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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-1864-ME

S.C.

APPELLANT

v.

APPEAL FROM CARTER FAMILY COURT
HONORABLE DAVID D. FLATT, JUDGE
ACTION NO. 18-AD-00054

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY SERVICES;
D.W.; AND B.J.C., A MINOR CHILD

APPELLEES

AND

NO. 2019-CA-1865-ME

S.C.

APPELLANT

v.

APPEAL FROM CARTER FAMILY COURT
HONORABLE DAVID D. FLATT, JUDGE
ACTION NO. 18-AD-00056

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

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT, MCNEILL, AND TAYLOR, JUDGES.

MCNEILL, JUDGE: Appellant, S.C., is the biological mother of four children, only two of whom, B.J.C. and J.R.J.J., are the subjects of the present case. In October of 2016, appellee, Commonwealth of Kentucky, Cabinet for Health and Family Services (“Cabinet”), opened a case for dependency, neglect, and abuse against S.C. on the basis of environmental concerns due to her home being in a deplorable condition.¹ As a result, the Cabinet removed B.J.C. and J.R.J.J. from S.C.’s custody and placed them in foster homes.

After the children had been in foster care for the requisite amount of time provided by statute, the Cabinet filed petitions for termination of parental rights (“TPR”) in Carter Family Court. A TPR evidentiary hearing was held on November 7, 2019, during which several witnesses testified, including two Cabinet officials and S.C. A guardian *ad litem* was present on behalf of B.J.C. and J.R.J.J. At the time of the hearing, the children had been in the custody of the Cabinet for 32 months.

¹ The record indicates, without limitation, the presence of trash throughout the home, feces on the bathroom floor, and the presence of bed bugs and cockroaches.

After considering the totality of the evidence, the trial court issued an order terminating S.C.’s parental rights to both children.² As a result, the court further ordered that they be placed in the custody of the Cabinet as wards of the state, with the authority to place the children for adoption. S.C. now appeals to this Court as a matter of right.³ Having reviewed the record and the law, we affirm the trial court.

I. STANDARD OF REVIEW

We review parental termination cases based upon the clearly erroneous standard set out in CR⁴ 52.01. *See, e.g., Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014). Therein, the Kentucky Supreme Court elaborated on the applicable standard of review as follows:

To begin, we note that the trial court has wide discretion in terminating parental rights. *Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010) (citing *K.R.L. v. P.A.C.*, 210 S.W.3d 183, 187 (Ky. App. 2006)). Thus, our review is limited to a clearly erroneous standard which focuses on whether the family court’s order of termination was based on clear and convincing evidence. Kentucky Rules of Civil Procedure (“CR”) 52.01. “Pursuant to this standard, an appellate court is obligated to give a great deal of deference to the family court’s findings and should not interfere with

² The Court’s order also terminated the parental rights of B.J.C.’s biological father, D.W., and J.R.J.J.’s biological father, J.B. Neither D.W. nor J.B. has appealed that ruling.

³ On January 29, 2020, this Court granted S.C.’s motion to consolidate these two cases on appeal.

⁴ Kentucky Rules of Civil Procedure.

those findings unless the record is devoid of substantial evidence to support them.” [T.N.H.], 302 S.W.3d at 663. Due to the fact that “termination decisions are so factually sensitive, appellate courts are generally loathe to reverse them, regardless of the outcome.” D.G.R., 364 S.W.3d at 113.

Id. With these standards in mind, we turn to the applicable law and the facts of the present case.

II. ANALYSIS

S.C. raises two arguments on appeal. First, she contends that the trial court misinterpreted the law surrounding termination of parental rights cases. Second, she argues that the trial court misapplied the facts to the law and disregarded the evidence in favor of S.C. and, therefore, abused its discretion. For the following reasons, we disagree.

A. **TPR Legal Directives**

In *Cabinet for Health and Family Services v. K.H.*, the Kentucky Supreme Court observed that “[t]he involuntary termination of parental rights is a scrupulous undertaking that is of the utmost constitutional concern.” 423 S.W.3d at 209 (citing *M.L.B. v. S.L.J.*, 519 U.S. 102, 119-20 (1996)). The Court further elaborated as follows:

The U.S. Supreme Court has unequivocally held that a parent has a “fundamental liberty interest” in the care and custody of his or her child. *See, e.g., Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). This fundamental interest “does not

evaporate simply because they have not been model parents or have lost temporary custody of their child to the State” *Id.* at 754-55, 102 S.Ct. 1388. Therefore, “[w]hen the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.” *Id.*

Id.

