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Commonwealth of Kentucky
Court of Appeals

NO. 2020-CA-0568-ME

M.C.

APPELLANT

v. APPEAL FROM WARREN FAMILY COURT
HONORABLE CATHERINE R. HOLDERFIELD, JUDGE
ACTION NO. 19-AD-00072

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND
FAMILY SERVICES; AND M.B.T.

APPELLEES

AND

NO. 2020-CA-0569-ME

M.C.

APPELLANT

v. APPEAL FROM WARREN FAMILY COURT
HONORABLE CATHERINE R. HOLDERFIELD, JUDGE
ACTION NO. 19-AD-00073

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND
FAMILY SERVICES; AND P.J.E.T.

APPELLEES

AND

NO. 2020-CA-0570-ME

M.C.

APPELLANT

v. APPEAL FROM WARREN FAMILY COURT
HONORABLE CATHERINE R. HOLDERFIELD, JUDGE
ACTION NO. 19-AD-00074

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND
FAMILY SERVICES; AND K.M.L.

APPELLEES

OPINION
AFFIRMING

* * * * *

BEFORE: ACREE, CALDWELL, AND K. THOMPSON, JUDGES.

THOMPSON, K., JUDGE: M.C. (mother) appeals from the Warren Family Court's orders terminating mother's parental rights to K.M.L, P.J.E.T., and M.B.T. (collectively children). Following a careful review of the facts and the law, we affirm.

K.M.L. and M.B.T., both female, and P.J.E.T., a male, are minor children born to mother in March 2006, April 2009, and August 2015, respectively. The natural fathers of children (J.L. is the father of K.M.L., and J.T. is the father of

M.B.T. and P.J.E.T.) (fathers) are not parties to this appeal.¹ In February 2016, children were living with their mother and J.T. At that time children were found to be living in filthy conditions, their home filled with drug paraphernalia and many of the ingredients necessary to manufacture methamphetamine. In addition, the home did not have running water, very little food was present, and the house filled with trash. On February 16, 2016, children were committed to the Cabinet for Health and Family Services (the Cabinet) by order of the Warren Family Court.

The Cabinet filed separate actions to terminate mother's parental rights as to children on June 5, 2019, with fathers also being respondents in the actions involving their children. The termination trial took place on November 26, 2019 and February 27, 2020. Mother was present on both dates and represented by counsel.

The Cabinet's witnesses predominantly consisted of therapists who had worked with the family and ongoing workers employed by the Cabinet who worked with the family at various times from February of 2016 through the February 27, 2020 hearing date. Mother testified on her own behalf.

We will discuss the testimony which occurred on each day of the trial separately. Different witnesses testified on each date, save for Mandy Skees who testified on each day. On November 26, 2019, the family court heard from

¹ Therefore, we will not discuss any testimony, findings or rulings as to fathers except as necessary to understanding why children were removed.

Michelle Yoestel, Hannah Siobahn, Tammy Brucato, S.L. (foster mother), Jane Higdon, and Skees.

Yoestel testified she is the therapist who performed a drug and alcohol assessment of mother on April 16, 2016. At that time, mother reported she had not used methamphetamine for a year. Yoestel recommended weekly drug and alcohol counseling sessions for mother. Yoestel testified M.C. attended two sessions in June 2016 and two in November 2016. During one of the November 2016 sessions, mother admitted she had relapsed and admitted that if asked to provide a urine sample on that date, she would have tested positive for both methamphetamine and marijuana.

Mother was again referred to Yoestel by the Cabinet in May 2019. While mother scheduled an appointment with Yoestel at that time, she did not come to the appointment.

Hannah Siobahn, a therapist for M.B.T., testified about her interactions with M.B.T. Siobahn testified that when she first began working with M.B.T., M.B.T. was suffering from hallucinations. Those issues have since resolved. Siobahn testified M.B.T. has difficulty managing attention-deficit/hyperactivity disorder and struggles with self-consciousness regarding the validity of her emotions. Siobahn last saw M.B.T. in October of 2019.

