

Commonwealth of Kentucky
Court of Appeals

NO. 2020-CA-1021-ME

A.A.E.

APPELLANT

v.

APPEAL FROM BOYD CIRCUIT COURT
HONORABLE JOHN F. VINCENT, JUDGE
ACTION NO. 20-AD-00023

C.D.L., A CHILD; AND CABINET
FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
KENTUCKY

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, CALDWELL, AND LAMBERT, JUDGES.

ACREE, JUDGE: A.A.E. (Mother) appeals the Boyd Circuit Court's July 23, 2020 findings of facts, conclusions of law, and judgment terminating her parental rights to C.D.L. (child). Mother argues the circuit court erred by terminating her parental rights because there is a lack of substantial evidence justifying the termination. After a careful review, we affirm.

BACKGROUND

A.A.E. is the biological mother of C.D.L, born September 22, 2011. On April 28, 2020, the Cabinet for Health and Family Services (CHFS) filed a petition for the involuntary termination of Mother's parental rights.¹ The circuit court held a final hearing on July 15, 2020. At the hearing, the circuit court heard testimony from a myriad of people, including Mother.

In September 2017, both Mother and Father became incarcerated. Mother eventually pleaded guilty to conspiracy to distribute 50 grams of methamphetamine. The court sentenced her to 63 months in federal prison. The child was placed in the care of her paternal aunt and uncle. Mother testified that even before her incarceration, she engaged in a pattern of criminal activity that prevented her from caring for the child's needs and providing adequate supervision. A Cabinet worker's testimony was consistent with that of Mother. The child's foster mother testified that prior to Mother's incarceration, the child did not receive adequate dental care or timely start kindergarten.²

Almost two years after Mother's incarceration, CHFS received a report that the paternal relatives were no longer able to care for the child. The

¹ T.A.L. is the biological father of C.D.L. CHFS also prevailed on its petition to terminate his parental rights, but he has not appealed the termination.

² The foster mother was previously familiar with the child's paternal relatives.

child was having behavioral issues at home and at school.³ Therefore, the relatives believed they could no longer adequately care for the child. Because the parents remained incarcerated, CHFS petitioned for temporary custody, which the circuit court granted. Since then, the child remained in CHFS custody.

After CHFS received custody, it negotiated a case plan with Mother. It required that Mother: (1) write letters to the child monthly; (2) utilize any available services at the federal prison, such as substance abuse treatment, AA/NA classes, mental health counseling, parenting classes, budgeting, and reintegration after incarceration classes; (3) maintain monthly contact with the case worker; and (4) complete an incarcerated parent packet and essays detailing her plans upon release from prison. Once released from prison, Mother also needed to establish stable housing and employment, participate in drug screens, secure new substance abuse providers and refrain from criminal activity.

The case worker testified that Mother did complete a number of programs available to her but has not demonstrated an ability to maintain sobriety or stability outside of an incarcerated setting. Mother did not have a long-term plan to provide care for the child. Instead, Mother was transiting to a half-way house for at least six months and CHFS did not approve of a half-way house as a placement for the child. Additionally, there were concerns for the child's mental

³ These behavioral issues consisted of evidence of sexual abuse.

health. According to the child’s therapist, the child was experiencing depression, poor concentration, irritability, anxiety, hallucinations, PTSD, adjustment disorder, and difficulty in disciplining and school issues—including enuresis,⁴ encopresis,⁵ and masturbating to the point of vaginal trauma. The therapist testified that the child had multiple traumas triggering the diagnosis of PTSD, specifically, her parents being in and out of her life and their incarceration.

Based on this testimony, the circuit court found it was appropriate to terminate Mother’s parental rights. This appeal followed.

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 Services 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 Resources*, 979 S.W.2d 114, 117 (Ky. App. 1998) (citation omitted).

⁴ A medical condition relating to nighttime incontinence.

⁵ A medical condition meaning fecal soiling in children over the age of four.

ANALYSIS

Mother argues the circuit court failed to find by clear and convincing evidence that she: (1) failed to provide essential parental care and protection for 6 months (KRS⁶ 625.090(2)(e)); and (2) for reasons other than poverty alone failed to provide essentials for her child (KRS 625.090(2)(g)). She argues her incarceration alone cannot support the conclusion she failed to provide parental care or essentials for her child; therefore, the judgment should be vacated. She also argues the court's ruling is erroneous because it contradicts its finding that she made an effort to improve herself, demonstrating an expectation of improvement. We join the circuit court in commending Mother on her efforts, but we do not find such words in conflict with the circuit court's ruling to such a degree that it compels reversal.

Kentucky case law makes clear that a parent's incarceration does not, by itself, always establish that parental rights should be terminated. "However, absence, voluntary or court-imposed, may be a factor to consider in determining whether the children have been neglected[.]" *J.H. v. Cabinet for Human Resources*, 704 S.W.2d 661, 664 (Ky. App. 1985). For example, a parent's choice of a "criminal lifestyle" that results in incarceration and the creation of risks of physical or mental injury to their children can be understood as neglecting a child.

⁶ Kentucky Revised Statutes.

Id. We believe the circuit court considered Mother's incarceration as a factor but did not rely solely upon it.

Kentucky case law does not favor termination of parental rights based solely on an isolated instance of incarceration, but clearly incarceration is something to be considered among all other factual circumstances. *Cabinet for Human Resources v. Rogeski*, 909 S.W.2d 660, 661 (Ky. 1995). For example, a parent's argument that his parental rights were terminated solely because of his incarceration was rejected in *Rogeski*. The court found he neglected his children by refusing to make efforts to support them financially even before his incarceration and by subjecting them to deplorable living conditions. *Id.*

We believe the circuit court's written findings indicate that Mother's parental rights were not terminated solely due to her incarceration. It specifically found Mother "acknowledged that, prior to her incarceration, she had engaged in a pattern of conduct that rendered her incapable of caring for the immediate [] ongoing needs of the child." (Trial Record at 209). It also found that abuse occurred before Mother's incarceration, which is supported by the testimony of case workers and the child's therapist. *Id.*

CONCLUSION

The circuit court did not err in terminating Mother's parental rights. For the foregoing reasons, we affirm the judgment of the Boyd Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

James W. Lyon, Jr.
Greenup, Kentucky

BRIEF FOR APPELLEE:

Leslie M. Laupp
Covington, Kentucky