

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001124-ME

R.R.

APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT
FAMILY COURT DIVISION

v.

HONORABLE KATHY STEIN, JUDGE
ACTION NO. 17-AD-00314

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

APPELLEES

AND

NO. 2018-CA-001125-ME

N.T.

APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT
FAMILY COURT DIVISION

v.

HONORABLE KATHY STEIN, JUDGE
ACTION NO. 17-AD-00314

COMMONWEALTH OF KENTUCKY, CABINET
FOR HEALTH AND FAMILY SERVICES;
K.C.R., A MINOR CHILD; AND R.R.,
NATURAL FATHER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, K. THOMPSON, AND L. THOMPSON, JUDGES.

TAYLOR, JUDGE: R.R. brings Appeal No. 2018-CA-001124-ME and N.T.

brings Appeal No. 2018-CA-001125-ME from Findings of Fact and Conclusions of Law and Order Terminating Parental Rights and Order of Judgment entered June 19, 2018, in the Fayette Circuit Court, Family Court Division, (family court) terminating the parties' respective parental rights to their minor child, K.C.R. We affirm.

On May 20, 2011, N.T. gave birth to a son, K.C.R. K.C.R. tested positive for cocaine at birth. Based upon the positive test result and N.T.'s admitted use of illegal substances during pregnancy, the Cabinet for Health and Family Services, Commonwealth of Kentucky, (Cabinet) petitioned for and received emergency custody of the child on May 23, 2011.

In April 2012, R.R. was adjudicated the father of K.C.R. (Action No. 11-J-01127) by the family court. At a subsequent disposition hearing, K.C.R. was placed in the temporary custody of R.R. Pursuant to an aftercare plan established by the Cabinet, R.R. was prohibited from allowing N.T. to have unsupervised contact with K.C.R.

The Cabinet subsequently received a referral that R.R. was leaving K.C.R. home alone. An investigation by the Cabinet revealed that N.T. was living in R.R.'s home and caring for K.C.R. while R.R. was working. Upon discovering that N.T. was providing care for K.C.R. in contravention of the aftercare plan, the Cabinet asked N.T. to provide a drug screen; N.T. refused. Shortly thereafter, a second referral was received by the Cabinet when R.R. was escorted off the property of a hotel where the family was apparently living. When the Cabinet made contact with R.R., he refused to state where the family was living, and N.T. refused requests to meet with a Cabinet's representative. As a result, the Cabinet sought and received emergency custody of K.C.R. on October 17, 2013. The Cabinet placed K.C.R. with his maternal grandmother and her husband (hereinafter referred to as "maternal grandparents.")

In September 2014, K.C.R. began exhibiting aggressive behavior, and his maternal grandparents stated they could no longer care for him. K.C.R. was then placed in foster care, diagnosed with autism, and began receiving in-home services. Shortly thereafter, the maternal grandmother sought and again received custody of K.C.R. The grandparents agreed to the Cabinet's aftercare plan that contained a specific directive that neither parent be permitted unsupervised contact with K.C.R. By January 2015, neither R.R. nor N.T. was making progress on their case plan with the Cabinet.

In November 2015, the Cabinet received a referral that N.T. was selling drugs out of her car while K.C.R. was present and that N.T. was using drugs in front of K.C.R. During the investigation, the maternal grandparents admitted they had permitted K.C.R. to live with N.T. As a result, in December 2015, a neglect petition was filed against the maternal grandparents. K.C.R. was removed from the grandparents' care and returned to the custody of the Cabinet. N.T. was given a case plan by the Cabinet but she never completed the plan's requirements. More particularly, N.T. continued to test positive for drugs, eventually ceased drug testing, never completed a drug abuse assessment, and failed to participate in scheduled visits with K.C.R. The Cabinet was unable to locate R.R. R.R. contacted the Cabinet approximately a year later in late 2016 and reported he was living in Colorado. The Cabinet mailed a copy of the case plan to R.R. in early 2017 and worked with the social services agency in Colorado. The Colorado agency ultimately reported R.R. was not capable of effectively caring for K.C.R. given the child's high level of need as a result of his autism. Furthermore, R.R.'s contact with K.C.R. had been very sporadic and inconsistent since late 2015.

