

RENDERED: FEBRUARY 15, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000844-ME

A.D.

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE KATHY STEIN, JUDGE
ACTION NO. 17-AD-00142

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; L.M.D. (A MINOR CHILD);
and J.W. Jr.

APPELLEES

AND

NO. 2018-CA-000845-ME

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v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE KATHY STEIN, JUDGE
ACTION NO. 17-AD-00143

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; L.D.D. (A MINOR CHILD);
and J.W. Jr.

APPELLEES

AND

NO. 2018-CA-000846-ME

A.D.

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE KATHY STEIN, JUDGE
ACTION NO. 17-AD-00144

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; L.T.D. (A MINOR CHILD);
and J.W. Jr.

APPELLEES

AND

NO. 2018-CA-000847-ME

A.D.

APPELLANT

v. APPEAL FROM FAYETTE FAMILY COURT
HONORABLE KATHY STEIN, JUDGE
ACTION NO. 17-AD-00145

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; J.E.W. (A MINOR CHILD);
and J.W. Jr.¹

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, KRAMER, AND MAZE, JUDGES.

KRAMER, JUDGE: A.D. (“Mother”) appeals from the Fayette Family Court’s orders involuntarily terminating her parental rights to four of her children.² Mother argues that there was not sufficient evidence presented to support the termination of her parental rights. She also argues that she established by a preponderance of evidence that the children would not continue to be abused or neglected if returned to her care. After careful review of the record and applicable law, we affirm the decisions of the Fayette Family Court.

¹ Although listed as an Appellee in all listed above-captioned appeals, J.W. Jr. is only the biological father of minor child, J.E.W., in Appeal No. 2018-CA-000847. J.W. Jr. did not appeal from the order terminating his parental rights to J.E.W.

² The family court orders in Appeal Nos. 2018-CA-000844, 2018-CA-000845, and 2018-CA-000846 also terminated the rights of L.F., the father of L.M.D., L.T.D., and L.D.D. L.F. did not appeal from these orders.

FACTS AND PROCEDURAL BACKGROUND

The following facts adduced at the hearing are undisputed. Mother has ten biological children. This case involves four of her youngest children:³ J.E.W., age 16, L.M.D., age 14, L.D.D., age 12, and L.T.D., age 11. The Cabinet for Health and Family Services (“the Cabinet”) became involved with this family in 2007. The family began living at the Salvation Army after Mother fled a domestic violence relationship in Cincinnati, Ohio. The Cabinet received a referral alleging physical abuse of one of the children while living at the Salvation Army. Along with the physical abuse allegations, it was reported that the Salvation Army was asking the family to leave due to Mother’s extreme disciplinary techniques, her non-compliance with the shelter rules, and her threatening to blow up the shelter. As a result, in November 2007, the Cabinet filed Dependency, Neglect, and Abuse Petitions (“DNA Petitions”) on behalf of the children in Mother’s care during this time. Mother stipulated to neglect, and the children were removed in January 2008. Mother was given a case plan, which she successfully worked, and the children were returned in April 2008.

Between 2009 and 2011, the Cabinet received several referrals alleging physical abuse and neglect, which were all unsubstantiated. In 2012, the

³ The older children, not in issue in this case, are no longer minors. The youngest child, not in issue in this case, has been placed with his father.

Cabinet again became involved with the family due to an older child's becoming a status offender and having to be committed to the Cabinet. In 2014, a referral was made to the Cabinet because the family was living in a hotel, that one of the children had poor hygiene, and that the children were exhibiting negative behaviors in school. These allegations were also found to be unsubstantiated.

In 2015, the Cabinet filed non-removal DNA petitions involving the four children who are subject of this case, and two other children who are not parties. These petitions were filed because one of the children, who is not a party to this case, was not enrolled in school and was living with her infant at a friend's house. This was a violation of a previous prevention plan; therefore, the petitions were filed with the main purpose of placing services in the home to help the family. The biggest concern of the Cabinet during this time was domestic violence and ongoing threats from L.F., the father of L.M.D., L.D.D., and L.T.D. It was also concerning to the Cabinet that Mother was a single mother trying to raise so many children. Ultimately, the Cabinet placed services in Mother's home and gave her a case plan, which she cooperated with.

In February 2016, a violent altercation occurred with one of Mother's adult children. The adult child, who did not reside in the home, came into Mother's home and committed an act of violence against Mother and her paramour in the presence of the children. Mother refused to press charges or to get a

domestic violence petition against her adult child to protect her and the children. Because of this altercation and Mother's refusal to seek protection, the in-home services she had been provided were discontinued.

In March 2016, because of the incident and continued instability, the Cabinet requested that the children at issue in this case be removed from the home. Mother stipulated to dependency at the removal hearing. The Cabinet provided Mother an updated case plan asking her to: (1) cooperate with the Cabinet; (2) participate in a CATS⁴ assessment; (3) participate in supervised visitation; and (4) support the children in their placement for their mental health. The children were committed to the Cabinet in May 2016, at which time the concerns for the family were Mother's instability and inability to protect the children. During this time, Mother was compliant with her case plan, had completed her TAP⁵ assessment, was having unsupervised visits with the children, was employed, had housing, and was involved in the CATS assessment.

