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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-001688-ME

C.I.

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE PAULA SHERLOCK, JUDGE
ACTION NOS. 17-AD-500169 & 17-AD-500169-T

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

APPELLEES

AND

NO. 2017-CA-001689-ME

C.I.

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE PAULA SHERLOCK, JUDGE
ACTION NOS. 17-AD-500170 & 17-AD-500170-T

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY; AND
I.J.H., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: JONES, MAZE, AND TAYLOR, JUDGES.

MAZE, JUDGE: C.I. appeals from orders of the Jefferson Family Court which terminated her parental rights to two of her children. She argues that the Cabinet for Health and Family Services (the Cabinet) failed to show that it made reasonable efforts toward reunification of the family or to accommodate her mental illness and intellectual disability. We find substantial evidence to support the family court's findings that the Cabinet's efforts were reasonable under the circumstances. Hence, we affirm the termination orders.

C.I. is the mother of N.A.I. and I.J.H. K.L.J. is the father of N.A.I., and D.J.H. is the father of I.J.H. However, neither Father appeared to contest the petitions for termination of their parental rights, and neither are parties to this appeal. The Cabinet first became involved with the family when a report of physical abuse to N.A.I. was received on February 26, 2013. Upon further investigation, the Cabinet filed a verified petition alleging that the children were

abused or neglected pursuant to KRS¹ 600.020. Following a hearing, the children were removed and placed in the Cabinet's custody. A third child, who is not the subject of this appeal, was removed and placed in the custody of his father.

The family court ordered C.I. to have a psychological evaluation and to participate in the Targeted Assessment Project by the University of Kentucky (UK TAP). The court also directed her to attend parenting classes. C.I. stipulated to the children being dependent due to her mental health status and learning disability. The children remained in the Cabinet's custody, with C.I. granted supervised visitation.

On February 6, 2014, C.I. filed a motion requesting that the children be returned and placed in the joint custody of herself and her mother, K.I. The family court granted the motion on April 20, 2014. But in December 2015, the Cabinet received a report regarding physical abuse to I.J.H. In response, the Cabinet filed a new petition with respect to N.A.I., I.J.H. and a third child. Following a temporary removal hearing, the children were again placed in the Cabinet's custody, where they have remained to this date.

After the second removal, C.I. was directed to additional assessment and treatment services. Subsequently, she was also directed to submit to random drug screens. C.I. and K.I. were granted supervised visitation. In 2016, K.I. filed a

¹ Kentucky Revised Statutes.

request for return of custody, which was denied. However, the court later granted K.I. unsupervised visitation. Due to C.I.'s lack of progress, the Cabinet changed its permanency goal from reunification to adoption.

On March 21, 2017, the Cabinet filed petitions for involuntary termination of C.I.'s parental rights to N.A.I. and I.J.H. The petitions also sought termination of the respective fathers' parental rights. The court appointed guardians *ad litem* (GAL) for the children and counsel for C.I. The GAL for the children reported that, while C.I. attempted to participate in programs to help her reunify with her children, she never acknowledged any wrongdoing on her part. In addition, the GAL also noted that both children have special needs that C.I. is simply incapable of meeting due to her intellectual deficits.

At the hearing, the Cabinet introduced records of C.I.'s psychological testing, which showed that she had a full-scale IQ of 54 with a third-grade reading level. The report also showed that C.I. had deficits in information processing and in executive functioning. In addition, C.I. was diagnosed with bipolar disorder.

Cabinet Caseworker Kristin Gatewood testified that C.I. had been compliant with her mental health evaluation and treatment programs. Gatewood also noted that C.I. was unable to take the abusive-parenting classes because she refused to admit that she had physically abused her children or placed them at risk. The children's foster mother testified as to the services the children were receiving

and that they were both doing well in her care. On the other hand, K.I. testified C.I.'s interactions with the children had generally been positive.

Thereafter, on September 6, 2017, the family court entered findings of fact, conclusions of law and separate orders terminating C.I.'s parental rights to the children. C.I. now appeals from these orders.

On review of an order terminating parental rights, we ask whether the family court's findings were clearly erroneous. *Cabinet for Families & Children v. G.C.W.*, 139 S.W.3d 172, 178 (Ky. App. 2004). Due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. CR² 52.01. The family court's factual findings will not be disturbed unless there exists no substantial evidence in the record to support them. *V.S. v. Commonwealth, Cabinet for Human Res.*, 706 S.W.2d 420, 424 (Ky. App. 1986).

To support an involuntary termination of parental rights, the family court must find by clear and convincing evidence the elements set out in KRS 625.090. First, the circuit court must find that the child is "an abused or neglected child." KRS 625.090(1)(a)(2). Second, "the circuit court must find the existence of one or more of ten specific grounds set forth in KRS 625.090(2)." *M.E.C. v. Commonwealth, Cabinet for Health and Family Services*, 254 SW.3d 846, 851

² Kentucky Rules of Civil Procedure.

(Ky. App. 2008). Finally, the circuit court must find termination of parental rights would be in the child's best interests, after considering the factors set forth in KRS 625.090(3)(a)-(f). KRS 625.090(1)(f).

In this appeal, C.I. does not dispute the family court's findings that the children were abused or neglected, or its findings under KRS 625.090(2).

However, C.I. challenges the family court's finding under KRS 625.090(1)(c) that termination of her parental rights would be in the best interests of the children.

C.I. contends that the Cabinet failed to demonstrate that it attempted to reasonably accommodate her known mental illness and intellectual disabilities.

We disagree. In determining the best interests of the children, KRS 625.090(3)(a) permits the family court to consider mental illness or intellectual disability which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time. The Cabinet provided C.I. with extensive support over a four-year period, including referrals for parenting classes, individual counseling, psychological assessment, random drug screens, and supervised visitation with the children. Although C.I. made efforts to cooperate with the Cabinet's plan, she could not meet the children's basic needs or her responsibilities as a parent. Moreover, the trial court found no reasonable likelihood that the situation would improve.

Termination of parental rights is almost always a difficult and regrettable situation and is particularly so where a parent like C.I. has tried to comply but was simply unable to meet most of the Cabinet's directives. While we place a high value on the continuance of the parent-child relationship, the needs of the children cannot be placed on hold indefinitely. In this case, the trial court properly granted the Cabinet's petitions to involuntarily terminate C.I.'s parental rights.

Accordingly, we affirm the orders of the Jefferson Family Court terminating C.I.'s parental rights to N.A.I. and I.J.H.

ALL CONCUR.

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