Siobahn testified she had never met mother but that M.B.T. spoke

positively of mother during therapy. She believes mother and daughter were bonded. In sessions, M.B.T. described mother as “funny” and “fun to be around.”

Siobahn further testified that foster mother and her husband, A.J., were currently providing a foster home to M.B.T. and P.J.E.T., and K.M.L. was currently placed at Maryhurst, a community living facility in Louisville, Kentucky.

Brucato, a life skills counselor, testified she worked with both M.B.T. and K.M.L. in late 2017 and into 2018. She later counseled mother, as the two had developed a good rapport while she was working with the girls. Brucato testified M.B.T. initially had difficulties with honesty and controlling her emotions but had made significant progress in therapy.

Brucato described K.M.L.’s course of treatment as much more difficult. K.M.L. would “shut down” or lay on the ground and scream when triggered. Her problems worsened when M.B.T. was sent to a crisis center for treatment.

Finally, Brucato testified regarding her treatment of mother from late 2018 until June 2019. Brucato testified mother had the most intense trauma timeline of any client she could remember. Mother endured sexual abuse, addiction, criminal charges, and instability as a child. Brucato testified mother kept appointments for a few months and, during that time, worked very hard at therapy. Mother shared willingly and openly and expressed a desire to be reunited

with her children. Eventually, however, mother stopped attending sessions. When canceling sessions, mother would cite transportation issues or her own fragile emotional state. Brucato believes mother suffers from post-traumatic stress disorder (PTSD), which sometimes renders her incapable of interaction.

Nonetheless, Brucato testified that mother was loving and affectionate with her children during group sessions. Mother parented appropriately when attending sessions for the children. In sum, Brucato noted, “I have always thought [mother] has the capability of parenting her children. My concern was her ability to maintain that for extended periods of time,” due to her PTSD.

Foster mother testified she and her husband began providing foster care to M.B.T and P.J.E.T. in July 2019 and continued to be their foster parents since that time. Foster mother testified she had planned a visit with K.M.L. over the Thanksgiving holiday. Foster mother testified she and her husband wanted K.M.L. to join her siblings at their home once she was discharged from Maryhurst. Foster mother stated she wanted to adopt all three children once the parental rights of their natural parents were terminated.

Higdon, the family’s ongoing worker from February 16, 2016 until November 1, 2017, explained about the Cabinet’s continued efforts to reunify mother with children while Higdon was the ongoing worker. Higdon testified mother was bonded with all three children and was appropriate with them at visits.

When asked if mother was on track for reunification as of November 1, 2017, Higdon equivocated, explaining that while mother was for the most part compliant and successful with visits with the children and appointments, she was not able to obtain independent housing or steady employment. Higdon also noted Mother was inconsistent with substance abuse and mental health treatment attendance.

Skees was the family's ongoing worker from November 1, 2017 until December 16, 2018. Consistent with other witnesses, Skees testified mother was bonded with children and made sincere efforts at reconciliation at times, but she failed to meet the requirements of her case plans over time. Skees testified she arranged for mother to see Brucato as a therapist once Brucato was no longer seeing the sisters as clients. While mother did take and pass every drug screening requested and was compliant with mental health treatment while under Brucato's care, she had difficulty engaging with the public sufficiently to obtain a job and was never able to secure independent housing.

Skees also testified regarding significant problems M.B.T and K.M.L. experienced while under the care of the Cabinet. On March 18, 2017, then nine-year old K.M.L.'s arm was broken by a worker at the Home of the Innocents who was attempting to place her in a restraint hold. As of that time, K.M.L had experienced nineteen different placements since being removed from mother's

home. M.B.T. had nine different placements during that time.

Skees testified mother completed a BRASS assessment as requested but did not follow up on recommendations. While mother completed a drug and alcohol assessment in 2016, she had since relapsed and was required to undergo another assessment. Mother did not do so while Skees was the ongoing worker.