In addition to these general constitutional concerns, the relevant statutes governing the termination of parental rights are provided in KRS⁵ Chapters 620 and 625. KRS 620.180(2)(c)3. mandates that the Cabinet file a petition for TPR after the child or children at issue have been in foster care for 15 cumulative months out of 48 months. It is undisputed that this standard was satisfied in the present case.

Under KRS 625.090(1), the trial court may involuntarily terminate all parental rights if the court finds from the pleadings and by clear and convincing evidence that:

- (a) 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;
. . .
- (b) The Cabinet for Health and Family Services has filed a petition with the court pursuant to KRS 620.180; and
- (c) Termination would be in the best interest of the child.

⁵ Kentucky Revised Statutes.

It is undisputed here that B.J.C. and J.R.J.J. have been adjudged to be abused or neglected and that the Cabinet has filed a petition with the court pursuant to KRS 620.180. Therefore, our analysis is focused on whether termination of S.C.'s parental rights is in the children's best interest and whether the additional dictates of KRS 625.090(2) have been satisfied.

When determining the best interest of the child as a ground for termination, the trial court is directed to consider the following factors:

- (a) Mental illness as defined by KRS 202A.011(9), or an intellectual disability as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;
- (b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;
- (c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court;
- (d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;

(e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and

(f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

KRS 625.090(3).

KRS 625.090 also provides the trial court with discretion to consider the following:

(4) If the child has been placed with the cabinet, the parent may present testimony concerning the reunification services offered by the cabinet and whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent.

(5) If 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.

Lastly, KRS 625.090(2) further provides that no termination of parental rights shall be ordered unless the trial court also finds by clear and convincing evidence the existence of one or more of the grounds listed in KRS 625.090(2)(a)-(k). In applying these relevant statutory directives to the facts of the present case, we cannot say that the trial court committed clear error.

B. The Evidence

As previously stated, a TPR hearing was held on November 7, 2019, during which documentary and testimonial evidence was introduced. Erin Stapleton was the Cabinet's case worker assigned to S.C.'s case at the time of trial. She stated that she had worked with S.C. since April of 2018 and had been involved in implementing multiple case plans concerning S.C. and her children.

Ms. Stapleton specifically testified that S.C.: 1) has had prior cases involving the Cabinet; 2) was diagnosed with a "major depressive disorder" for which she was prescribed medication that she does not always take; 3) missed at least two separate court hearings concerning the custody of her children; 4) failed one drug screening, but passed several subsequent screenings; and 5) failed to maintain a suitable living arrangement of her own. Ms. Stapleton further noted that S.C. had multiple living arrangements during the Cabinet's investigation, including being homeless for a time. Lastly, she testified that S.C. was in contact with "high-risk" individuals, including J.R.J.J.'s father, whom she married after he was recently released from prison.

During cross-examination, Ms. Stapleton acknowledged that S.C.'s mother died shortly before the children were removed from S.C.'s custody by the Cabinet, which was relevant to her state of mind at the time. Ms. Stapleton was also questioned whether she was aware that S.C. was currently employed, had her

own apartment, and was making child support payments. She responded that S.C. had not fully complied with any Cabinet-approved case plan, only portions thereof. She specifically noted that S.C. had not demonstrated stable housing for six months, as was required.

Megan Kohler, a Certified Social Worker and Senior Clinician, testified telephonically. Her testimony primarily concerned the results of S.C.'s Comprehensive Assessment and Training Services testing ("CATS"), which was performed by her team at the University of Kentucky Center on Trauma and Children. This multidimensional test included an extensive interview of S.C., evaluation of the children, and consideration of other relevant evidence.

Based on this evaluation, Ms. Kohler testified that she had "a lot" of concerns about S.C., including her lack of insight, problematic relationships with men, as well as her homelessness and lack of transportation. Ms. Kohler specifically testified that: 1) on the Parenting Stress Index portion of the CATS test, S.C. reflected a minimization of stress regarding her children; 2) S.C. produced an invalid profile on the Child Abuse Potential Index because she was "faking good"; and 3) S.C.'s relationship history with J.R.J.J.'s father included more than 48 acts of psychological aggression in just one year.

S.C. also testified that she: 1) was participating in therapy and trying to positively change her life; 2) acknowledged the unclean living conditions which

were the cause of her children's removal by the Cabinet; 3) agreed that she has mental health concerns, but that she did not have drug issues; 4) conceded that she missed several mental health appointments, failed to complete several necessary tasks required by the Cabinet and sometimes failed to keep in contact with the Cabinet; and 5) did not consider J.R.J.J.'s father, her current husband, "high-risk."

Several other witnesses also provided testimony, including two witnesses—J.R.J.J.'s grandmother and another case worker—who testified on S.C.'s behalf. James Hamlin, a social worker whose testimony concerned S.C.'s supervised play time with the children, was also generally favorable to S.C..

