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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2021-CA-0471-ME

F.M.R. APPELLANT

v. APPEAL FROM MONTGOMERY CIRCUIT COURT
HONORABLE WILLIAM EVANS LANE, JUDGE
ACTION NO. 20-AD-00014

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
AND C.C.R., AN INFANT APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, COMBS, AND MAZE, JUDGES.

ACREE, JUDGE: F.M.R. (Mother) appeals the Montgomery Circuit Court's April 7, 2021 findings of facts, conclusions of law, and judgment involuntarily terminating her parental rights to C.C.R. (Child). Mother generally contends the

judgment of involuntary termination is not supported by clear and convincing evidence as required by KRS[1] 625.090. We affirm.

BACKGROUND

On May 1, 2019, the Cabinet for Health and Family Services acquired emergency custody of Child[2] after receiving notification from law enforcement that Mother and Child's adult sibling were intoxicated and acting erratically in front of Child. (Record (R.) at 136.) Following this event, both adults submitted to drug screenings and both tested positive for numerous illegal substances. Mother tested positive for marijuana, amphetamines, and oxycodone.[3] The circuit court granted the Cabinet emergency custody of Child when Mother admitted the Cabinet's allegations that Child was abused or neglected.

When in the Cabinet's custody, Child exhibited alarming behavior, including: cutting herself, shaving her head, and attempting to jump out of a moving vehicle. Child also suffered from chronic head lice,[4] as well as anxiety and depression. During the termination hearing, Child testified that she witnessed her

[1] Kentucky Revised Statutes.

[2] Child was born on November 26, 2006 and was initially placed in foster care after her birth because of Mother's substance abuse.

[3] Mother had a long history of substance abuse. She testified at trial that at a young age she was in a car accident and was prescribed opiates as part of her recovery. She became addicted to opiates and suffered from addiction thereafter.

[4] Around May 2019, Child had a pending truancy charge related to her chronic case of head lice.

mother using illegal substances. Child also testified that she regularly had to fend for herself, as Mother habitually left Child home alone. Child did not have a bedroom in her mother's house,[5] nor did Mother require Child to go to school, ensure she was fed, or teach her personal hygiene. After removal from Mother's care, Child's condition improved, and the troubling behavior listed above either ceased or dramatically subsided.

After Child's removal, the Cabinet established an initial case plan for Mother to regain custody. The plan required Mother to complete a substance abuse and mental health assessment and to follow all recommendations arising from those assessments. Additionally, Mother was required to: submit to random drug screens, avoid illegal substances, take all medications prescribed to her, complete parenting classes, cooperate with the Cabinet and attend all court hearings, and participate in visits with Child. Finally, the Cabinet required Mother to maintain appropriate and stable housing and income. Mother did not comply with these requirements.

Initially, Mother refused to cooperate with the Cabinet except for her participation in supervised visitation. Even then, Mother failed to attend every session and seemed to be under the influence during some visits. The visits did not improve Mother's relationship with Child. As a result, Child expressed no interest

[5] Child testified that she slept on the couch in her mother's house.

in returning to Mother's custody; rather, Child expressed her desire to remain in foster care.

Child's negative response did not motivate Mother to improve her cooperation with the Cabinet. At trial, Child's case worker said whenever she spoke with Mother, Mother would yell at the case worker resulting in escalated tension during their meetings. Even though her case plan required her to submit to regular drug screens performed by the Cabinet, Mother never complied. However, third-party testing showed she never stopped smoking marijuana.

About three months before trial, Mother voluntarily began treating at Addiction Recovery Care (ARC) for drug and alcohol abuse. She entered the program admitting to previous positive tests for marijuana and amphetamines. While in the ARC program, Mother tested positive for marijuana three times.[6]

At trial, Mother testified she had maintained stable housing and employment, but the Cabinet disputed that claim.[7] She failed to complete any parenting class and she could not give a date of sobriety when asked.

[6] Mother tested positive for marijuana on November 13, 2020, December 15, 2020, and January 6, 2021. These drug screens were not conducted by the Cabinet. Mother never submitted a drug screen to the Cabinet, but she stated in February 2021 that if she did submit a test, it would be positive for marijuana.

[7] The Cabinet refuted this claim because Mother's paramour still lived with her and he had also tested positive for illegal substance during drug testing that occurred around May 1, 2019.

Child testified that she did not want reunification with Mother. She felt safe in her foster home and recognized the value of the improvements she made to her own life while in foster care. Child testified that she "can't waste [her] life because [her] mother wasted hers."

The Montgomery Circuit Court terminated Mother's parental rights to Child after finding and adjudging Child abused or neglected pursuant to KRS 600.020(1) and that termination was in Child's best interest. The court then concluded Mother failed in her responsibility under KRS 625.090(2)(e) and (2)(g), for reasons other than poverty alone, to provide parental care and protection, reasonably necessary food, clothing, shelter, medical care, or education, with no reasonable expectation of significant improvement in Mother's conduct in the immediately foreseeable future. This appeal followed.

