

RENDERED: SEPTEMBER 16, 2022; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2021-CA-1123-ME

L.C. AND S.C.

APPELLANTS

v. APPEAL FROM MERCER FAMILY COURT
HONORABLE BRUCE PETRIE, JUDGE
ACTION NO. 21-AD-00006

CABINET FOR HEALTH AND
FAMILY SERVICES AND A.M.C., A
MINOR CHILD

APPELLEES

AND

NO. 2021-CA-1129-ME

L.C. AND S.C.

APPELLANTS

v. APPEAL FROM MERCER FAMILY COURT
HONORABLE BRUCE PETRIE, JUDGE
ACTION NO. 21-AD-00007

CABINET FOR HEALTH AND
FAMILY SERVICES AND A.S.C., A
MINOR CHILD

APPELLEES

AND

NO. 2021-CA-1130-ME

L.C. AND S.C.

APPELLANTS

v. APPEAL FROM MERCER FAMILY COURT
HONORABLE BRUCE PETRIE, JUDGE
ACTION NO. 21-AD-00008

CABINET FOR HEALTH AND
FAMILY SERVICES AND A.P.C., A
MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: ACREE, COMBS, AND MAZE, JUDGES.

ACREE, JUDGE: Appellant father, L.C., and Appellant mother, S.C., appeal the Mercer Family Court's August 20, 2021 findings of fact, conclusions of law, orders terminating parental rights, and orders of judgment. The family court terminated Appellants' parental rights to A.M.C., A.S.C., and A.P.C., Appellants' three children. Finding no error, we affirm.

BACKGROUND

The Cabinet for Health and Family Services (Cabinet) filed a dependency, neglect, and abuse (DNA) petition on February 22, 2019 with the Mercer Family Court, alleging Appellants neglected or abused their three children. The Cabinet noted both Appellants had a lengthy history with the Cabinet related to domestic violence and to the children's home environment. Of note, the family court previously adjudged A.M.C. to be an abused or neglected child in 2017. Following the Cabinet's petition, the children were placed in foster care on September 27, 2019.

On January 26, 2021 – fifteen months later – the Cabinet filed a petition to terminate Appellants' parental rights to each of the three children. The family court held a hearing on the petition on July 23, 2021. In rendering its decision, the court relied on the testimony of Dr. Paul Ebben and Megan Bosley, Appellants' social worker assigned to them by the Cabinet.

Dr. Ebben met with Appellants for three assessments in 2020. Dr. Ebben noted while neither Appellant believed there to be any environmental neglect, the assessments revealed cleanliness problems – including lice – which S.C. attributed to having “lots of cats.” Appellants acknowledged on subsequent assessments there was a greater history of domestic violence than they initially

indicated, and that L.C. was living with S.C. in violation of a court order.

However, the pair denied any deficiencies in their parenting.

The children told Dr. Ebben a different story. They witnessed domestic violence, including L.C. throwing a dresser at S.C., and they remembered the police coming to their house. The children also indicated to Dr. Ebben that they witnessed sexual situations at home. They also told him the home was “nasty” due to cockroaches and animal excrement, but the house was in such a state for so long they were accustomed to it. One child told him he was not sure if he was safe in the home.

Dr. Ebben noted a substantial lack of improvement in Appellants’ behavior across the course of his assessments. Because Appellants failed to follow their case plans, failed to report for some drug screens, submitted samples which tested positive following drug screens, and engaged in behavior which put their children at risk for depression, anxiety, and other mental health disorders, Dr. Ebben believed Appellants’ parental rights should be terminated.

Ms. Bosley confirmed L.C. violated a court order by living in the home. She testified as to Appellants’ assigned case plans; while L.C. completed his case plan and complied initially, he eventually began failing drug screens, testing positive for THC, amphetamines, and methamphetamines. L.C. blamed one of his positive amphetamine screens on an energy drink.

S.C. did not complete her plan and continued to deny any domestic violence during assessments. Ms. Bosley noted an overall failure by Appellants in taking responsibility for their problematic behavior and did not reasonably believe Appellants could improve sufficiently to allow the children to return to the home.

Ms. Bosley also testified as to the condition of the children. The two older children were alleged to have gone to school with dried cat feces on their clothing and that one of the children had lice multiple times. She noted one child demonstrated “sexualized behavior” toward his two siblings and made threats of violence. She further noted the child lies, manipulates, and engages in cruel behavior to a family dog. The two oldest children stated to Ms. Bosley they engaged in sexualized behavior between themselves since they were four years old.

S.C. herself testified that the children witnessed domestic violence in the home and believed this caused trauma to the children. She stated she was not candid with her case workers about domestic violence issues because she was subjected to it for so long and because she was embarrassed about it and stated improvements were made in the home environment. L.C. also testified and, although he acknowledged his actions were having negative effects on his wife and children, he denied ever using methamphetamine and insisted the children’s statements about having witnessed sexual behavior and domestic violence were out of context.

On August 20, 2021, the family court entered an order terminating parental rights and order of judgment and accompanying findings of fact and conclusions of law for each of the three children. This appeal followed.

STANDARD OF REVIEW

Counsel for both L.C. and S.C. filed briefs pursuant to *A.C. v. Cabinet for Health and Family Services*, noting they have examined the record and concluded there is no meritorious basis for appealing the orders terminating parental rights. 362 S.W.3d 361, 364-65 (Ky. App. 2012). This procedure solves counsel’s “dilemma of having to diligently represent the indigent client who wants to appeal while still complying with counsel’s other ethical duties as a member of the Bar.” *Id.* at 368 (citations omitted). When evaluating such an appeal, “this Court will fully examine the record and decide whether the appeal is wholly frivolous” before deciding the case. *Id.* at 371.

