

RENDERED: AUGUST 26, 2022; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2022-CA-0366-ME

S.P.

APPELLANT

v.

APPEAL FROM FAYETE CIRCUIT COURT
HONORABLE LIBBY G. MESSER, JUDGE
ACTION NO. 21-AD-00072

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY SERVICES;
AND J.A.A.B., A MINOR CHILD

APPELLEES

AND

NO. 2022-CA-0371-ME

S.P.

APPELLANT

v.

APPEAL FROM FAYETE CIRCUIT COURT
HONORABLE LIBBY G. MESSER, JUDGE
ACTION NO. 21-AD-00073

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY SERVICES;
AND U.J.N.D.P., IV, A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GOODWINE, MAZE, AND K. THOMPSON, JUDGES.

MAZE, JUDGE: This is an appeal from the Fayette Circuit Court's orders terminating parental rights and orders of judgment entered on February 27, 2022.

Appellees J.A.A.B. (born April 2019) and U.J.N.D.P., IV (born March 2020) are the children of Appellant, S.P. (Mother).¹ J.A.A.B. was committed to Appellee, Cabinet for Health and Family Services (Cabinet), in No. 20-J-00013-001 based upon allegations of neglect. She has been in the custody of the Cabinet since January 15, 2020, placed in foster care. After the birth of U.J.N.D.P., IV, he was also found to have been neglected² and has been in the custody of the Cabinet, placed in foster care, since April 1, 2020. On April 23, 2021, the Cabinet filed petitions for the termination of parental rights as to both children. A final hearing was held before the Fayette Circuit Court on January 25, 2022. At the conclusion of that hearing, the trial court made its decision terminating Mother's parental rights on the record. Additional written findings of fact and conclusions of law

¹ Although J.B. was named as the father of J.A.A.B. in 21-AD-00072, his status as her father has been disproven by DNA testing. S.P. has named two other putative fathers; neither has been confirmed by DNA testing as the father of either child.

² No. 20-J-00310-001.

were entered on February 27, 2022, along with the orders terminating parental rights and orders of judgment from which Mother now appeals. We affirm.

Amber Fugate became the case worker for this family in July of 2020 and served as such until September of 2021. She testified that the first referral to the Cabinet occurred in 2019 and it was based upon allegations that Mother was under the influence of marijuana in the presence of J.A.A.B. The second referral occurred immediately after U.J.N.D.P., IV's birth. Pursuant to the Cabinet's petition, both children were committed to its custody, Mother having stipulated to neglect. At that time, an initial treatment plan was reached addressing concerns of substance abuse, mental health, anger management, and stability.

When Fugate took over the case in July of 2020, an updated treatment plan was developed. Mother was allowed supervised visitation and was required to demonstrate appropriate parenting skills. She was offered services, including mental health treatment at Crossroads Counseling and UK-TAP resources for housing.

However, she was still required to produce consistent and negative drug screens. In the period during which Fugate served as the family's case worker, Mother repeatedly tested positive for cocaine. Further, she failed to visit with the children on a consistent basis.

Fugate testified that the children have done well in the foster home placement. She noted that these individuals are known to Mother and have a prior relationship with her. Upon questioning by the children's guardian *ad litem*, Fugate stated that this is the only home that the children have ever known and that they have bonded with the foster parents.

Hannah Deas has been the family's case worker since Fugate's departure. She testified that she has had limited contact with Mother, primarily by phone or text, usually about visitation. Mother has refused to permit a home visit and until the final hearing, would not supply her address or identify who lives with her. Although seventeen visits were scheduled since Ms. Deas took over the case, Mother only attended three.

Mother testified that she has not used cocaine and that she has been drug free during her mental health treatment with Mountain Comprehensive Care. She believes that she has had false positives brought on by her prescription medications. She stated that she is attending Sullivan University to pursue an associate degree in information technology and that she is also seeking Supplemental Security Income (SSI). She indicated that she is on waiting lists for housing. She confirmed that she gets along well with the children's foster parents and would allow them to see the children if they were returned to her. She feels that the children should also have a relationship with their older siblings.