STANDARD OF REVIEW

The trial court has a great deal of discretion when ruling on an involuntary termination of parental rights action. *M.P.S. v. Cabinet for Hum. Res.*, 979 S.W.2d 114, 116 (Ky. App. 1998). "Because termination decisions are so factually sensitive, appellate courts are generally loathe [sic] to reverse them . . . ." *D.G.R. v. Cabinet for Health & Fam. Servs.*, 364 S.W.3d 106, 113 (Ky. 2012). The standard of review in a termination case is confined to the clearly erroneous

standard in CR[8] 52.01, based upon clear and convincing evidence. *M.P.S.*, 979 S.W.2d at 116; *V.S. v. Commonwealth, Cabinet for Hum. Res.*, 706 S.W.2d 420, 423 (Ky. App. 1986). "Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is 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, 70 S.W.2d 5, 9 (1934). "Under this standard, an appellate court is obligated to give a great deal of deference to the trial court's findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them." *D.G.R.*, 364 S.W.3d at 113; *K.R.L. v. P.A.C.*, 210 S.W.3d 183, 187 (Ky. App. 2006).

ANALYSIS

To involuntarily terminate one's parental rights, a circuit court must find clear and convincing evidence satisfactory to the requirements of KRS 625.090. In accordance with this statute, a circuit court must determine: (1) the child is an abused or neglected child, KRS 625.090(1)(a); (2) termination of parental rights is in the best interest of the child, KRS 625.090(1)(c); and (3) one of the grounds enumerated in KRS 625.090(2)(a)-(k) exists.

Before undertaking our review, however, we must take a close look at what the appellant's brief tells us Mother is seeking. Notwithstanding Mother's

[8] Kentucky Rules of Civil Procedure.

several failures to comply with CR 76.12,[9] she has narrowed the focus of our review by asserting no challenge to certain crucial findings of the circuit court.

Mother does not challenge the circuit court's finding that Child is an abused or neglected child as required by KRS 625.090(1)(a). Mother also chose not to challenge the circuit court's finding that Mother, "for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being . . . ." KRS 625.090(2)(g).

Mother makes only two arguments. First, she says the evidence did not support a finding that for a period in excess of six months, she failed or refused to provide essential parental care and protection for Child. Her second argument is that the Cabinet failed to provide reasonable efforts toward reunification and, absent those efforts, substantial evidence did not support the circuit court's finding that there was no reasonable expectation that mother's circumstances would improve. We are persuaded by neither argument.

[9] Mother fails to provide "a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner." CR 76.12(4)(c)(v). She also fails to provide "ample references to the specific pages of the record, or tape and digital counter number in the case of untranscribed videotape or audiotape recordings, or date and time in the case of all other untranscribed electronic recordings, supporting each of the statements narrated in the summary." CR 76.12(4)(c)(iv). And, there is almost no citation to legal authority which violated our requirement that she provide "citations of authority pertinent to each issue of law . . . ." CR 76.12(4)(c)(v).

Mother first argues the Cabinet failed to present sufficient evidence supporting the finding under KRS 625.090(2)(e) that for six months or more she failed to provide essential parental care and protection. (Appellant's brief, p. 11.) This challenges only one of the circuit court's two findings under KRS 625.090(2), when only one is needed. We could concede to her argument regarding Subsection (2)(e) and it would not change the outcome because she does not challenge the finding under Subsection (2)(g). Nevertheless, we disagree and conclude there was sufficient evidence to support a finding under Subsection (2)(e).

Although Mother acknowledges the incident prompting Child's initial removal (drug use with her adult child) and three positive drug screens, she claims these are isolated incidents not indicative of "a pattern of behavior . . . ." (Appellant's brief, p. 11.) But Child, who was 14 when she testified, told the different story of a more relevant continuity of behavior that fell short of the parental care and protection required by the statute. We summarized that testimony previously and need not repeat it. However, reasonable inferences can be drawn from that evidence supporting a finding that Mother's less-than-parental behavior lasted more than six months.

In short, we conclude the Cabinet established, "by clear and convincing evidence[,] the existence of one (1) or more of the . . . grounds" enumerated in KRS 625.090(2). We move on to Mother's only other claim–the

Cabinet's "failure to provide reasonable efforts towards reunification of the family." (Appellant's brief, p. 11.)

The circuit court concluded that the Cabinet, "prior to the filing of the petition[,] made reasonable efforts as defined in KRS 620.020 to reunite the child with the parent[] . . . ." KRS 625.090(3)(c); *see* R. at 144. This is a factor "[i]n determining the best interest of the child and the existence of a ground for termination" under KRS 625.090(2). KRS 625.090(3)(c). "Reasonable efforts" is defined as "the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available . . . ." KRS 620.020(13). The Supreme Court of Kentucky held the Cabinet made all reasonable efforts under the statute when the Cabinet established a case plan for a parent, set up supervised visits, and allowed the parent to be involved in the child's therapy. *Cabinet for Health and Family Servs. v. K.H.*, 423 S.W.3d 204, 212 (Ky. 2014); *see also C.A.W. v. Cabinet for Health and Family Servs.*, 391 S.W.3d 400, 405 (Ky. App. 2013).

