights is warranted. *M.P.S. v. Cabinet for Human Res.*, 979 S.W.2d 114, 116 (Ky. App. 1998). Accordingly, appellate courts will not set aside the trial court's findings of fact unless they are clearly erroneous. [Kentucky Rule of Civil Procedure] CR 52.01. Findings of fact are clearly erroneous only if there exists no substantial evidence in the record to support them. *Yates v. Wilson*, 339 S.W.2d 458 (Ky. 1960). "The standard of proof before the trial court necessary for the termination of parental rights is clear and convincing evidence." *V.S.*

v. Commonwealth of Kentucky, Cabinet for Human Res., 706 S.W.2d 420, 423 (Ky. App. 1986). “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.” *Rowland v. Holt*, 253 Ky. 718, 70 S.W.2d 5, 9 (1934).

In Kentucky, the involuntary termination of parental rights is governed by [Kentucky Revised Statute] KRS 625.090. Under that statute, termination of parental rights is proper upon satisfaction of a three-pronged test. First, the child must be found to be abused or neglected, as defined in KRS 600.020(1). KRS 625.090(1). Second, the court must find that at least one of the enumerated factors in KRS 625.090(2) is present. Finally, the court must find that it is in the best interest of the child that parental rights be terminated. KRS 625.090(3).

M.P.R. v. Cabinet for Health & Family Servs., 520 S.W.3d 409, 412 (Ky. App. 2017) (footnotes omitted).

The circuit court based its finding of neglect on the following subsections of KRS 600.020(1)(a)(2):

(1) “Abused or neglected child” means a child whose health or welfare is harmed or threatened with harm when:

(a) His or her parent, guardian, person in a position of authority or special trust, as defined in KRS 532.045, or other person exercising custodial control or supervision of the child:

...

2. Creates or allows to be created a risk of physical or emotional injury as defined in this section to the child by other than accidental means;

3. Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005;

...

8. Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. A parent or other person exercising custodial control or supervision of the child legitimately practicing the person's religious beliefs shall not be considered a negligent parent solely because of failure to provide specified medical treatment for a child for that reason alone. This exception shall not preclude a court from ordering necessary medical services for a child;
or

9. Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) cumulative months out of forty-eight (48) months.

As the circuit court found, the Father engaged in domestic violence while the Children were at home; in fact, one instance occurred while Child Two was in the Mother's arms; the Father violated the protective order obtained by the Mother "on more than one occasion." The Father committed crimes (and was incarcerated on multiple occasions and was incarcerated at the time of the final hearing) throughout the Children's lives, he failed to maintain employment, or to provide "adequate care, supervision, food, clothing, shelter, and education or medical care." Medical care is especially crucial to Child Two, who has special needs that require daily therapies (physical and occupational) and constant doctor visits (he has five physicians in Cincinnati and four in Louisville). Although the Father attended and completed some parenting classes while in prison, the circuit court found that to be insufficient progress on the case plan. Finally, the Children had been in foster care for 15 months preceding the petition to terminate the Father's parental rights. Thus, the circuit court's finding of neglect (the first prong of the three-prong test) was supported by substantial evidence. *M.P.R.*, 520 S.W.3d at 412; KRS 625.090(1).

We next examine whether there was substantial evidence to support the circuit court's finding "that at least one of the enumerated factors in KRS 625.090(2) is present." *Cabinet for Health & Family Servs. v. K.H.*, 423 S.W.3d

204, 209 (Ky. 2014); *M.P.R.*, 520 S.W.3d at 412. Here, the circuit court based its decision upon three of the factors enumerated in KRS. 625.090(2), *viz.*:

(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) cumulative months out of forty-eight (48) months preceding the filing of the petition to terminate parental rights.

We agree with the Cabinet 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, 1403, 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 Daviess Circuit Court terminating the Father’s parental rights is affirmed.

ALL CONCUR.

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