As the termination trial was not completed on November 26, 2019, the trial was continued and eventually concluded on February 27, 2020. On that date, the family court heard from Catherine Ellis, Skees, and mother.

Catherine Ellis testified she was the family's ongoing worker from December 18, 2018 until February 4, 2020. She testified she prepared a new case plan for mother on February 20, 2019. Mother tested positive for methamphetamine on that date, then did not comply with drug screen requests thereafter. Mother did not complete a mental health assessment pursuant to the plan, and although she completed a BRASS assessment, she did not follow through with any of the recommendations. Mother did not attend therapy sessions and attended visitation sporadically while Ellis was the ongoing worker. Ellis testified the Cabinet obtained a waiver of reasonable efforts on May 20, 2019.

Ellis testified that termination of mother's parental rights was in the best interest of children because mother made little progress over the past four years. Ellis believed termination was the only path to permanency for children and

was necessary for children to become well-rounded adults. Despite this, Ellis testified that both girls were bonded with mother.

On cross examination, Ellis testified K.M.L. was currently in a group home at Maryhurst and placement for her had proven difficult. In response to direct questioning from mother's counsel, Ellis testified M.B.T. and P.J.E.T. were no longer living in foster mother's home. In December 2019, approximately two weeks after foster mother testified to her desire to adopt all three children, the family put in notice to the Cabinet they no longer wanted to foster M.B.T. and P.J.E.T. Therefore M.B.T. and P.J.E.T. were moved to a new placement.

Skees testified she resumed her role of ongoing worker for the family on February 5, 2020. She and mother attended a planning care meeting for K.M.L. at Maryhurst on February 13, 2020. Mother also attended visitation with children on February 6 and February 20, 2020. During one of these visits, M.B.T. disclosed for the first time that she had been physically and sexually abused at the home of a foster parent in 2017. She did so while crying in mother's arms.

Skees testified termination was in the best interest of children, as neither parent was able to reunite with them safely. She testified reuniting the three children with one another remained her goal but conceded doing so would be difficult.

Despite her testimony concerning the best interest of children, Skees

testified that continued contact with mother was important for K.M.L. and M.B.T. Skees testified she and mother were the only adults K.M.L. trusted. Moments later, Skees testified she was being reassigned within the Cabinet and a new ongoing worker would be assigned the following week.

Skees explained she has advocated that children, particularly the girls, would benefit from continued contact with mother if and when termination was granted. Skees testified she contacted Wendy's Wonderful Kids, an organization that works with children after parental rights have been terminated, to arrange for continued contact and visitation. She testified continued contact would be important for the development of children, particularly the girls. She testified, however, that Wendy's Wonderful Kids may or may not arrange for visitation at its own discretion.

Mother testified she had endured many struggles over the past four years. She admitted to using drugs because it was how she coped, that her financial resources are limited, and she does odd jobs. She testified her children are very important to her, explaining if she could get them back that they would be her reason for remaining drug free. She asked that her children be returned to her.

On March 23, 2020, separate written findings of fact and conclusions of law were entered as to each child in support of terminating mother's parental rights. Separate orders were also entered terminating mother's parental rights to

each child.

The family court found that each child was abused and neglected, and that termination would be in each child's best interest. The family court detailed the "filthy living conditions" children were subjected to before being removed by the Cabinet which included the presence of "drug paraphernalia, syringes, burnt tin foil with what appeared to be drug residue, and empty child's pill bottles." The family court noted the residence had "no running water . . . , very little food, trash and clutter everywhere, and many of the ingredients to manufacture methamphetamines." The family court further found that mother was convicted of a criminal charge relating to the physical or sexual abuse of any child.

The family court found specific grounds for termination: mother for a period of not less than six months continuously failed or refused to provide or is substantially incapable of providing essential parental care and protection for children and there is no reasonable expectation of improvement in parental care and protection, considering the ages of children; mother for reasons other than poverty alone had continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for children's well-being and there is no reasonable expectation of significant improvement in mother's conduct in the immediately foreseeable future, considering the ages of children; and children have been in

foster care under the responsibility of the Cabinet for fifteen out of the forty-eight months preceding the filing of the petition to terminate parental rights.

