

Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-0632-ME

S.A.T.¹

APPELLANT

v.

APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE TRACI H. BRISLIN, JUDGE
ACTION NO. 20-AD-00188

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
AND J.M.T., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, DIXON, AND MAZE, JUDGES.

DIXON, JUDGE: S.A.T. (“Mother”) is the biological Mother of J.M.T. (“Son”) born in October 2015. Mother challenges the order of TPR entered on April 29,

¹ Pursuant to Court policy, to protect the privacy of minor children, we refer to parties in termination of parental rights (“TPR”) cases by initials only.

2021, by the Fayette Circuit Court. Following review of the record, briefs, and law, we affirm.

FACTS AND PROCEDURAL BACKGROUND

On November 22, 2017, Mother and Son were passengers in a vehicle that crashed into a light pole. The driver was charged with driving under the influence. Mother was treated at a hospital for minor injuries and tested positive for alcohol and cocaine. Although Son was not properly restrained in a car seat, he was not seriously injured. Following the accident, Son was removed from Mother's care by the Cabinet for Health and Family Services (the "Cabinet")² while it investigated whether Son was an abused, neglected, and/or dependent child. Son was placed with his maternal grandmother ("Grandmother").

On December 12, 2017, the Cabinet filed a neglect petition against Mother. A hearing was held on December 20, 2017. Grandmother was granted temporary custody of Son, and Mother was allowed supervised visitation and ordered to submit to drug testing. In December 2017, a detailed case plan was developed for Mother.

A disposition hearing was held on January 31, 2018, at which Mother stipulated to her neglect of Son. It was noted that while Mother had submitted to

² J.H.E. is Son's putative biological Father ("Father") and has had little involvement in Son's life. Father did not challenge the family court's TPR order; accordingly, we focus our review solely on Mother.

some drug screens, she had also missed some of the scheduled drug screening appointments.

In March 2018, a new petition for placement of Son was filed by the Cabinet due to Grandmother's inability to continue to care for him. Son was then placed with M.C., Son's fictive kin.

A subsequent disposition hearing was held in May 2018. The Cabinet noted Mother's positive progress in the case plan, including substance abuse treatment, visitation with Son, and assistance with some of Son's necessities. However, it was again noted that Mother had submitted to some drug screens but missed others, supposedly due to conflicts with her work schedule. It was further alleged that Mother was subject to a domestic violence incident. Consequently, the Cabinet recommended Mother undergo a domestic violence assessment.

On July 9, 2018, Mother moved the family court to lift the supervision requirement of her visitation with Son. A case review was held on July 18, 2018, during which the Cabinet expressed concerns about Mother's ability to maintain stability and sobriety as she was staying in a motel and continued to miss drug screening appointments. At that time, it was noted Mother was engaged in substance abuse treatment through an intensive outpatient program. It was further noted that she had failed to complete a domestic violence assessment as previously suggested by the Cabinet.

The family court reviewed this matter again on August 22, 2018.

Since the prior review, Mother had completed several drug screens, but failed one by testing positive for cocaine, and missed several others. She also missed her appointment with the Cabinet's social worker to review a new case plan on August 14, 2018.

In December 2019, another petition for placement of Son was filed because M.C. was no longer able to care for him. Mother had ceased all visitation with Son on the Thanksgiving prior to the petition. On January 29, 2020, Mother met with the Cabinet to develop a new case plan. A disposition hearing was held on the petition in February 2020, during which the Cabinet reported Mother continued to miss drug screens, had not progressed on her case plan, and was arrested on February 13, 2020, for alcohol intoxication in a public place, assault, disorderly conduct, and terroristic threatening.

Another case review was held on May 26, 2020. Mother had only submitted to one drug screen in which she tested positive for alcohol and cocaine. Mother had not progressed with her case plan, did not have stable housing, was arrested on new misdemeanor charges on April 19, 2020, and had attempted suicide.

Another review was held on July 29, 2020. Again, Mother had not progressed with her case plan, was arrested on a new misdemeanor charge on July

12, 2020, and continued to miss drug screens. The permanency goal for Son was changed from return to Mother to adoption.

On August 31, 2020, the Cabinet petitioned the court for involuntary TPR. On April 15, 2021, a final hearing was held. Mother requested the hearing be continued, but her request was denied. The family court found Son to be an abused/neglected child, found Mother to be incapable of providing essential parental care, with no reasonable expectation of improvement, and found TPR to be in Son's best interest.

STANDARD OF REVIEW

To begin, we note that the trial court has wide discretion in terminating parental rights. [*Cabinet for Health & Fam. Servs. 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 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 [sic] to reverse them, regardless of the outcome." *D.G.R. [v. Commonwealth, Cabinet for Health & Fam. Servs.]*, 364 S.W.3d [106,] 113 [(Ky. 2012)].

Cabinet for Health & Fam. Servs. v. K.H., 423 S.W.3d 204, 211 (Ky. 2014).

“Substantial evidence has been conclusively defined by Kentucky courts as that which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person.” *Bowling v. Nat. Res. & Env’t Prot. Cabinet*, 891 S.W.2d 406, 409 (Ky. App. 1994). “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). With these standards in mind, we turn to the case at bar.

ANALYSIS

On appeal, Mother first argues the Cabinet did not prove by clear and convincing evidence that she was incapable of providing essential parental care for Son and there was no reasonable expectation of improvement given his age. Mother asserts she has demonstrated significant efforts and cooperation with the Cabinet throughout the case. Mother lists the things she did over the course of three-plus years to comply with the case plans in an effort to minimize her noncompliance.

