

RENDERED: OCTOBER 5, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-000333-ME

K.J.

APPELLANT

v. APPEAL FROM KENTON FAMILY COURT,
HONORABLE CHRISTOPHER J. MEHLING, JUDGE
ACTION NO. 17-AD-00016

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

APPELLEES

AND
NO. 2018-CA-000348-ME

K.J.

APPELLANT

v. APPEAL FROM KENTON FAMILY COURT,
HONORABLE CHRISTOPHER J. MEHLING, JUDGE
ACTION NO. 17-AD-00017

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

APPELLEES

AND
NO. 2018-CA-000349-ME

K.J.

APPELLANT

v. APPEAL FROM KENTON FAMILY COURT,
HONORABLE CHRISTOPHER J. MEHLING, JUDGE
ACTION NO. 17-AD-00018

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

APPELLEES

OPINION
AFFIRMING

** ** * * * **

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

KRAMER, JUDGE: K.J. (Mother) appeals from a decision of the Kenton Family court, which terminated her parental rights to three of her children.¹ After careful review of the record, we affirm.

The Cabinet has been involved in the three children's lives for many years through multiple dependency, neglect and abuse actions. The first actions regarding the two oldest children at issue occurred in 2005. And the first action

¹ The father of two of the children also had his parental rights terminated at the hearing. However, he is not a party to this appeal. The third child's father is deceased.

regarding the youngest child at issue was in 2013. Each child has been removed from Mother's home and placed in the custody of the Cabinet multiple times over the course of their lives.

The most recent removal was in 2015 after Mother's home was condemned. There were also sexual abuse allegations within the home, involving the children at issue and Mother's adult children. An emergency custody order was entered, and the Cabinet ultimately obtained custody of the three children. Mother was ordered to comply with the Cabinet's case plan to regain custody of her children. The children have remained in the custody of the Cabinet since that time.

In January 2017 the Cabinet petitioned to terminate Mother's parental rights. Following a termination hearing, the family court entered findings of fact and conclusions of law and an order terminating Mother's parental rights in January 2018. This appeal followed.

In reviewing a decision to terminate parental rights, we apply a clearly erroneous standard. *Com., Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010); CR² 52.01. "Pursuant to this standard, an appellate court is obligated to give a great deal of deference to the family court's findings and should not interfere with those findings unless the record is devoid of

² Kentucky Rule of Civil Procedure.

substantial evidence to support them.” *T.N.H.*, 302 S.W.3d at 663 (citations omitted).

Involuntary termination proceedings are governed by KRS³ 625.090, which provides that a family court may involuntarily terminate parental rights only if the court finds by clear and convincing evidence that a three-pronged test has been met. First, the children must be deemed abused or neglected as defined by KRS 600.020(1).⁴ KRS 625.090(1)(a). Second, termination of parental rights must be in the children’s best interest, and the court is provided with a series of factors that it shall consider when making this determination. KRS 625.090(1)(c); KRS 625.090(3). Third, the court must also find at least one ground of parental unfitness listed in the statute. KRS 625.090(2).

On appeal, Mother does not take issue with the family court’s determination regarding the second and third prongs of the termination test. Rather, she only argues that there was not clear and convincing evidence to deem the children abused or neglected. Therefore, we will simply review the family court’s abuse and neglect finding. Regarding that finding, Mother specifically argues that the family court based its decision on “an unproven allegation,” *i.e.*, the sexual abuse allegation. However, this argument lacks merit.

³ Kentucky Revised Statute.

⁴ This finding can be made at the termination hearing pursuant to KRS 625.090(1)(a)(2), which is what occurred in this case.

The definition for an abused or neglected child is found in KRS 600.020(1). And while it is true that subsection 6 of that statute references sexual abuse, the family court did not utilize that particular subsection to find the children abused or neglected. Instead, the court found the children to be abused or neglected under subsections 4, 8 and 9 of KRS 600.020(1)(a).⁵ Upon review, evidence in the record fully supports the family court's conclusion regarding those subsections.

The family court noted that Mother has lost custody of thirteen of her other children. Over the course of all the related dependency, neglect and abuse proceedings, Mother has repeatedly exhibited behaviors which showed her

⁵ These subsections of KRS 600.020 state:

- (1) "Abused or neglected child" means a child whose health or welfare is harmed or threatened with harm when:
 - (a) His or her parent[:]
.....
 4. Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;
.....
 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[.]

inability to care for her children. In fact, Mother was convicted of endangering the welfare of a minor on two occasions. At the time of the final hearing, Mother's house was still condemned despite having over two years to correct the issue. Further, the family court found that since the children were removed in 2015 Mother had not: (1) obtained stable employment; (2) paid any child support; (3) provided clothing for the children; (4) been involved in the children's medical decisions; (5) progressed meaningfully on her case plan; or (6) demonstrated lifestyle changes that would allow the safe return of the children to her care. For these reasons, the children were in the custody of the Cabinet for approximately thirty consecutive months prior to the final hearing. There was substantial evidence in the record to support these findings. Therefore, the family court did not err in adjudging the children to be abused or neglected.

As previously mentioned, Mother does not take issue with the family court's determination regarding the second and third prong of the termination test. Therefore, for the above-stated reasons we AFFIRM the decision of the Kenton Family Court terminating Mother's parental rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

Joseph T. Ireland
Covington, Kentucky

**BRIEF FOR APPELLEE, CABINET
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