Here, those same services were reasonably provided by the Cabinet. The Cabinet created a case plan with Mother, which Mother did not follow. The case plan allowed for supervised visits with Child and the circuit court heard substantial evidence that the visits were marred by Mother's behavior. Mother did not attend all visits and appeared to be under the influence during some. The court

had sufficient evidence to determine Mother was uncooperative with the Cabinet's case plan and Mother's behavior had a negative impact on an already strained parent-child relationship. However, Mother's squandering of opportunities the Cabinet provided does not translate into the Cabinet's failure to provide them. Under similar facts, this Court has found substantial evidence that the Cabinet made all reasonable efforts to provide Mother a pathway to reunification that Mother herself chose not to travel. *See C.J.M. v. Cabinet for Health & Fam. Servs.*, 389 S.W.3d 155, 162 (Ky. App. 2012) (Mother failed to "attend[] parenting classes, participat[e] in random drug tests, abstain[] from any illegal drug use . . . , complet[e] mental health and substance abuse assessments, attend[] court, mak[e] the planned visits with her child, and cooperat[e] with home visits.").

Mother does not cite to the provision requiring the circuit court to consider whether Mother made changes in circumstances, conduct, or conditions that would weigh in favor of reunification as in Child's best interest. KRS 625.090(3)(d). But, having considered it *sua sponte*, we conclude it does not justify reversing the termination.

Mother loosely references what she suggested were significant changes in her lifestyle by enrolling in the ARC program and that her only "backslide" was three positive drug tests conducted while Mother was attending

ARC.[10] Further, Mother claims that if Child was returned to her custody, her new living arrangements would provide a space the Cabinet would deem "appropriate" for Child. The circuit court disagreed with Mother's contentions and determined Mother failed to make sufficient changes in her high-risk behavior. We find no reason to question that determination.

Mother's efforts to improve her own life may be worthy of some approbation, and she should continue to seek the help and treatment she needs. However, based on the record, the circuit court had sufficient evidence to conclude these efforts were too little and too late to benefit Child.

Despite receiving treatment from the ARC program, Mother tested positive for marijuana three times, and Mother stated before trial she would fail another drug screening if one were given.[11] Further, the circuit court heard evidence that Mother lived with the same paramour, who also tested positive for illegal substances. No meaningful lifestyle changes had occurred for purposes of this factor, and Mother's evidence of change is insufficient to overcome the circuit court's finding that Mother still maintained a high-risk lifestyle. Therefore, the

[10] The three positive drug tests occurred on November 13, 2020, December 15, 2020, and January 6, 2021. For reference, the involuntary termination of parental rights trial occurred on April 7, 2021.

[11] The record indicates this statement was made sometime in February 2021.

circuit court had substantial evidence to conclude Mother failed to make sufficient changes in her life for reunification to be in Child's best interest.

Finally, we will consider another factor in determining whether termination of Mother's parental rights is in Child's best interests–the physical, emotional, and mental health of Child and whether improvements to Child's wellbeing will continue if reunification occurs. *See* KRS 625.090(3)(e). Again, Mother does not cite this provision and barely alludes to it. She blames the Cabinet for Child's wishing to stay in foster care, stating, "It is the Appellant's position that the child's wish to not return to Appellant is a direct result from [sic] being isolated from Appellant which furthered the familial strain." (Appellant's brief, p. 11.) Nothing in the record supports such an allegation.

Mother discounts or ignores outright the detrimental state of Child's physical, emotional, and mental health when the court initially awarded the Cabinet custody of Child. The evidence, with nothing to contradict it, demonstrates Child's improved academic performance, positive adjustment to foster care, significant improvements to mental health, and Child's own desire to stay in foster care; all of which has been sufficient justification for affirming termination of parental rights as being in the child's best interest. *C.H. v. Cabinet for Health & Fam. Servs.*, 399 S.W.3d 782, 790 (Ky. App. 2013); *see also B.E.K. v. Cabinet for Health & Fam. Servs.*, 487 S.W.3d 457, 469 (Ky. App. 2016). In

this case, the circuit court found that Child has thrived since removal. Child is well-adjusted to foster care life. Child testified to these improvements herself and, notably, to her desire not to be reunified with Mother but to continue her life in the foster care system. She told the circuit court she did not want to lose the progress she had made since being separated from her mother.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the Montgomery Circuit Court's April 7, 2021 findings of facts, conclusions of law, and judgment involuntarily terminating F.M.R.'s parental rights relative to C.C.R.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Betty Megan Williams Mt. Sterling, Kentucky	Leslie M. Laupp Covington, Kentucky