Over the more than three years since Son was removed from her care, Mother failed to acquire stable housing and was staying at a motel as of the date of the final hearing. She presented little, if any, evidence of regular, stable

employment.³ She provided little financial or other assistance toward Son's necessities after he was removed from her care. Moreover, Mother did not exercise her visitation rights with Son for well over a year prior to the final hearing. Although she eventually completed an intensive outpatient program, Mother clearly continues to struggle with drug and alcohol addiction⁴ and frequently finds herself at odds with the law, as evidenced by various new misdemeanor charges incurred between many of the case reviews. Sadly, her recovery efforts did little or nothing to improve her stability, sobriety, or ability to parent Son, who has now been out of Mother's care for a very significant period of his young life.

We disagree with Mother's characterization that this case is like *M.E.C. v. Commonwealth, Cabinet for Health & Family Services*, 254 S.W.3d 846 (Ky. App. 2008), or *F.V. v. Commonwealth Cabinet for Health & Family Services*, 567 S.W.3d 597, 599 (Ky. App. 2018). While we agree those cases demonstrate that perfect compliance is not required to prevent TPR, we cannot turn a blind eye to the substantial evidence of Mother's noncompliance in this case. Taking this substantial evidence into account, we cannot say the family court clearly erred in

³ Mother submitted pay stubs showing she had worked at Captain D's since March 8, 2021, but was unable to verify any other employment.

⁴ Mother tested positive for drugs as late as March 23, 2021, prior to the final hearing.

finding the Cabinet met its burden of proving by clear and convincing evidence that Mother was incapable of providing essential parental care for Son and that there was no reasonable expectation of improvement given his young age.

Mother next contends the Cabinet did not present clear and convincing evidence that it made reasonable efforts to reunite Son with her.

Again, we disagree.

“Reasonable efforts” means the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community in accordance with the state plan for Public Law 96-272 which are necessary to enable the child to safely live at home[.]

KRS⁵ 620.020(13).

The Cabinet made referrals for Mother—including substance abuse treatment programs, family and domestic violence counseling, and random drug screens—and recommended supervised visitation. Mother complied with only some of the services offered, but her partial compliance ultimately did not further the case plan goal of helping Mother to achieve a level of stability and sobriety necessary for the Cabinet to recommend Son be returned to her care. Although Mother eventually requested unsupervised visitation, she failed to exercise any visitation for well over a year prior to the final hearing. Furthermore, she tested

⁵ Kentucky Revised Statutes.

positive for drugs on multiple occasions and continued to violate the law. Given Mother's testimony at the final hearing that she did not know how she recently tested positive for drugs, it appears Mother's greatest stumbling block is refusing to accept responsibility for her drug abuse problems even after completing intensive outpatient treatment.

Mother now attempts to challenge the reasonable efforts made by the Cabinet. Two case plans were developed for her, one in 2017 and one in 2020. Counter to Mother's assertions, the record more than demonstrates the Cabinet made reasonable efforts to reunite her with Son for *over three years*—not the limited amount of time with such extenuating circumstances as was found to be insufficient in *M.E.C.*⁶ The Cabinet referred Mother to drug rehabilitation programs, drug screening, and counseling. That is the extent of its responsibility under KRS 620.020(13).

The services that will be reasonable, and therefore required, depend on the facts and circumstances of each case. There may be a strong relationship between the definition of reasonable efforts and the court's findings with regard to parental attitude. If parents have made no attempt to comply with reunification plans initially developed by the Cabinet for Health and Family Services, it should not necessarily be incumbent upon the Cabinet to develop additional, proactive services for the family prior to termination of parental rights.

⁶ In that case, “[t]he goal from reunification to termination was changed after only eight months [sic] time, of which M.E.C. was either incarcerated or hospitalized.” *M.E.C.*, 254 S.W.3d at 854.

16 Louise E. Graham & James E. Keller, *Involuntary termination of parental rights—Reasonable efforts by Cabinet for Health & Family Servs.*, KY. PRAC. *Domestic Relations L.* § 25:31 (2021).

In the case at hand, Mother had ample opportunities to comply with reunification plans offered by the Cabinet but failed to complete her case plan and repeatedly failed and/or missed her drug screens. She claims her employment prevented her from appearing for the drug screens she missed; yet, she has provided no documentation or corroborating evidence of employment prior to March 8, 2021. Mother’s repeated failure to comply with her case plans prevented the Cabinet from recommending reunification of the family. Therefore, it was not clear error for the family court to find the Cabinet made reasonable efforts to reunite the family.

Mother’s final argument is that the Cabinet did not prove by clear and convincing evidence that it is in Son’s best interest for her parental rights to be terminated. This argument is essentially a rehash of Mother’s first argument. She claims her ability to fully complete her assigned tasks under her case plans “was impaired as a result of the [COVID-19] pandemic.” Mother’s first case plan was developed in 2017, well before COVID-19 reached pandemic status. Even so, Mother offers no explanation—much less evidence—as to how the COVID-19 pandemic affected her ability to complete tasks under either case plan. We will not

search the record to construct Mother’s argument for her, nor will we go on a fishing expedition to find support for her underdeveloped arguments. “Even when briefs have been filed, a reviewing court will generally confine itself to errors pointed out in the briefs and will not search the record for errors.” *Milby v. Mears*, 580 S.W.2d 724, 727 (Ky. App. 1979).

For the reasons discussed above, we uphold the family court’s findings that TPR was appropriate, statutorily permissible, and supported by clear, convincing, and substantial evidence.

CONCLUSION

The order of the Fayette Circuit Court is hereby **AFFIRMED**.

ALL CONCUR.

BRIEF FOR APPELLANT:

Donald D. Waggener
Lexington, Kentucky

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

Dilissa G. Milburn
Mayfield, Kentucky