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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2021-CA-0695-ME

J.M.D. [1] APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
HONORABLE ROBERT W. MCGINNIS, JUDGE
ACTION NO. 19-AD-00166

M.S.; M.S.C.; R.A.D.; AND R.D., A CHILD APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, CHIEF JUDGE; DIXON AND JONES, JUDGES.

DIXON, JUDGE: J.M.D. ("Father") is the biological Father of R.S.[2] ("Daughter"), born March 11, 2017. Father challenges orders and judgments for adoption of

[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.

[2] R.S. a/k/a R.L.D. are the former names of the child, whose name was legally changed to L.D. as part of the adoption. Nonetheless, she was named "R.D." in the notice of appeal.

Daughter without his consent and TPR entered by the Kenton Family Court. Following review of the record, briefs, and law, we affirm.

FACTS AND PROCEDURAL BACKGROUND

Daughter has lived with M.S.C. and R.A.D. since December 20, 2017. M.S.C. was granted permanent custody of Daughter on January 16, 2019. On November 20, 2019, M.S.C. and R.A.D. petitioned the trial court to adopt Daughter and involuntarily terminate the parental rights of Father, who was deported to and still resides in Mexico, and M.S. ("Mother"), the biological Mother of Daughter.[3] Father has not provided any parental care or protection for Daughter since she was an infant. After Father was appointed counsel and a translator procured for him, a hearing on this matter was held on March 11, 2021.

On May 19, 2021, the trial court entered its findings of fact and conclusions of law for the TPR of Father and Mother to Daughter. It found that, for reasons other than poverty alone, Father had failed to provide for Daughter. It also found that, although Father had made sporadic telephonic contact with Daughter, Father had not contacted Daughter via telephone or otherwise since December 2020. It concluded TPR was appropriate as to Father "due to abandonment, a failure to provide parental care and protection and failure to provide the necessities of life." It further found that the adoption of Daughter by

[3] Since Mother has not appealed, we focus our Opinion on Father.

M.S.C. and R.A.D. would serve the best interest of the child. The same date, the trial court entered its judgment of TPR, finding Daughter an abandoned and neglected child. Also, on the same date, the trial court entered its findings of fact and conclusions of law for adoption, as well as its judgment ordering adoption of Daughter by M.S.C. and R.A.D. This appeal followed.

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 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 & Family 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. Natural 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

In Kentucky, adoption is a statutory right that forever severs the parental relationship. *Day v. Day*, 937 S.W.2d 717, 719 (Ky. 1997). Since adoptions are creatures of statute, we must require "strict compliance with the procedures provided in order to protect the rights of the natural parents." *Id*. This process, specifically for an adoption without the consent of the child's biological parents, is governed by KRS[4] 199.470, KRS 199.500(4), and KRS 199.502. KRS 199.500(4) permits adoption without the consent of the living biological parents of a child if it is pleaded and proven as a part of the adoption proceedings that *any* of the provisions of KRS 625.090 exist with respect to the child.

In the instant case, Daughter was adjudged to be a neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction. This satisfies the requirement of KRS 625.090(1)(a)1. KRS 199.502 provides that an adoption may be granted without the consent of the living biological parents of a child if it is

[4] Kentucky Revised Statutes.

pleaded and proven as part of the adoption proceeding that *any* of the therein enumerated conditions exist with respect to the child. Here, the trial court made all required findings, specifically finding that the conditions listed in KRS 199.502(1)(a), KRS 199.502(1)(e), and KRS 199.502(1)(g) were met. We have determined each was supported by clear and convincing proof and, therefore, must affirm.

