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Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001715-ME

J.T.C. APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE KATHY STEIN, JUDGE
ACTION NO. 18-AD-00067

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY; A.M.C., A MINOR CHILD;
AND M.M., MOTHER APPELLEES

AND NO. 2018-CA-001716-ME

J.T.C. APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT
FAMILY COURT DIVISION
v. HONORABLE KATHY STEIN, JUDGE
ACTION NO. 18-AD-00068

CABINET FOR HEALTH AND
FAMILY SERVICES, COMMONWEALTH
OF KENTUCKY; M.R.C., A MINOR CHILD;
AND M.M., MOTHER APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CALDWELL, JONES, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: J.T.C. brings Appeal Nos. 2018-CA-001715-ME and 2018-CA-001716-ME from Findings of Fact and Conclusions of Law and Orders Terminating Parental Rights and Orders of Judgment (Orders) entered in the Fayette Circuit Court, Family Court Division, on October 23, 2018, terminating his parental rights to his two minor children, M.R.C. and A.M.C. We affirm.

J.T.C. is the father of two minor children, M.R.C, who was born March 5, 2013, and A.M.C., who was born September 6, 2015. The Cabinet for Health and Family Services (Cabinet) initially became involved with the family in June of 2014 when it received a referral that the biological mother, M.M., was using drugs while caring for M.R.C. M.M., who was involved with a suboxone clinic, tested positive for suboxone but also tested positive for cocaine. During the Cabinet's investigation, M.M. became incarcerated, and the Cabinet filed a petition alleging M.M. had neglected M.R.C.

M.M. identified J.T.C. as M.R.C.'s father. J.T.C. was incarcerated when M.R.C. was removed from M.M.; thus, he could not be considered for placement. M.R.C. was ultimately placed with her maternal grandmother (Grandmother). Grandmother was granted discretion regarding visits between M.R.C. and both parents. The family court subsequently found that M.R.C. was a neglected child. The Cabinet offered both parents case plans. M.M. met with the Cabinet's caseworker and was given a case plan; J.T.C. did not attend his appointment.

M.M.'s case plan included the requirement that, *inter alia*, she must remain drug and alcohol free. The Cabinet provided free drug screens and referrals to various community partners to assist M.M. However, M.M. continued to test positive for various drugs and eventually ceased testing. J.T.C. did not have a case plan, but there was an order providing him with drug screening. J.T.C. drug screened once in August of 2014 and then did not return. The Cabinet was unable to make contact with either parent for several months.

In February 2015, while conducting a home visit at Grandmother's house, the Cabinet's caseworker discovered both M.M. and J.T.C. in the home. Both parents told the caseworker they would like to establish a new case plan, so she set up a meeting for March of 2015. Neither parent appeared. By order entered August 24, 2015, the family court adopted the Cabinet's recommendation

of "closing case due to lack of cooperation" and "custody remains with [Grandmother]." A no-contact order was issued preventing contact between M.R.C. and both parents.

In September 2015, the Cabinet received another referral alleging the Grandmother had allowed M.M. to have unsupervised contact with M.R.C. When the Cabinet's caseworker went to the Grandmother's home, she discovered M.M. was there with M.R.C. and with her new baby, A.M.C. Grandmother was not present, but an unknown male was sleeping on the couch. The Cabinet requested and received emergency custody of M.R.C. and A.M.C. on September 30, 2015. The family court subsequently made a finding of neglect as to both children in December 2015. J.T.C. was again incarcerated, but upon release did schedule an appointment with the caseworker. However, J.T.C. did not make the appointment and did not drug screen. M.M. was given a case plan that contained various directives including that she remain drug and alcohol free. M.M. made some progress on her case plan but still did not drug screen. M.M. was again incarcerated, became homeless, and ceased contact with the Cabinet. A caseworker made contact with both parents in April 2016 and set up a meeting but neither parent appeared. The Cabinet again closed its case with custody to the Grandmother.

In January of 2017, the Cabinet received two referrals alleging that M.M. and J.T.C. were again having contact with the children. On both occasions, the caseworker made contact with the Grandmother, and she admitted allowing the parents to have contact with the children. As a result, on February 13, 2017, the Cabinet requested and received custody of M.R.C. and A.M.C. On July 3, 2017, the family court made a finding of neglect as to both children against M.M., J.T.C., and the Grandmother.

After removal from the Grandmother's house, the Cabinet again made case plans for both parents. Both case plans included the directive that M.M. and J.T.C. remain drug and alcohol free. M.M. made no progress on her case plan, was incarcerated again, and did not contact her caseworker upon release. J.T.C. was in and out of incarceration and never drug screened. Neither parent visited the children. By order entered September 18, 2017, M.R.C. and A.M.C. were committed to the custody of the Cabinet and the permanency goal was changed from reunification to adoption. M.R.C. and A.M.C. were placed together in a concurrent foster home.

On March 14, 2018, the Cabinet filed an action in the Fayette Family Court seeking involuntary termination of parental rights of both parents as to M.R.C. and A.M.C. By orders entered October 23, 2018, M.M. and J.T.C.'s parental rights were terminated. These appeals, filed by J.T.C. only, followed.

