

RENDERED: FEBRUARY 1, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001230-ME

S.L.J.

APPELLANT

v. APPEAL FROM BULLITT FAMILY COURT
HONORABLE ELISE GIVHAN SPAINHOUR, JUDGE
ACTION NO. 16-AD-00059

THE CABINET FOR HEALTH
AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
H.D.C.; AND A.C., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND LAMBERT, JUDGES.

CLAYTON, CHIEF JUDGE: This appeal is taken from a decision of the Bullitt Family Court terminating the parental rights of S.L.J. (“Mother”) to her minor daughter, A.C. (“Child”). The parental rights of Child’s father, H.D.C., were

terminated in the same proceedings, but he did not appeal. For the following reasons, we affirm.

When Mother gave birth to Child on July 17, 2015, she was sixteen years of age and in the custody of the Cabinet for Health and Family Services (Cabinet). Mother had been removed from her parents in 2011 and placed with relatives. She ran away from them in 2013, claiming she had been sexually abused by a cousin, although she later recanted the allegation. Evidence was also offered that Mother's father had committed murder. Mother was taken into the custody of the Cabinet in June 2013. In November 2014, she was placed at All God's Children, where she was diagnosed with adjustment disorder, mood disorder and ADHD and prescribed various medications including Prozac, Abilify and Adderall, which were stopped when she became pregnant. From May 2015 until July 2015 she was placed in Maryhurst. Mother was in foster care when she gave birth. She stipulated that Child was dependent because she was in the Cabinet's custody and could not care for her. Child has been in the Cabinet's custody since that time.

Following the birth, Mother and Child resided together in the foster home where Mother cared for Child's needs. On September 1, 2015, Mother left the foster home without permission and remained absent until October 1, 2015, when she returned and was placed in an independent living program at the Home of the Innocents. She remained there until the middle of November 2015, when

she left and had no contact with the Cabinet until she returned on February 11, 2016. She was placed in Otter Creek Academy through March 2016 and then in Rivendell Hospital for substance abuse treatment in May 2016. After completing the program at Rivendell, she received inpatient mental health treatment at the River Valley Hospital which she left, against medical advice, without completing the program. She was then placed in Options for Success where she remained for one week before leaving. The family court entered a permanency hearing order on August 17, 2016, changing Child's goal to adoption. Mother reached the age of eighteen on September 25, 2016, and consequently was no longer in the Cabinet's custody.

The Cabinet developed case treatment plans every six months to facilitate the reunification of Mother with Child. The first case plan, developed in August 2015 shortly after Child's birth, required Mother to complete the nurturing parents program, be responsible for the care of Child, complete the HANDS program which provides in-home services to parents, remain drug-free and continue with mental health treatment. Mother started but did not complete the nurturing parents program and never started the HANDS program because she left. Mother was drug-free while in contact with the Cabinet. She was diagnosed with depression and prescribed medication but did not continue her mental health

treatment while she was away or after she left the Cabinet's custody upon turning eighteen in September 2016.

In October 2016, Mother contacted the Cabinet and her social service worker created an updated case plan. Mother was asked to submit to random drug screens; complete a substance abuse assessment and follow all recommendations, complete a mental health assessment and follow all recommendations, complete parenting classes, be available for home visits, and visit with Child. Mother had appeared in court on September 28, 2016, under the influence of drugs. Thereafter, she refused to submit to a drug screen. After the Cabinet filed its petition to terminate her parental rights, she began voluntarily having drug screens every Monday which were all negative. She failed to complete substance abuse and mental health assessments and treatment, failed to attend parenting classes, and did not submit to any home visits. The Cabinet did not know her address and the social worker testified that she had not maintained stable housing or employment for a minimum of six months. The social worker also testified that she was not aware of any treatment plans not previously offered to Mother that could have resulted in reunification.

As to her relationship with Child, Mother had no contact with Child during her numerous lengthy and unexplained absences. It is unclear what occurred during these periods but on one occasion, Mother was the victim of

human trafficking. Mother did visit regularly with the Child when she was in the Cabinet's custody. She brought snacks, outfits and provided appropriate, nurturing care for Child. Child nonetheless struggled during the visits due to their frequent lengthy separations. During Mother's weekly visits after January 2017, Child would appear distressed, cry uncontrollably and bang on the door to leave. The social worker testified that Child appears indifferent to Mother and has not bonded with her. The family court suspended visitation in March 2017. Child is living in a foster home where she is healthy, happy and content. Her foster parents wish to adopt her.

Mother provided no shelter or medical care for Child, since she came into the Cabinet's custody. She has never paid any child support.