A trial court may involuntarily terminate a parent's rights where it finds by clear and convincing evidence that a child has been abused or neglected, that termination is in the child's best interests, and that one of the grounds set forth in KRS³ 625.090(2) has been shown. *M.B. v. D.W.*, 236 S.W.3d 31, 34 (Ky. App. 2007). In this case, Mother has challenged the trial court's conclusion that termination is in the children's best interests including the court's finding that the Cabinet made reasonable efforts to effect reunification.

“When reviewing a family court's determination of the best interests of a child, we must apply the abuse of discretion standard. *Young v. Holmes*, 295 S.W.3d 144, 146 (Ky. App. 2009). Absent a showing that a decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles, a family court's determination on the issue will not be an abuse of discretion and will be sustained. *Miller v. Harris*, 320 S.W.3d 138, 141 (Ky. App. 2010).” *D.J.D. v. Cabinet for Health and Family Services*, 350 S.W.3d 833, 837 (Ky. App. 2011). Applying this standard to the trial court's findings, we can find no abuse.

In determining the best interests of the children, the trial court considered the factors set forth in KRS 625.090(3)(a)-(f). Indeed, the trial court's written conclusions specifically addressed each of those factors, eliminating KRS

³ Kentucky Revised Statutes.

625.090(3)(a), as inapplicable. The trial court then noted that both children have previously been adjudicated to be neglected. KRS 625.090(3)(b).

Mother specifically argues that the trial court clearly erred in finding as to KRS 625.090(3)(c), that the Cabinet has made reasonable efforts to reunite the children with her, rendering all reasonable reunification services to her.

“Reasonable efforts” are defined in KRS 620.020(13) as “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[.]”

“Reunification services” are identified in KRS 620.020(14) as “remedial and preventive services which are designed to strengthen the family unit, to secure reunification of the family and child where appropriate, as quickly as practicable, and to prevent the future removal of the child from the family[.]”

In this case, the trial court found that the Cabinet has made referrals to Crossroads Counseling, Mountain Comp Care and UK-TAP; that the Cabinet has paid for drug screening; and has supervised Mother’s visitations. As noted in *W.A. v. Cabinet for Health and Family Services, Commonwealth*, 275 S.W.3d 214, 220 (Ky. App. 2008), “the findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings.” The trial court’s records, the testimony of the Cabinet’s representatives, and the testimony

of Mother are all substantial evidence of the Cabinet's reasonable efforts to effect reunification and this Court will not disturb the trial court's finding on this issue.

KRS 625.090(3)(d) requires the trial court to examine the efforts of the parent to alter his or her behavior to enable the child to return to his or her home within a reasonable time. The trial court found that, while Mother had completed significant tasks, she was unable to demonstrate what she had learned. She cancelled visits, failed to test on a consistent basis, and produced positive drug screens, for which she blamed detox tea and then her medications. She also failed to sign releases necessary to confirm that she had completed the required tasks, particularly the psychiatric evaluation recommended by Crossroads Counseling. She remains unable to provide housing for the children and cannot say when she might be able to do so. Finally, pursuant to KRS 625.090(3)(f) the trial court must consider the parent's payment of child support. As no such information was presented, the court gave Mother the benefit of the doubt and presumed payment.

Additionally, the trial court addressed Mother's argument pursuant to KRS 625.090(5) that she has proven by a preponderance of the evidence that the children would not be abused or neglected if returned to her. The court found that Mother had not produced sufficient evidence to show that the children would not continue to be neglected if returned to her care, noting that even if she had

produced the requisite evidence, it would not be inclined to exercise its discretion to return the children to her.

In *D.G.R. v. Commonwealth, Cabinet for Health and Family Services*, 364 S.W.3d 106, 115 (Ky. 2012), the Court made clear that, if the parent raises this issue, it becomes a portion of the best interest analysis. While the trial court found that Mother failed to present sufficient evidence, this Court has reviewed the record and cannot find that any evidence was presented. This Court also recognizes that, even had the appropriate quantum of evidence been presented, the statute gives the trial court discretion to return the child but not mandating such return. Based upon the foregoing, this Court concludes that the trial court did not abuse its discretion in finding that termination is in the best interests of the children.

Accordingly, we affirm the orders terminating parental rights and orders of judgment entered by the Fayette Circuit Court.

GOODWINE, JUDGE, CONCURS.

THOMPSON, K., JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

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Lexington, Kentucky

BRIEF FOR APPELLEE
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