

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000950-ME

B.A.B.

APPELLANT

v.

APPEAL FROM CAMPBELL FAMILY COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 15-AD-00059

CABINET FOR HEALTH & FAMILY
SERVICES,
COMMONWEALTH OF KENTUCKY;
AND M.J.A.B. (A MINOR CHILD)

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, GOODWINE, AND KRAMER, JUDGES.

KRAMER, JUDGE: B.A.B. (Mother) appeals from the Campbell Family Court's order terminating her parental rights to M.J.A.B. (Child).¹ After a careful review of the record and applicable law, we affirm.

¹ This order also terminated the parental rights of Child's father. His appeal, enumerated as 2018-CA-000952-ME, is addressed in a separate opinion.

The Cabinet has been involved with this family for several years. Mother and E.K.B. (Father) have three children together. Mother and Father remain married, but have been separated and living apart since 1999, approximately five years before Child was born. Mother lives in the Northern Kentucky area and Father resides in Cincinnati, Ohio. Their two oldest children had already reached the age of majority at the time of the instant termination proceedings.

Child was first removed from Mother's home in October 2006 when he was two years old. The Cabinet removed Child from the home because Mother received an eviction notice and her home was without running water. Child has not returned to his Mother's care since this removal. Thereafter, the Cabinet petitioned to terminate both parents' parental rights as to all three of their children in November 2008.² The family court denied that petition and held that the Cabinet failed to prove that the children were abused and neglected by clear and convincing evidence. This Court affirmed that decision in October 2009.³ The family court did not return Child to either parent at that time; instead, it directed the Cabinet to create new case plans for Mother and Father.

² Child's two older siblings were still minor children at the time the Cabinet petitioned for termination in 2008.

³ *Commonwealth, Cabinet for Health and Family Servs. v. B.B.*, No. 2009-CA-000448-ME, 2009 WL 3321414 (Ky. App. Oct. 16, 2009).

In that case plan, Mother was ordered to: (1) complete a mental health assessment; (2) attend NorthKey;⁴ (3) attend visits with Child; (4) pay her bills; (5) participate in family counseling; and (6) receive individual counseling. Mother never completed any of the tasks.

The Cabinet petitioned to terminate Mother's parental rights in October 2015. At the time the petition was filed, Child had been in the custody of the Cabinet or his foster family for more than nine consecutive years. A termination hearing began in September 2017 but was continued until March 2018. At the hearing, the parties made several stipulations and the family court heard testimony from: (1) three of Child's social workers; (2) Child's and Father's family therapist; and (3) Father. Of note, Mother did not wish to testify. A forensic psychological report from Dr. Ed Connor, Psy.D., was also entered into the record. The family court entered an order terminating Mother's parental rights in May 2018. This appeal followed. Further facts will be discussed as they become relevant.

On appeal, Mother argues that: (1) the family court's finding that Child was abused or neglected was not supported by substantial evidence; and (2) the Cabinet failed to provide adequate reunification services to Mother. At the

⁴ NorthKey is a mental health treatment facility.

termination hearing, Mother indicated she did not want Child returned to her care. Instead, she preferred Child to live with Father. As an extension of this preference, Mother also “incorporates by reference the arguments contained in Father’s appellate brief.”

When reviewing a family court’s termination of parental rights, this Court applies the clearly erroneous standard of review under CR⁵ 52.01. The family court’s factual findings must be upheld if they are supported by substantial evidence in the record. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998).

Involuntary termination proceedings are governed by KRS⁶ 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, Child must be deemed abused or neglected as defined by KRS 600.020(1). KRS 625.090(1)(a). Second, termination of parental rights must be in Child’s best interest. KRS 625.090(1)(c). Third, the court must also find at least one ground of parental unfitness listed in the statute. KRS 625.090(2). Mother only takes issue with the first and second prong of this test.

⁵ Kentucky Rule of Civil Procedure.

⁶ Kentucky Revised Statute.

Regarding the first prong, the family court found that Child was neglected according to KRS 600.020(1)(a)(9). That subsection states that a child is neglected when a parent “[f]ails 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[.]” The family court also found Child to be neglected under KRS 600.020(1)(a)(7), which states a child is neglected when a parent abandons the child.

At the time of the final hearing, Child had been committed to the Cabinet for over 130 *consecutive* months. Mother was willfully not working her case plan and hoping Child would return to Father; thus, the finding under KRS 600.020(1)(a)(9) was supported by substantial evidence. Furthermore, Mother does not argue that she *did not* abandon Child on appeal; thus, the finding under KRS 600.020(1)(a)(7) is affirmed. *See Osborne v. Payne*, 31 S.W.3d 911, 916 (Ky. 2000) (“Any part of a judgment appealed from that is not briefed is affirmed as being confessed.”). Therefore, Mother’s argument regarding the first prong of the termination test fails.

Regarding the second prong of the test, Mother argues it was not in Child’s best interest to terminate her parental rights because the Cabinet failed to

provide adequate reunification services to her. Testimony at the termination hearing, however, showed that Mother was provided with ample services.

Mother was given access to multiple services primarily aimed at helping her address her mental health needs, gaining financial independence, and reestablishing a bond with Child. Testimony from Child's social workers indicated that Mother did not consistently cooperate with the Cabinet and eventually stopped working with the Cabinet. Most troubling is her lack of visitation with the Child. At first, Mother was given regular visitation; however, she would routinely cancel the visits. The cancellations became so frequent that the Cabinet changed the process of her visitation. Instead of the visits being regularly scheduled, Mother was told to call a few days ahead if she wanted to exercise her visitation rights with Child that week. Ultimately, Mother stopped exercising those rights altogether.

As previously mentioned, Mother also incorporates all of Father's arguments into her appellate brief. Because we are affirming the family court's decision to terminate Father's parental rights in Appeal No. 2018-CA-000952-ME,⁷ we need not address those arguments here.

In light of the foregoing, the order of the Campbell Family Court terminating Mother's parental rights is AFFIRMED.

ALL CONCUR.

⁷ The opinion in Father's appeal is rendered contemporaneously with this opinion.

BRIEF FOR APPELLANT:

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**BRIEF FOR APPELLEE, CABINET
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