In 2017, the results of the CATS⁶ assessment explained that there were no additional services that could be offered to Mother, within a reasonable

⁴ University of Kentucky Center on Trauma and Children clinic provides the Comprehensive Assessment and Training Services ("CATS").

⁵ TAP is a functional vocational aptitude assessment.

⁶ It should be noted that the CATS assessment was not performed on L.T.D. or L.D.D. because they were in residential facilities and considered too psychologically fragile to participate.

timeframe, that would mitigate the risk to the children. Therefore, reunification was not recommended so that the children could have stability, be in a safe environment, and due to mental health concerns of Mother and the children. Subsequently, the Cabinet requested to change the goal for the children from “return to parent” to “adoption.” In July 2017, Mother’s visits with the children were suspended based on allegations that she was speaking with the children about the case.

In March 2018, a termination hearing was held. Evidence was presented at the hearing regarding Mother’s extremely traumatic childhood. As a child, Mother was removed from her mother and placed in the custody of the state when she was between the ages of four and five, due to sexual abuse. While in the custody of the state, Mother was physically beaten and buried in the snow. At the age of twelve, Mother became pregnant and had her first child at the age of thirteen. At the age of sixteen, Mother found her mother dead. Throughout Mother’s life she has experienced sexual abuse and assault, homelessness, and domestic violence, which led to a diagnosis of Post Traumatic Stress Disorder (PTSD).

Testimony was produced that the main concern was Mother’s lack of mental health treatment and her inability to protect the children. Megan Kohler, a clinical specialist and team leader with the CATS clinic, testified that Mother

lacked the ability to see the deficits within herself. Ms. Kohler also testified that Mother was unable to identify signs and ways to avoid violent relationships in the future. She also testified that Mother was unable to acknowledge the physical abuse that she had perpetrated against her children. Ultimately, Ms. Kohler testified that Mother's inability to accept that she had caused physical abuse to her children, her unwillingness to acknowledge this behavior, her not being able to provide a home free of violence, her instability, and her need to address her personal trauma were all barriers that prevented reunification.

Regarding the children's placement and mental history, the Cabinet produced the testimony of Renee Hightower, the current ongoing worker. Ms. Hightower explained the following: J.E.W. is the most stable child; she has been in her foster home for over a year; and is in an adoptive home. J.E.W. is doing well in school, has no significant mental health issues, and attends therapy regularly. L.M.D. is in an adoptive foster home as well. However, she has been hospitalized several times for suicidal ideations. She is receiving great support from her foster family and is going to an alternative school where she can receive mental health treatment. L.D.D. is in a potentially adoptive home. He has, however, bounced back and forth between residential facilities and foster homes. He is currently in a foster home where he seems to be doing well. L.T.D. is the most unstable of the children. He has been in fourteen different placements due to

his behavioral problems. He is currently in a residential facility with the hopes that he will stabilize and transition to an adoptive home.

Following Ms. Hightower's testimony, Mother testified. Mother testified that in 2017 she was diagnosed with depression, childhood trauma disorder, anxiety, and panic attacks, which led her to see a psychiatrist. She was prescribed medication to help with her mental health. She testified that she was employed; that she had begun at her current job in January 2018; and that she was going to be promoted to shift supervisor and would be earning a higher wage. Mother testified that she was currently staying in a one-bedroom apartment, but she was number three on the waiting list for a four-bedroom apartment. However, Mother also testified that she had only been in this apartment for a couple of weeks. Prior to that, she was living with her friend and her friend's five children in their apartment. Mother explained the steps she was taking to effectively address her mental health issues. She also admitted that she was not currently able to take the children but believed she would be able to do so within three to six months.

After the conclusion of the testimony and evidence, the family court made oral findings from the bench, which were later reduced to writing. The family court entered four thorough orders detailing its conclusion to terminate Mother's parental rights to all four children. Based on the family court's findings and conclusions, it entered orders terminating Mother's paternal rights.

This appeal followed.

STANDARD OF REVIEW

This Court reviews the termination of parental rights under the clearly erroneous standard.

The standard for review in termination of parental rights cases is set forth in *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116-17 (Ky. App. 1998). Therein, it is established that this Court's standard of review in a termination of parental rights case is the clearly erroneous standard found in Kentucky Rules of Civil Procedure (CR) 52.01, which is based upon clear and convincing evidence. Hence, this Court's review is to determine whether the trial court's order was supported by substantial evidence on the record. And the Court will not disturb the trial court's findings unless no substantial evidence exists on the record.

M.E.C. v. Commonwealth, Cabinet for Health & Family Servs., 254 S.W.3d 846, 850 (Ky. App. 2008) (citation omitted).

