

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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001522-ME

K.G.

APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 18-AD-00018

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

APPELLEES

NO. 2018-CA-001523-ME

K.G.

APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 18-AD-00019

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

APPELLEES

NO. 2018-CA-001525-ME

K.G.

APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 18-AD-00020

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

APPELLEES

AND

NO. 2018-CA-001527-ME

K.G.

APPELLANT

v.

APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE RICHARD A. WOESTE, JUDGE
ACTION NO. 18-AD-00021

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

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; ACREE AND TAYLOR, JUDGES.

ACREE, JUDGE: Appellant, Mother, appeals the order and judgment terminating her parental rights to raise her four minor children. We find the order of termination is supported by substantial evidence and, therefore, affirm.

BACKGROUND

Mother is the biological parent of four minor children who are the subjects of this action. Mother gave birth to the youngest child on March 1, 2017. The child tested positive for codeine, heroin, morphine, and marijuana. On March 20, 2017, the Cabinet filed a dependency, neglect, or abuse petition, alleging homelessness (the family had been living in a tent in the woods) and concerns of substance abuse by Mother. Mother admitted to a finding of neglect and stipulated the finding could be amended to dependency if she successfully completed her case plan. Accordingly, the family court committed the children to the Cabinet.

The family court ordered Mother to: (1) maintain stable housing and employment; (2) complete drug screens; (3) complete parenting classes; (4) complete a substance abuse and mental health assessment; (5) complete therapy as recommended; (6) participate in AA/NA; (7) complete life learning; and (8) follow all court orders.

The family court found Mother made little to no progress with her case plan. The Cabinet noted Mother was initially working her plan. She

completed parenting classes, an employment support program, provided three clean drug screens, and was having visitation with her children. Additionally, she completed a UKTAP assessment, but later failed to follow recommendations. However, after her December evaluation, Mother failed to complete further drug screens, was inconsistent in attending treatment, and was inconsistent in engaging in scheduled phone calls with her children.

The family court found Mother has had no face-to-face contact with her children since June 2017 and no phone contact since December 2017. Nor has she provided any support for her children since the beginning of her case. Mother has not sustained stable housing or sobriety and her UKTAP case was closed out as unsuccessful. Moreover, she was found in contempt for failure to follow court orders and is currently incarcerated.

The family court held a hearing on June 4, 2018, for the involuntary termination of Mother's parental rights.¹ At the beginning of the hearing, Mother declined appointed representation. The trial judge allowed her to continue, *pro se*, but required appointed counsel to remain present at the hearing to assist Mother. The family court entered its order terminating Mother's parental rights on September 6, 2018. This appeal followed.

¹ The three eldest children have the same biological father. At the termination proceeding, he executed a voluntary consent to the termination of his parental rights. The father of the youngest child is unknown.

STANDARD OF REVIEW

When the sufficiency of the evidence is challenged on appeal, we are permitted to reverse only if the trial court's findings of fact are clearly erroneous. *Cabinet for Health & Family Servs. v. I.W., Jr.*, 338 S.W.3d 295, 299 (Ky. App. 2010). All that is needed "is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent-minded people." *M.P.S. v. Cabinet for Human Res.*, 979 S.W.2d 114, 117 (Ky. App. 1998) (citation omitted).

ANALYSIS

Before terminating parental rights, the family court must find clear and convincing evidence to support each of three parts of the standard established by KRS² 625.090. First, the child must have been found to be an "abused or neglected" child as defined by KRS 600.020(1). KRS 625.090(1)(a). Second, termination must be in the child's best interest. KRS 625.090(1)(c). Third, the family court must find at least one ground of parental unfitness. KRS 625.090(2).

Mother argues the family court: (1) erred by failing to appoint counsel during her parental termination proceeding, pursuant to KRS 625.080(3); (2) misapplied KRS 600.020(1)(a)9 and that substantial evidence did not support a

² Kentucky Revised Statutes.

finding of neglect; and (3) erred by not finding the Cabinet failed to provide adequate reunification services. We are not persuaded.

Failure to appoint counsel

Pursuant to the due process clause of the Fourteenth Amendment and KRS 625.080(3), indigent parents have the right to the appointment of counsel at all critical stages of the termination proceedings. *See R.V. v. Commonwealth, Dep't for Health & Family Servs.*, 242 S.W.3d 669, 672-73 (Ky. App. 2007). But, we have noted “while counsel is to be appointed in dependency actions, no statutory or caselaw provisions indicate[] that counsel must be foisted on parties who decline representation.” *C.J.M. v. Cabinet for Health & Family Servs.*, 389 S.W.3d 155, 163 (Ky. App. 2012). The plain language of the statute states that upon determining a parent is indigent, “the Circuit Court shall inform the parent [of the right to counsel]; and, ***upon request***, if it appears reasonably necessary in the interest of justice, the Circuit Court shall appoint an attorney to represent the parent[.]” KRS 625.080(3) (emphasis added).