J.T.C. contends the family court erred by terminating his parental rights. The entirety of his first argument is as follows:

> In this particular case, it is undeniable that [J.T.C.] cares for his children. The Cabinet presented no court records showing [J.T.C.] had been convicted of a crime from the physical or sexual abuse or criminal neglect of any child. It is not in the child's best interest to sever the relationship between child and parent when the parent has shown that the children would not be abused or neglected if returned.

J.T.C.'s Briefs at 4 (citation omitted).

Involuntary termination of parental rights is governed by Kentucky Revised Statutes (KRS) 625.090. To involuntarily terminate parental rights under KRS 625.090, the family court must find by clear and convincing evidence that the following three-prong test is satisfied: (1) the child has been adjudged an abused or neglected child as defined by KRS 600.020(1) by a court of competent jurisdiction or the child is found to be abused or neglected as defined in KRS 600.020(1) in this proceeding, (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, 209 (Ky. 2014).

In the case *sub judice*, the first prong of the test for terminating parental rights was satisfied as the family court found by clear and convincing evidence that M.R.C. and A.M.C. were abused or neglected children pursuant to

KRS 600.020(1). The family court previously adjudged the children as abused or neglected in the underlying dependency, abuse, or neglect proceeding. And, the family court also found the children to be abused or neglected in this proceeding. The family court specifically concluded that J.T.C. engaged in a pattern of conduct that rendered him incapable of caring for the immediate and ongoing needs of the children. KRS 600.020(1)(a)3. In support thereof, evidence was presented that J.T.C. engaged in a consistent pattern of criminal behavior, admitted being incarcerated when M.R.C. was born, and acknowledged being in and out of jail repeatedly. For example, J.T.C. acknowledged that in 2017 he had been incarcerated in March, May, and June of that year. The family court also determined that J.T.C. did not make sufficient progress toward the goals identified in a court-approved case plan for the safe return of his children that had been committed to the custody of the Cabinet for 15 cumulative months out of 48. As previously noted, J.T.C. made no progress on his case plans with the Cabinet, which he admitted. He did not provide any proof that he completed any tasks for the case plan and never drug screened consistently. At times, J.T.C. even failed to attend the meetings to negotiate a case plan. Therefore, we believe that the family court properly determined by clear and convincing evidence that M.R.C. and A.M.C. were abused or neglected pursuant to KRS 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. KRS 625.090(3) requires consideration of several factors when determining whether terminating parental rights is in the child's best interest. One such factor is that the child has been adjudged an abused or neglected child pursuant to KRS 600.020(1). In this case, the relevant factors considered under KRS 625.090(3) were that reasonable efforts were made in an attempt to reunite the children with J.T.C., but those efforts were unsuccessful. Also, J.T.C. did not make efforts or adjustments to his circumstances, conduct, or conditions to make it in the best interests of the children to return custody. KRS 625.090(3)(d). Thus, we believe the family court properly determined by clear and convincing evidence that termination was in the children's best interests.

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 presented, as noted above, demonstrated that J.T.C. for a period of not less than six months had continuously or repeatedly failed or was incapable of providing essential care and protection of M.R.C. and A.M.C. KRS 625.090(2)(e**).** As such, the family court properly determined that at least one of the grounds identified in KRS 625.090(2) had been satisfied.

J.T.C. next contends the family court erred by terminating his parental rights as the Cabinet did not demonstrate there had been reasonable efforts to reunite the family. KRS 620.020(13) provides that "reasonable efforts" mean the existence of ordinary diligence and care by the Cabinet to utilize all preventive and reunification services available to enable the children to return home safely.

Here, the Cabinet's caseworker testified that J.T.C. had been offered numerous services by the Cabinet, including several opportunities to establish a case plan and free drug screenings. J.T.C. frequently failed to make appointments to establish a case plan, made no progress on case plans that were established, repeatedly failed to drug screen, and did not utilize the services the Cabinet made available to him. These efforts by the Cabinet constitute "reasonable efforts" under Kentucky law. *See C.A.W. v. Cabinet for Health & Family Services, Commonwealth*, 391 S.W.3d 400, 405 (Ky. App. 2013). As the evidence indicates that J.T.C. failed to avail himself of the services offered by the Cabinet intended to lead to reunification, we believe his argument on appeal is without merit. Therefore, the family court correctly found by clear and convincing evidence that the Cabinet provided "reasonable efforts," as defined in KRS 620.020(13), to reunify the family. Thus, we reject J.T.C.'s assertion to the contrary.

J.T.C. finally contends that the family court erred by terminating his parental rights in contravention of KRS 625.090(5). KRS 625.090(5) specifically

provides 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."

It is well-established that the use of the words "in its discretion may" in the statute renders KRS 625.090(5) permissive. *See D.G.R. v. Commonwealth, Cabinet for Health and Family Services*, 364 S.W.3d 106. 112 (Ky. 2012). The statute clearly allows the family court to exercise its discretion not to terminate parental rights. *Id.* In this case, the record below supports the family court's decision that J.T.C. did not prove by a preponderance of the evidence that the children would not be abused or neglected if returned to J.T.C. The family court concluded specifically that J.T.C.'s criminal lifestyle, his failure to satisfy the Cabinet's case plans, and his failure to drug screen consistently rendered him incapable of providing essential care for his children. Therefore, we believe J.T.C.'s argument on this issue is without merit.

We view any remaining contentions to be moot or without merit.

For the foregoing reasons, the orders of the Fayette Circuit Court are affirmed.

ALL CONCUR.

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