Due to the lack of progress by N.T. or R.R., the Cabinet's permanency goal was changed to adoption on October 30, 2017. K.C.R. was slowly transitioned into an adoptive home to minimize any negative behavior caused by

K.C.R.'s autism. After placement in his adoptive home, K.C.R. showed dramatic improvement including becoming toilet trained, speaking a few words, and attending school.

On June 4, 2018, an evidentiary hearing was conducted on the Cabinet's petition to terminate the parental rights of N.T. and R.R. On June 19, 2018, the family court rendered Findings of Fact and Conclusions of Law, and Order Terminating Parental Rights and Order of Judgment, terminating the parental rights of N.T. and R.R. These appeals follow.

R.R. and N.T. contend the family court abused its discretion by terminating their parental rights to K.C.R. More specifically, R.R. argues his parental rights were terminated without specific findings of fact pursuant to Kentucky Revised Statutes (KRS) 625.090(2)¹ and that the findings of facts were not supported by the weight of the evidence. Both R.R. and N.T. assert the family court erred by determining that termination of their parental rights was in K.C.R.'s best interest.

The involuntary termination of parental rights in Kentucky is governed by KRS 625.090. To involuntarily terminate parental rights under KRS 625.090, the family court must find by clear and convincing evidence that the

¹ Throughout this Opinion we are utilizing the provisions found in Kentucky Revised Statutes Chapter 600 to 645, also known as the Kentucky Unified Juvenile Code, as the provisions existed in June 2018 when R.R. and N.T.'s parental rights were terminated.

following three-prong test is satisfied: (1) the child was found or adjudged to be abused or neglected as defined in KRS 600.020(1); (2) termination of parental rights is in the child's best interest; and (3) the existence of at least one of the grounds enumerated in KRS 625.090(2). *Cabinet for Health and Family Servs. v. K.H.*, 423 S.W.3d 204, 210 (Ky. 2014).

As to the first prong of the test for terminating parental rights, the family court found by clear and convincing evidence, as concerns both R.R. and N.T., that K.C.R. had been adjudged a neglected child as defined in KRS 600.020(1). The family court noted that K.C.R. was adjudged a neglected child in the underlying juvenile action on June 13, 2011, and on November 26, 2013. The family court specifically found that R.R. had and N.T. repeatedly failed to provide K.C.R. with essential care, protection, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. *See* KRS 600.020(1)(a)(4) and (1)(a)(8).

In support thereof, the family court pointed out that K.C.R. tested positive for cocaine at birth and was removed from N.T.'s custody. After R.R. was adjudicated the father of K.C.R., R.R. completed a case plan established by the Cabinet and was granted custody of K.C.R. in 2011. The Cabinet's aftercare plan with R.R. prohibited N.T. from having unsupervised contact with K.C.R. The Cabinet later discovered in 2013 that R.R. was allowing N.T. to live in his home

and provide unsupervised care for K.C.R. in contravention of the Cabinet's plan. N.T. refused to take drug screens requested by the Cabinet. Based on these events, K.C.R. was removed from R.R.'s custody in 2013. Both parties were given case plans by the Cabinet that they again failed to complete. R.R. left Kentucky for Colorado in 2015 and had no contact with K.C.R. until December of 2016. With the exception of his income tax return being intercepted by the Cabinet, R.R. had not paid child support or otherwise materially provided for K.C.R. since leaving Kentucky in 2015. And, R.R. also failed to make sufficient progress toward the goals identified by the Cabinet's case plan to allow for the safe return of the child. The family court also found that R.R. did not maintain consistent contact with K.C.R. For example, when K.C.R. was removed from his maternal grandparents and placed in the custody of the Cabinet in December of 2015, R.R. did not contact the Cabinet or establish a new case plan until approximately one year later.