Here, Mother was appointed counsel prior to the termination proceeding. But, on the day of the hearing, she chose to forego representation and did not request different counsel. KRS 625.080(3) did not require the family court to force counsel upon her. Nonetheless, the family court directed counsel to remain present and expressed to Mother she was free to consult with counsel at any

time during the hearing. The record also indicates counsel assisted her throughout the hearing. For example, counsel consulted with Mother prior to the submission of each exhibit, advised the family court on Mother's position regarding certain stipulations, and questioned Mother on the stand.

Therefore, the family court did not violate KRS 625.080(3) when Mother chose to forego counsel. Nor were Mother's due process rights violated, as she was afforded the opportunity to consult with counsel throughout the hearing.

Finding of neglect

Mother believes the family court misapplied KRS 600.020(1)(a)9 and that substantial evidence failed to support a finding of neglect. We disagree.

The family court adjudged the children neglected as defined in KRS 600.020(1)(a). KRS 600.020(1)(a)9 provides a child is neglected if the parent:

Fails 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 found that Mother made little to no progress toward the completion of her case plan. The "sporadic progress" she made was insufficient to show a lifestyle change.

Mother failed to maintain stable housing, failed to attend drug screens after December 2017, and failed to follow court orders, leading to her subsequent

incarceration. Although Mother attended a UKTAP assessment, she failed to follow its recommendations. Additionally, Mother has failed to maintain sobriety and testified she had recently relapsed. We conclude there is sufficient evidence to support a finding under KRS 600.020(1)(a)9 that the children were neglected.

We find no merit in Mother's assertion that she would have been able to meet her burden of proving she made sufficient progress toward her case plan at her hearing if she had counsel to assist her. As noted above, Mother was appointed counsel, which she refused. Still, counsel remained present to assist Mother throughout the hearing, and did so.

Moreover, Mother is currently incarcerated and will be in an aftercare program for two years upon her release. This, coupled with her failure to provide any monetary support to her children, her failure to provide assistance with food and clothing, her failure to maintain stable housing, and her failure to maintain sobriety, is sufficient evidence to support a finding of neglect under KRS 600.020(1)(a)3, 4, and 8.

Reunification

Mother argues the Cabinet did not render or attempt to render all reasonable services that reasonably might be expected to bring about family

reunification.³ We disagree.

KRS 625.090(3) lays out the factors courts shall consider in determining the best interest of a child. These factors are: (a) mental illness that renders the parent unable to care for the child; (b) acts of abuse or neglect toward any child in the family; (c) the Cabinet's reasonable efforts to reunite the child with the parent if the child has been placed with the Cabinet; (d) the parent's efforts and behavioral adjustments that tend to make return of the child to the parent in that child's best interests; (e) the physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare; and (f) the parent's payment or the failure to pay a reasonable portion of the cost of the child's physical care and maintenance. KRS 625.090(3)(a)-(f). All factors must be considered but not all need be proven to find termination is in the child's best interest. KRS 625.090(3). Because Mother only challenges the Cabinet's reunification efforts, we limit our discussion to this factor.

Reasonable efforts are defined as the "exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available . . . which are necessary to enable the child to safely live at home[.]"

³ Mother, again, asserts that with the benefit of legal counsel, she would have been able to present sufficient evidence that the Cabinet failed to offer adequate reunification services. Because we have resolved this issue, we decline to address it again.

KRS 620.020(11).⁴ The Cabinet offered Mother numerous services. Specifically, the Cabinet offered:

- (1) substance abuse evaluations and treatments with UKTAP;
- (2) drug screens;
- (3) parenting assessment referrals;
- (4) NA/AA meeting referrals;
- (5) therapy and group support session referrals;
- (6) referral to the Life Learning Center;
- (7) housing and employment referrals;
- (8) case management services; and
- (9) phone contact with her children.

Mother asserts “[s]ervices aimed at preserving the bond between parent and child” would have reunified the family. However, she has not identified any specific service that could have been provided by the Cabinet. The family court concluded no additional services were likely to bring about a family reunification. That suffices under the statute for this factor.

⁴ We use the version of the statute as it was at the time of judgment. The statute was amended effective June 27, 2019, and section 11 can now be found at section 13.

CONCLUSION

The Campbell Family Court's orders terminating the parental rights of K.G. are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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Covington, Kentucky

BRIEF FOR APPELLEE CABINET
FOR HEALTH AND FAMILY
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Leslie M. Laupp
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