Involuntary TPR is permitted on the finding of a single factor listed in KRS 625.090(2); similarly, adoption without consent of a biological parent is permitted on the finding of a single factor listed in KRS 199.502(1). Here, clear and convincing proof was presented on three grounds: abandonment (KRS 199.502(1)(a)); failure/refusal/inability to provide essential parental care and protection for a period of not less than six months without reasonable expectation of improvement (KRS 199.502(1)(e)); and, for reasons other than poverty alone, failure/inability to provide essential food, clothing, shelter, medical care, or education without reasonable expectation of significant improvement in the parent in the immediately foreseeable future (KRS 199.502(1)(g)). The trial court had to find substantial, clear, and convincing evidence supporting only one ground; yet, it found support for three.

"Generally, abandonment is demonstrated by facts or circumstances that evince a settled purpose to forego all parental duties and relinquish all parental

claims to the child." *O.S. v. C.F.*, 655 S.W.2d 32, 34 (Ky. App. 1983). Father argues he did not "abandon" Daughter because he attempted to stay connected with Daughter by calling her on the telephone. The trial court noted these conversations were infrequent, as well as the child's young age and the fact that Father's language–Spanish–is one unfamiliar to Daughter. Further, Father's position conveniently overlooks his blatant failure to provide any child support, so much as a birthday card or a Christmas toy, or any other effort to parent Daughter or participate in her life. Father has not communicated with Daughter since December 7, 2020. His years of absence far surpass the 90-day requirement to find abandonment. Thus, the trial court did not err in finding Father abandoned Daughter pursuant to KRS 199.502(1)(a).

Father claims he sent money to Daughter's grandmother for her support, but that money was never made available for Daughter's care. Even if this is so, Father provided no other type of parental support for Daughter. It is clear he did not provide Daughter essential parental care and protection for at least six months. Accordingly, KRS 199.502(1)(e) was satisfied.

Father challenges the trial court's finding he did not provide essentials necessary for Daughter's wellbeing and "there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child[.]" KRS 199.502(1)(g). Father asserts he

is capable of providing essential food, clothing, shelter, medical care, or education now. Nonetheless, he has not demonstrated that he either has provided or has a reasonable plan to provide any of these items for Daughter. As such, KRS 199.502(1)(g) was satisfied.

Attacking the "reasonable expectation of" improvement or significant improvement mentioned in KRS 199.502(1)(e) and (g), Father claims he has "made significant efforts to rehabilitate himself so that he will be a productive and responsible father." He claimed he lived in a home in Mexico, was employed, and had a bedroom for Daughter. Realistically, however, Daughter has reaped no tangible benefit from any of these improvements. Accordingly, the trial court's finding that there was no reasonable expectation of improvement or significant improvement, as required by KRS 199.502(1)(e) and (g), was supported by substantial, clear, and convincing evidence.

Father further challenges whether the best interest finding as to Daughter was clearly erroneous. Because the trial court's decision was supported by substantial evidence, we conclude it was not. Kentucky's highest court has observed:

> Termination of parental rights, as provided for by statute, whether voluntary or involuntary, once legally adjudicated severs all relationship of parent and child as if the same had never existed. *Hill v. Garner*, [561 S.W.2d 106 (Ky. App. 1977)]. The statutory reasons underlying the termination process relate to parental

> abandonment, neglect and abuse so substantial that the child must be legally cutoff [sic] from the parent. They justify a legal structure that provides finality and blocks every path to further litigation to reestablish a connection to parents whose rights have been terminated.

Hicks v. Enlow, 764 S.W.2d 68, 71 (Ky. 1989), *holdings concerning grandparents' rights susperseded by statute*, KRS 405.021 *as amended in 1996, as recognized in Blackaby v. Barnes*, 614 S.W.3d 897, 900-01 (Ky. 2021). Here, the legal criteria were met for TPR and such provides finality and permanency to Daughter. The trial court's findings of KRS 199.502(1)(a), (e), and (g) are based on substantial clear and convincing evidence. There was no error.

CONCLUSION

Therefore, and for the foregoing reasons, the orders and judgments entered by the Kenton Family Court are AFFIRMED.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES, M.S.C. AND R.A.D.:

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