

Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-0427-ME

B.L.

APPELLANT

v.

APPEAL FROM SCOTT CIRCUIT COURT
HONORABLE LISA H. MORGAN, JUDGE
ACTION NO. 20-AD-00039

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
AND K.S., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, GOODWINE, AND LAMBERT, JUDGES.

LAMBERT, JUDGE: B.L. (the Mother) appeals from the Scott Circuit Court's
order granting termination of her parental rights to K.S. (the Child), born in 2006.

Having reviewed the record and the law, we affirm the circuit court.¹

¹ No appeal was taken by the Father (M.S.) from the order terminating his parental rights. Therefore, this Opinion only pertains to the Mother and the involuntary termination of her parental rights.

The Child had been placed in emergency custody with a relative in April 2017 after the Mother physically assaulted the Child. The Mother entered a guilty plea to one of the three criminal charges resulting from the incident. Reunification services were offered, which the Mother completed to the Cabinet's and circuit court's satisfaction, and the Child was returned to the Mother's custody in June 2018.² However, in December of that year, the Mother again physically assaulted the Child. And the Child was placed with fictive kin.³ In March 2019, when the non-family placement did not work out, the Child was moved to foster care, where she has remained since. The Mother stipulated to neglect after each of these incidents.

The Mother's case plan was updated in September 2019 and May 2020. Her contact with the Child, which had been limited to supervised visits, was suspended entirely in July 2020 after it was determined that the Child, because her relationship with the Mother was so strained, required individual therapy after each session. Continued efforts to reunite the family were largely unsuccessful. Termination of parental rights proceedings were undertaken versus the Parents in August 2020. Separate counsel was appointed for each of the Parents, and a

² The Mother has other children, none of whom is subject to these proceedings.

³ "Fictive kin' means an individual who is not related by birth, adoption, or marriage to a child, but who has an emotionally significant relationship with the child[.]" Kentucky Revised Statute (KRS) 199.011(9); and KRS 600.020(28).

guardian *ad litem* was appointed to represent the Child's interests. The final hearing was held in February 2021. The Parents' rights to the Child were terminated by order entered on March 11, 2021.

The Mother filed a timely notice of appeal. She argues (1) that the Cabinet failed to meet its burden of proving that termination of the Mother's parental rights was in the Child's best interests; (2) that the Cabinet failed to make reasonable efforts at reunification; and (3) that the Cabinet failed to prove that the Child will continue to be abused or neglected.

We begin our analysis by stating our standard of review. In *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116-17 (Ky. App. 1998), we recognized that:

The trial court has a great deal of discretion in determining whether the child fits within the abused or neglected category and whether the abuse or neglect warrants termination. *Department for Human Resources v. Moore*, Ky. App., 552 S.W.2d 672, 675 (1977). This Court's standard of review in a termination of parental rights action is confined to the clearly erroneous standard in CR^[4] 52.01 based upon clear and convincing evidence, and the findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings. *V.S. v. Commonwealth, Cabinet for Human Resources*, Ky. App., 706 S.W.2d 420, 424 (1986).

“Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is

⁴ Kentucky Rules of Civil Procedure.

proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent-minded people.” *Rowland v. Holt*, 253 Ky. 718, 726, 70 S.W.2d 5, 9 (1934).

Furthermore, “[t]he findings of the trial judge may not be set aside unless clearly erroneous with due regard being given to the opportunity of the trial judge to consider the credibility of the witnesses.” *Lawson v. Loid*, 896 S.W.2d 1, 3 (Ky. 1995) (citing CR 52.01; *Cherry v. Cherry*, 634 S.W.2d 423 (Ky. 1982); *Reichle v. Reichle*, 719 S.W.2d 442 (Ky. 1986)).

“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)]. 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. [v. Commonwealth, Cabinet for Health and Family Services]*, 364 S.W.3d [106,] 113 [(Ky. 2012)].

Cabinet for Health and Family Services v. K.H., 423 S.W.3d 204, 211 (Ky. 2014).

Furthermore, there are statutory guidelines to which the courts of this Commonwealth must adhere, namely:

Pursuant to KRS 625.090, to involuntarily terminate parental rights, the trial court must find by clear and convincing evidence: (1) that the child is an abused or neglected child as defined by KRS 600.020(1); (2) that termination would be in the best interest of the child; and (3) that one or more of the grounds enumerated in KRS 625.090(2) exists. KRS 625.090(1) and (2). In

considering the best interest of the child and the existence of a ground for termination, a court is required to consider the factors enumerated in KRS 625.090(3).