The family court concluded that it was in the best interest of children that termination be ordered because they needed the stability provided by the Cabinet placing them for adoption because they had been in foster care for over four years and need permanency and an opportunity to progress to being well-rounded adults. The family court extensively reviewed the efforts which were made to help mother and mother's failure to follow up with assessments and sporadic attendance at therapy, noting:

[O]ften times [when mother would call in to cancel therapy she] reported that she was experiencing disabling symptoms, i.e. unable to get out of bed and panic attacks. When mother feels overwhelmed she shuts down. Mother is diagnosed with post-traumatic stress disorder. Mother has a persistent inability to regulate reactions to triggers. Mother suffers a paralyzing effect when she is exposed to triggers. Mother was experiencing dissociative episodes, ranging all the way from being off task to completely shutting down. Mother's responses to trauma get in the way of her ability to function. Mother's post-traumatic stress disorder has impaired her to the degree that it is often times difficult for her to meet her own needs.

The family court further noted that mother continued to have a drug problem, explaining that mother refused to take a random drug screen in November 2016, but stated it would be positive, tested positive for methamphetamine in February 2019, and has refused random drug screens since that date. The family court also

found that despite visits being scheduled every other week, mother visited children sporadically, visiting on 6/12/19, 8/22/19, 10/17/19, 10/31/19, 12/12/19, 12/26/19, 2/6/20, 2/20/20 and 2/24/20. The family court found mother is unemployed and a waiver of reasonable efforts was granted in May 2019. In making the legal conclusion that termination was appropriate, the family court noted that all factors in Kentucky Revised Statutes (KRS) 625.090(3) were considered.

Mother appeals from these orders, arguing that the family court failed to make sufficient findings of fact that it was in children's best interest to terminate her parental rights and abused its discretion in relying upon a non-existent conviction or abuse or neglect to support termination of mother's parental rights.

The statutory requirements of KRS 625.090 dictate whether termination of a party's parental rights is appropriate. Termination may only be granted upon satisfaction, by clear and convincing evidence, of a three-part test. First, the child must have been found to be an "abused or neglected" child, as defined by KRS 600.020. KRS 625.090(1)(a). Second, termination must be in the child's best interest, KRS 625.090(1)(c), as determined by the consideration of the factors in KRS 625.090(3)(a)-(f). Third, the family court must find at least one ground of parental unfitness. KRS 625.090(2)(a)-(k). *B.E.K. v. Cabinet for Health and Family Servs.*, 487 S.W.3d 457, 464 (Ky.App. 2016).

Because the family court has wide discretion in deciding to terminate

parental rights, “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.” *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014). “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 those findings unless the record is devoid of substantial evidence to support them.” *Commonwealth, Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010).

Mother does not dispute the factors of neglect or parental unfitness. Indeed, three grounds for termination were found, KRS 625.090(2)(e), (g), and (j). Rather, she argues that termination was not in children’s best interest. Specifically, she contends the findings of fact are silent as to the physical, emotional, and mental health of children pursuant to KRS 625.090(3)(e). Mother misinterprets the statutory scheme involved.

KRS 625.090(3) enumerates six factors the family court shall consider “In determining the best interest of the child and the existence of a ground for termination. . . .” The 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 interest; (e) "[t]he 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).

Mother's argument concerning the absence of findings on one of the factors is unavailing. The Kentucky Supreme Court has emphasized the factors are not a "checklist." *D.G.R. v. Commonwealth, Cabinet for Health and Family Services*, 364 S.W.3d 106, 115 (Ky. 2012). The family court need not address each factor in its findings of fact. *K.H.*, 423 S.W.3d at 212.