The family court also found K.C.R. had been committed to the custody of the Cabinet and remained in foster care for fifteen (15) of the most recent twenty-two (22) months. See KRS 600.020(1)(a)(9). As such, we conclude the family court made the required findings of fact to support the family court's finding that K.C.R. was a neglected child as defined in K.R.S. 600.020(1).

The second prong of the analysis for termination of parental rights is that termination must be in the child's best interest. See KRS 625.090(1)(b). A

best interest determination requires consideration of several factors as enumerated in KRS 625.090(3)(a)-(f). In this case, the family court found that reasonable efforts were made to reunite K.C.R. with R.R. and N.T. but those efforts were not successful. *See* KRS 625.090(3)(c).

The family court also found that the Cabinet offered all reasonable services to both parents, including case plans, referrals to community partners, free drug screening, and supervised visitation. Despite the opportunities made available to R.R. and N.T., both parties failed or refused to make sufficient efforts and adjustments to their circumstances, conduct, or conditions to allow K.C.R.'s return to be in his best interest. *See* KRS 625.090(3)(d). The family court further found that K.C.R. was making great progress in his adoptive home. Furthermore, the family court specifically found that R.R. did not understand or appreciate the special needs of K.C.R. due to his autism. Thus, the prospect for K.C.R.'s improvement would continue if parental rights were terminated. *See* KRS 625.090(3)(e). Contrary to R.R. and N.T.'s assertion, we are of the opinion that the family court properly determined that termination of R.R. and N.T.'s parental rights was in K.C.R.'s best interest.

Under the third prong of the analysis for terminating parental rights, the family court must find the existence of one or more of the grounds set forth in KRS 625.090(2). The evidence demonstrated and the family court found that

R.R. had abandoned K.C.R. for a period of not less than ninety (90) days. *See* KRS 625.090(2)(a). The family court also found that for a period of not less than six (6) months R.R. and N.T. had failed or refused to provide or had been substantially incapable of providing essential parental protection for K.C.R. and there was no reasonable expectation of improvement given the young age of K.C.R. *See* KRS 625.090(2)(e). In support thereof, the family court noted that the Cabinet's involvement dated back to 2011 when K.C.R. tested positive for cocaine at birth. R.R. was subsequently adjudicated the father of K.C.R., worked on a case plan established by the Cabinet, and was granted custody of K.C.R. However, in 2013, the Cabinet removed K.C.R. from R.R.'s custody because R.R. had permitted N.T. to provide unsupervised care for K.C.R. in contravention of the Cabinet's aftercare plan. Then, from 2013 until 2015, R.R. and N.T. failed to work with the Cabinet on reunification. As noted, in November 2015, the Cabinet learned that N.T. was selling drugs with her children in the car and that she was using drugs in front of her children. As a result, in 2015, K.C.R. was removed from the custody of his maternal grandparents by the Cabinet. R.R.'s location was unknown. As R.R. was not consistently involved with K.C.R., R.R. did not know K.C.R. was removed from his maternal grandparents and placed in foster care until approximately a year later.

The family court also found that for reasons other than poverty alone, R.R. and N.T. failed to provide essential food, clothing, shelter, medical care or education reasonably necessary and available for K.C.R.'s well-being and that there was no reasonable expectation of significant improvement in R.R.'s conduct in the immediately foreseeable future. *See* KRS 625.090(2)(g). And, finally, the Cabinet found that K.C.R. had been in foster care for fifteen (15) of the most recent twenty-two (22) months, prior to the filing of the petition. KRS 625.090(2)(j).

In sum, the three-prong analysis set forth in KRS 625.090 was sufficiently satisfied as there was clear and convincing evidence presented that termination of parental rights of both R.R. and N.T. was in K.C.R.'s best interests. We, therefore, conclude that the family court did not err by involuntarily terminating the parental rights of R.R. and N.T.

For the foregoing reasons, the Order of the Fayette Circuit Court is affirmed.

ALL CONCUR.

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