Cabinet for Health and Family Services v. K.S., 585 S.W.3d 202, 209 (Ky. 2019).

The Mother concedes that she stipulated to neglect, thus meeting the first prong of the analysis. Additionally, the circuit court made an independent finding of neglect at the final hearing. We therefore turn to the issue of whether termination of the Mother's parental rights was in the best interest of the Child. KRS 625.090(3). The Mother's sole argument in this regard is that the circuit court failed to take into account that the Mother's progress in early 2018 led to the return of the Child to the family unit, and therefore the Mother had proven that there was once more a reasonable expectation for sufficient improvement warranting another chance at parenting the Child.

We disagree. In its 13-page findings of fact and conclusions of law, the circuit court painstakingly considered the evidence pertaining to each factor set forth in the statute. The circuit court specifically addressed the testimony of the Mother in reaching its conclusion. We have reviewed the entirety of the record and evidence, including the videotaped testimony of the witnesses, and adopt the circuit court's findings as if fully set forth herein.

We next consider whether any of the grounds enunciated in KRS 625.090(2) were supported by substantial evidence. Here the circuit court based its

determination that grounds for termination existed under KRS 625.090(2)(c), (e), and (j), which state:

(c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;

...

(e) That the parent, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;

...

(j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) cumulative months out of forty-eight (48) months preceding the filing of the petition to terminate parental rights[.]

The Mother had two criminal convictions for physically injuring the Child, thus satisfying KRS 625.090(2)(c). As the Cabinet aptly points out, “[u]nder the language of KRS 625.090(2), the existence of only one of the grounds in that section needs to be proven by clear and convincing evidence.” *Commonwealth, Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). We need not discuss this argument further except to note that the evidence supports the circuit court’s findings under KRS 625.090(2)(e) and (j) as well.

We next address the Mother's assertion that the Cabinet failed to make reasonable efforts for reunification. KRS 620.020(13) defines "reasonable efforts" as "the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community . . . which are necessary to enable the child to safely live at home[.]" The Cabinet's witness testified to the following services offered to the Mother: case planning, ongoing communication with the case worker, anger management therapy, mental health and parenting assessments, family counseling, in-home services, and referrals to community partners. The circuit court found that the Cabinet had "exhausted its resources and there are no additional services that the Cabinet could offer that would result in reunification of [the Mother] with [her] Child in the foreseeable future." In fact, the Mother fails to identify what, if any, further services the Cabinet could or should have offered to her that would have affected the outcome. We fail to find error in this regard. *C.A.W. v. Cabinet for Health and Family Services, Commonwealth*, 391 S.W.3d 400, 405 (Ky. App. 2013) ("The Cabinet's provision of services to these parents was exhaustive, as denoted by the record.").

We lastly turn to the issue of whether the Cabinet failed to prove that the Child will continue to be abused or neglected. The Mother insists that there were reasonable expectations of improvement. We disagree.

While Mother's view of the situation may have differed from that of the social worker, "when the testimony is

conflicting we may not substitute our decision for the judgment of the trial court.” *R.C.R. v. Commonwealth, Cabinet for Human Resources*, 988 S.W.2d 36, 39 (Ky. App. 1998), *as modified* (Jan. 29, 1999) (citation omitted). The evidence of record indicates that Mother failed to avail herself of the services offered by the Cabinet and failed to regularly attend the weekly visitations with Child; such failure does not lead to the conclusion that the Cabinet did not use reasonable efforts to reunite Mother with Child.

P.S. v. Cabinet for Health and Family Services, 596 S.W.3d 110, 118 (Ky. App. 2020). The circuit court’s decision is supported by substantial evidence, and we decline to disturb it.

In summation, we believe the family court made individualized findings that [the Mother] neglected or abused [the Child] as defined by KRS 600.020(1). The family court’s findings were also amply supported by substantial evidence sufficient to meet the three-part test as found in KRS 625.090. Moreover, [the Mother] has failed to show that the family court abused its discretion in terminating [the Mother’s] parental rights. For these reasons, we . . . hereby affirm the [circuit c]ourt’s order terminating [the Mother’s] parental rights.

K.H., 423 S.W.3d at 214.

We affirm the Scott Circuit Court’s order terminating Mother’s parental rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ashley Larmour
Georgetown, Kentucky

**BRIEF FOR APPELLEE CABINET
FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
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