In parental rights termination cases, the trial court has a great deal of discretion. *M.P.S. v. Cabinet for Hum. Res.*, 979 S.W.2d 114, 116 (Ky. App. 1998). The standard of review in a termination case is confined to the clearly erroneous standard in CR¹ 52.01, based upon clear and convincing evidence, and the findings of fact of the trial court will not be disturbed unless no substantial evidence exists in the record to support its findings. *M.P.S.*, 979 S.W.2d at 116;

¹ Kentucky Rules of Civil Procedure.

V.S. v. 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, 726, 70 S.W.2d 5, 9 (1934).

ANALYSIS

A family court may only terminate parental rights if each requirement of KRS² 625.090 has been met by clear and convincing evidence. As defined by KRS 600.020(1), the child must first have “been adjudged to be an abused or neglected child[.]” KRS 625.090(1)(a). Second, termination must be “in the best interest of the child.” KRS 625.090(1)(c). Third, the family court must find at least one of the grounds of parental unfitness provided by KRS 625.090(2)(a)-(k).

Abused or Neglected Children.

The family court determined each child to be abused or neglected on grounds that (a) Appellants did not provide them “adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the [children’s] well-being” pursuant to KRS 600.020(1)(a)8.; (b) Appellants “continuously or repeatedly fail[ed to] refuse[d] to provide essential parental care and protection for the [children], considering [their] age” pursuant to KRS 600.020(1)(a)4.; and (c)

² Kentucky Revised Statutes.

Appellants have “fail[ed] to make sufficient progress toward identified goals as set forth in the court-approved case plan” such that the children were required to remain in foster care for fifteen of the preceding forty-eight months pursuant to KRS 600.020(1)(a)9. We find no error in these conclusions.

Dr. Ebben’s testimony indicated Appellants obviously failed to provide adequate care and shelter for the children and failed to provide essential parental care and protection. The house where the family lived is infested with cockroaches and littered with animal waste, and the children were forced to witness both domestic abuse of S.C. by L.C. and sexual conduct. This environment contributed to severe behavioral issues among the children. They told Dr. Ebben the house was in such poor condition for so long that they became accustomed to it. And, because of Appellants’ failure to make sufficient progress toward identified goals, all three children were in foster care for the fifteen months preceding the filing of the petitions to terminate Appellants’ parental rights. In our view, substantial evidence of abuse and neglect obviously supports the family court’s determination the children were abused and neglected, and we will not disturb it on appeal.

Best Interest of the Child.

Counsel for Appellants assert, pursuant to *A.C., supra*, the only colorable argument to be made on appeal is that termination of Appellants’

parental rights would not be in the children's best interest and thus KRS 625.090(1)(c) was not satisfied. Counsel directs our attention to KRS 625.090(3)(d), which states the family court is required to consider, among other factors, "[t]he efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child[.]" Counsel argues Appellants have made such efforts by substantially completing their case plans, participating in mental health assessments and substance abuse assessments, participating in parenting classes, and demonstrating they could maintain steady income. Counsel notes most drug screens were negative, and domestic violence counseling has substantially improved Appellants' behavior at home.

However, any effort by Appellants to improve circumstances, conduct, or conditions is only one factor the family court is required to consider in determining the best interest of the children. Other factors include "[a]cts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family[,]" KRS 625.090(3)(b), and "[t]he physical, emotional, and mental health of the [children] and the prospects for the improvement of the [children's] welfare if termination is ordered[,]" KRS 625.090(3)(e). The family court's findings, as previously discussed, are supported by evidence of an extensive and longstanding history of

child abuse. Ms. Bosley noted the children improved since being placed in foster care, and Dr. Ebben opined the children would suffer emotional and mental harm if Appellants' parental rights remained intact. We find it is not error for the family court to have weighed the evidence of abuse more strongly than it weighed Appellants' partial compliance with their assigned case plans.

Parental Unfitness.

Finally, the family court determined Appellants were unfit parents. KRS 625.090 provides several grounds upon which a parent may be deemed unfit, at least one of which must be demonstrated by clear and convincing evidence. KRS 625.090(2). These include “[t]hat 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[,]” KRS 625.090(2)(c), that for a period of at least six months the parent “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[,]” KRS 625.090(2)(e), that for reasons other than poverty alone the parent has “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 and that 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 625.090(2)(g), and “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[,]” KRS 625.090(2)(j).

The fact that Appellants failed to rectify their behavior to a satisfactory degree resulting in the Cabinet maintaining the children in foster care for a continuous fifteen-month period is sufficient on its own to affirm the family court's conclusion that Appellants are unfit parents. However, Appellants' conduct and the home environment were deficient in ways that meet multiple statutory grounds of parental unfitness. Appellants continuously and repeatedly refused to provide essential care and protection for their children, they failed to provide adequate shelter and clothing necessary for the children's well-being, and their conduct in the home gave rise to the children's severe behavioral problems and emotional harm. The evidence supporting the family court's determination that Appellants are unfit parents is quite clear and convincing, and no error exists in this conclusion.

CONCLUSION

Finding no error, we affirm the Mercer Family Court’s August 20, 2021 findings of fact, conclusions of law, orders terminating parental rights, and orders of judgment.

ALL CONCUR.

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