In its findings of fact and conclusions of law, the trial court noted that B.J.C. and J.R.J.J. are abused or neglected children pursuant to KRS 600.020, and found, *inter alia*, that S.C.: 1) admitted that she had neglected her children in the underlying juvenile actions, Carter Family Court Case Nos. 16-J-00141-002 and 16-J-00142-002; 2) for a period of not less than six months, has continuously or repeatedly not provided essential parental care and protection and that there is no reasonable expectation of improvement. *See* KRS 625.090(2)(e); 3) for reasons other than poverty alone, is unable to provide for her children's essential needs, and that there is no reasonable expectation of significant improvement in the foreseeable future. *See* KRS 625.090(2)(g); 4) remains unable to recognize, take adequate responsibility for, or correct the instability which has caused emotional

stress and trauma to B.J.C.; 5) has outstanding child support arrearages of more than \$400; 6) has periods of cooperation and understanding and then reverts to instability and inappropriate living conditions; and 7) resides with and recently married the father of one of her children, just eleven days after he was released from prison on parole for multiple felony convictions. The court also stated that it has given S.C. numerous chances throughout the history of this case which she has failed to utilize. Lastly, the court noted that when conceding that her parenting has been deficient, S.C. specifically stated “I let [the children] get away with more than I should have.” (Opinion and Order at p. 4).

Within her general argument that the trial court committed reversible error S.C. specifically contends the court erred in failing to appropriately consider her current employment and living arrangements and that she was not mentally ill pursuant to KRS 625.090(3)(a). She also takes issue with the allegedly outdated CATS test report that, in B.J.C.’s case, was generated well over a year before the hearing. Further, S.C. correctly notes that some portions of the report weigh in S.C.’s favor, and specifically cites to a copy of an email from a Cabinet official contained in the CATS record opining that there was not enough evidence to proceed to termination at that time. However, the overall conclusion section of B.J.C.’s 51-page CATS report provides the following recommendation:

It appears unlikely that [S.C.] will make the necessary improvements to her caregiving and circumstances in

a timeframe that supports her children’s urgent need for permanency, and as on-going, intermittent contact with [S.C.] is causing emotional distress to her children, the CATS team recommends DCBS focus on securing permanency for [the children] outside of [S.C.’s] care. It is recommended that arrangements for a final visit be made for the immediate future.

(Emphases in original). A separate report was compiled for J.R.J.J. that contains this identical conclusion. Therefore, a balanced review of the CATS report, and its overall conclusion, does not weigh in S.C.’s favor. Furthermore, S.C.’s arguments ignore the totality of the evidence and relevant statutory provisions at issue here. For example, the trial court’s findings included specific grounds for termination under KRS 625.090(2). The court also addressed the “best interest of the child” factors outlined in KRS 625.090(3). Although the court’s order “did not specifically address each factor, its findings lead us to believe that each factor was properly considered.” *K.H.*, 423 S.W.3d at 212 (citing *D.G.R. v. Commonwealth, Cabinet for Health and Family Services*, 364 S.W.3d 106, 115 (Ky. 2012)).

And although the trial court made no specific finding as to mental illness under KRS 625.090(3)(a), ample evidence was introduced concerning S.C.’s depressive condition, including her own testimony. In any event, even the absence of a finding of mental illness on behalf of the parent does not obviate the termination of parental rights. Mental health is only one factor to be considered. The status of S.C.’s employment, housing, and transportation at the time of the

hearing and throughout the entirety of the proceedings is also relevant, but not dispositive.

The two comprehensive CATS reports were introduced as exhibits and Ms. Kohler testified extensively concerning the evaluation results. This testing was administered nearly a year and a half after the Cabinet had opened a case against S.C., after her children had already been placed in foster care, and was highly relevant to determining S.C.'s fitness as a mother. This evidence was proper for the court's consideration.

Critically, the court's opinion reflects a consideration of the totality of S.C.'s history with the Cabinet and other care providers during the pendency of these proceedings. In its findings, the court was specifically concerned with S.C.'s ability to demonstrate remorse for her actions and that she was insufficiently aware of the deficits in her parenting.

We must consider this case in light of the clearly erroneous standard of review, which is highly deferential to the trial court's findings. CR 52.01. Applying this standard, we certainly cannot say that "the record is devoid of substantial evidence" to support the trial court's decision. *See T.N.H.*, 302 S.W.3d at 663. Therefore, there was no clear error here.

III. CONCLUSION

For the foregoing reasons, we hereby affirm the order of the Carter Family Court terminating S.C.'s parental rights.

ALL CONCUR.

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