The Cabinet filed a petition for involuntary termination of parental rights on December 28, 2016. The family court held a bifurcated trial on March 2, 2017 and June 15, 2017. The second hearing date was set by the family court while Mother was present, but she failed to appear. Mother filed a motion to set another date which the family court denied. The court entered findings of fact and conclusions of law and an order terminating parental rights and order of judgment terminating Mother and father's parental rights. This appeal by Mother followed.

Mother's counsel has filed a brief in accordance with *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012). In *A.C.*, this

Court applied the reasoning of *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), to cases in which parental rights have been terminated and counsel cannot, following a thorough, good-faith review of the record, identify any non-frivolous grounds upon which to base an appeal. *A.C.*, 362 S.W.3d at 371. Counsel in this case has reviewed the record and concluded that there are no meritorious issues to raise on appeal and has filed a motion to withdraw. We agree with counsel's assessment of the case and grant the motion to withdraw by separate order.

Involuntary termination proceedings are governed by KRS 625.090,¹ which provides that a circuit 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 child must be deemed abused or neglected, as defined by KRS 600.020. KRS 625.090(1)(a). Second, the court must also find at least one of the ten grounds listed in subsection (2) the statute. KRS 625.090(2). Third, termination of parental rights must be in the child'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)(b); KRS 625.090(3).

“[T]o pass constitutional muster, the evidence supporting termination must be clear and convincing. Clear and convincing proof is that of a probative

¹ KRS 625.090 was amended effective July 14, 2018. The citations in this opinion are to the prior version of the statute utilized by the family court which came into effect July 12, 2012.

and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent minded people.” *R.P., Jr. v. T.A.C.*, 469 S.W.3d 425, 427 (Ky. App. 2015) (internal citations and quotation marks omitted).

The family court found Child was a neglected child as defined in KRS 600.020(1)(a). This finding is supported by clear and convincing evidence. Mother abandoned Child for lengthy periods on at least three occasions (between September and October 2015; between November 2015 and February 2016; and between May 2016 and January 2017) and did not contact Child or the Cabinet during these absences. KRS 600.020(1)(a)7. Child has been in foster care for her entire life and Mother did not complete the Cabinet’s plans to address her substance abuse, mental health and parenting issues. KRS 600.020(1)(a)9. Mother failed to provide essential care and protection for Child and has not provided adequate care, supervision, food, clothing, shelter, education or medical care. KRS 600.020(1)(a)4, 8.

Under KRS 625.090(2), the family court found the existence of the grounds (e), (g) and (j): that Mother, for a period of not less than six months, had continuously or repeatedly failed to provide or 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 Child; that she, for reasons other than poverty alone, continuously failed

to provide or is incapable of providing essential food, clothing, shelter or medical care or education and there is no reasonable expectation of significant improvement considering the age of Child; and finally, Child has been in the foster care of the Cabinet since July 19, 2015, or for fifteen of the most recent twenty-two months preceding the filing of the petition for termination. These findings are all supported by clear and convincing evidence in the record.

In assessing Child's best interest under the factors listed in KRS 625.090(3), clear and convincing evidence also supports the family court's finding that the Cabinet had rendered reasonable reunification services to Mother until it became apparent there was nothing more the Cabinet could do to facilitate reunification and that Mother had made no efforts or adjustments in her circumstances, conduct or conditions to make it in the best interest of Child to return to her home within a reasonable period of time, considering the age of the child. KRS 625.090(3)(c), (d). The family court's further finding that the Cabinet was meeting Child's physical, emotional and mental health needs and that Child's welfare would improve if parental rights were terminated was supported by testimony that Child is thriving in her foster home and her foster parents wish to adopt her. KRS 625.090(3)(d).

Finally, we recognize that during the first eighteen months of Child's life, Mother was herself a minor in the custody of the Cabinet. Our case law

clearly holds, however, that just because a parent is committed to the Cabinet does not mean the parent has no further responsibilities to the child. *Commonwealth, Cabinet for Health and Family Services. v. T.N.H.*, 302 S.W.3d 658, 662 (Ky. 2010). The Cabinet provided Mother with numerous services to enable her to gain parenting skills and address her own mental health issues. She repeatedly failed to take advantage of these opportunities, and also repeatedly abandoned Child without explanation. Under the circumstances, the family court correctly decided there was no reasonable expectation of improvement in this situation. KRS 625.090(2)(e), (g).

The family court's findings are supported by clear and convincing evidence in the record. Consequently, the findings of fact and conclusions of law and order terminating parental rights and order of judgment entered on January 10, 2017, are affirmed.

ALL CONCUR.

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