Mother argues the evidence presented at the hearing does not support the finding that terminating her parental rights was in the best interest of children. Mother argues that children have had numerous placements, K.M.L. has been institutionalized for significant periods of time and was not placed with a foster family at the time of the hearing, and M.B.T. had her arm broken while in care and has alleged she was a victim of physical and sexual abuse while in custody of the Cabinet. Mother argues that foster care has not served children well and given the recent disruption in placement and numerous previous placements, the lack of

prospects for a joint placement or a viable adoptive placement, children's prospects for improved welfare upon termination have not been established. She points out that with termination children will lose their bond with mother but there is no evidence that they will gain improved stability or permanence.

The family court's findings of fact demonstrate it considered the factors enumerated in KRS 625.090(3). It made extensive findings concerning the Cabinet's efforts to reunite children with mother pursuant to KRS 625.090(3)(c) and mother's failure to make necessary efforts and behavioral adjustments which would make it in children's best interest to return to her care pursuant to KRS 625.090(3)(d). The family court's findings are all supported by substantial evidence in the record. The family court's conclusion that termination is in the best interest of children is not clearly erroneous and should not be disturbed.

While mother is correct that permanency through adoption is not assured and finding an adoptive placement may be particularly challenging for K.M.L. given her age and needs, the solution is not for children to permanently linger in foster care without any hope for adoption or hope of being reunited with mother. Children's basic needs were not being met by mother when they were taken into care and the family court could properly find that mother, who was still using drugs and unable to even visit them regularly, would not be able to care for them in the future. Simply put, eventually returning into mother's care was not a

viable option.

The Cabinet does its best to place all children whose parents' rights have been terminated for adoption, including having a photo listing website for waiting children. *See Meet Kentucky's Waiting Children*, Kentucky Adoption Photolisting, <https://adoptuskids.org/states/ky/index.aspx> (last visited Jul. 28, 2021). Even if children may ultimately age out of foster care without being adopted, their basic needs will be met at least until that time. *See* KRS 620.363 (specifying foster children's rights). While potentially aging out of foster care comes with a whole host of problems,² children who become wards of the Cabinet after termination of parental rights and remain wards when they turn eighteen may continue to be wards until age twenty-one at the discretion of the Cabinet upon request of the ward "for the purpose of the child's participating in state or federal educational programs or to assist the child in establishing independent living arrangements." KRS 625.025.

Finally, mother also argues that the family court erred by finding, in each of the three sets of findings of fact and conclusions of law, that she has "been convicted of a criminal charge relating to the physical and sexual abuse or neglect of any child." Factually, mother is correct. Testimony at the hearing established

² *See* Melinda Atkinson *Aging Out of Foster Care: Towards a Universal Safety Net for Former Foster Care Youth*, 43 HARV. C.R.-C. L. L. REV. 183, 187-195 (2008) (detailing the many negative consequences for youth who age out of foster care).

that while charges of child endangerment were brought against mother in 2016, those charges were dismissed. No other evidence concerning criminal charges was presented.

KRS 625.090(1)(a)4. provides a basis for a finding of abuse or neglect based upon a prior conviction for a “criminal charge relating to the physical or sexual abuse or neglect of any child” where abuse, neglect, or emotional injury is likely to occur to this child if parental rights are not terminated. Considering the statutory framework of KRS 625.090(1)(a), however, this erroneous finding had no impact on the family court’s analysis concerning termination. Only one of the conditions enumerated in KRS 625.090(1)(a)1.-4. must be satisfied to support termination. The family court also adjudged each child “to be an abused or neglected [child] as defined in KRS 600.020(1).” This finding, which mother does not challenge, satisfies KRS 625.090(1)(a)2.

Therefore, any finding concerning KRS 625.090(1)(a)4., while perhaps supporting an alternate ground for termination, was unnecessary. Unlike the multi-factorial test concerning the “best interest of the child” in KRS 625.090(3), the requirements of KRS 625.090(1)(a) are disjunctive and alternative. Therefore, the family court was not required to find a conviction described in KRS 625.090(1)(a)4. to support termination. As such there was no clear error in the family court’s decision.

For the reasons set forth above, we affirm the Warren Family Court's orders terminating the parental rights of mother to children.

ALL CONCUR.

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