ANALYSIS

Mother presents two arguments in this appeal: (1) that the evidence presented at the hearing was insufficient to support a termination of parental rights; and (2) that the evidence presented demonstrated by the preponderance of the evidence that the children would not continue to be abused or neglected if returned to Mother.

This Court has previously stated that,

KRS^[7] 625.090 provides that parental rights may be involuntarily terminated only if, based on clear and convincing evidence, a circuit court finds: (1) that the child is abused or neglected as defined in KRS 600.020(1); (2) that termination is in the child's best interests; and (3) the existence of one or more of ten specific grounds set out in KRS 625.090(2).

W.A. v. Cabinet for Health & Family Servs., Commonwealth, 275 S.W.3d 214, 220 (Ky. App. 2008) (quoting *M.B. v. D.W.*, 236 S.W.3d 31, 34 (Ky. App. 2007)).

In the present case, the children were adjudicated neglected in November 2007 and then again, the day of the termination hearing. Mother does not dispute the family court's finding that the children were abused or neglected pursuant to KRS 625.090(1); nor does she dispute the best-interest findings. Therefore, the first and second elements of the test are met and supported by substantial evidence.

However, regarding the third element of the test, Mother argues that the family court erred in finding that there was substantial evidence to support the termination of her parental rights to the children pursuant to KRS 625.090(2)(e) and (g). KRS 625.090(2) states:

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:

.....

⁷ Kentucky Revised Statute.

(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[.]

I. KRS 625.090(2)(e)

Regarding KRS 625.090(2)(e), Mother argues that the family court did not make adequate findings to support its determination that there was no reasonable expectation that Mother would improve her situation considering the age of the children. We disagree.

The family court found, and testimony supported, that Mother had been involved with the Cabinet for a period of ten years. During that time, she had continuously exposed her children “to extreme physical discipline, domestic violence, homelessness, and lack of supervision.” When the children had

previously been returned to Mother, the cycle of violence and instability continued to be a persistent problem for the family. While Mother has been cooperative and compliant with her many case plans, her mental needs were still a barrier for reunification. Mother's inability to meet the emotional needs of the children, to protect the children, and to provide day-to-day care of the children are most problematic. Consequently, there is substantial evidence in the record to support the family court's decision. Therefore, the family court's findings were not clearly erroneous in determining that there is no reasonable expectation for Mother to improve.

II. KRS 625.090(2)(g)

Regarding KRS 625.090(2)(g), Mother argues that the family court's determination with respect to her inability to provide essential care for her children was based on poverty. We disagree.

The family court noted in its orders that "[t]his failure to provide essential care is not due to poverty as the Cabinet had provided significant resources to help this family yet the same instability and violence continues to be an issue." Mother has lived an extremely traumatic and unstable life. The evidence shows that this family has faced instability since they first came to the Cabinet's attention in 2007. Evidence showed that Mother had received in-home services and financial support from services provided through the community and

the Cabinet throughout the years. It was also shown that even when Mother did not have the children, she still experienced instability.

While we applaud Mother's efforts to get on the right track to become stable and address her mental health needs, the history of this family is indicative of Mother's inability to provide for children even when offered help. Mother has been provided various opportunities over the past ten years to remedy the issue of instability and has yet to overcome this obstacle. Substantial evidence in the record supports the family court's decisions. Therefore, the family court's determinations are not clearly erroneous.

III. Continued abuse or neglect

Lastly, Mother contends that the family court erred by not finding that she proved by the preponderance of evidence that the children would not continue to be abused or neglected if returned to her. We disagree.

KRS 625.090(5) states that, "[i]f the parent proves by a preponderance of the evidence that the child will not continue to be an abused or neglected child as defined in KRS 600.020(1) if returned to the parent the court in its discretion may determine not to terminate parental rights." The plain language of the statute gives the family court "discretion" to not terminate parental rights and does not prohibit termination if such evidence is produced. Mother argues that there was sufficient evidence to prove that the children will not continue to be abused or

neglected. In support of this, Mother contends that she: (1) provided evidence that she has taken steps to improve her mental health; (2) has become cognizant of her past trauma and how that has affected her children; (3) has been employed; (4) is on the waiting list to receive a four-bedroom apartment; and (5) was compliant with her case plan.

Although Mother has indeed done all the things listed above, the family court was not convinced that this was enough. The family court had substantial evidence to show that there was pattern of instability for this family for over ten years. The CATS assessment specifically concluded that there were no additional services that could be offered in a reasonable time that would mitigate the risk of harm to the children. Hence, substantial evidence in the record supported the family court's decisions. Therefore, the family court did not abuse its discretion.

CONCLUSION

For the reasons stated above, we AFFIRM the Fayette Family Court's orders of April 20, 2018, terminating Mother's parental rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

Carolyn A. Allen
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BRIEF FOR APPELLEE, CABINET
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