

RENDERED: OCTOBER 7, 2022; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2022-CA-0478-ME

J.S.

APPELLANT

v.

APPEAL FROM CALLOWAY CIRCUIT COURT
HONORABLE STEPHANIE J. PERLOW, JUDGE
ACTION NO. 21-AD-00038

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

APPELLEES

AND

NO. 2022-CA-0480-ME

J.S.

APPELLANT

v.

APPEAL FROM CALLOWAY CIRCUIT COURT
HONORABLE STEPHANIE J. PERLOW, JUDGE
ACTION NO. 21-AD-00039

CABINET FOR HEALTH AND
FAMILY SERVICES,

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CETRULO, COMBS, AND GOODWINE, JUDGES.

COMBS, JUDGE: Appellant, J.S. (Mother), appeals from orders of the Calloway Family Court terminating her parental rights to two of her minor children, D.C.S. and N.R.S. After our review, we affirm.

Mother is the natural mother of D.C.S., a male child born in November 2018; his putative father is J.C. Mother is also the natural mother of N.R.S., a female child born in May 2020; her putative father is M.C.¹

The family court’s findings of fact and conclusions of law provide a succinct but thorough summary of the relevant underlying facts leading to the Cabinet’s involvement in these matters:

In May of 2020, the Cabinet first became involved with the family when the Respondent Mother . . . gave birth to . . . [N.R.S.] When [N.R.S.] was born, she tested positive for amphetamines and methamphetamines. [Mother] admitted to using methamphetamine for the duration of her pregnancy every 2-3 days. When [Mother] that [*sic*] the Cabinet was going to remove

¹ Both fathers were served by warning order attorney; neither father appeared or pleaded in these matters.

[N.R.S.] from her custody, [Mother] left the hospital against medical advice and left the child at the hospital. Based on these actions, the Cabinet removed N.R.S. and placed her into foster care in May 2020.

During the course of the open case with [N.R.S.], the Cabinet received a report that [Mother] had another child in her care. Based on that report, the Cabinet completed an investigation. The [Mother] was living in a trailer with several different people, all of whom were using methamphetamine. [D.C.S.] who was around 20 months old at the time, was present in the home. Due to the substance abuse in the home, the Cabinet filed a petition for removal in July 2020. [D.C.S.] has been in the Cabinet's custody since that time. About a week to two weeks after his removal, the foster parents noticed a significant change in [D.C.S.'s] behavior. The Cabinet sought medical attention for [D.C.S.] and he tested positive for methamphetamine. Based on [D.C.S.'s] positive drug test, [Mother] was charged with Criminal Abuse -- Second Degree (child 12 year old or under). [Mother] ultimately pled guilty to Criminal Abuse -- Second Degree (child 12 year old or under). She received a three year sentence that is probated.

On October 25, 2021, the Cabinet filed petitions for the involuntary termination of Mother's parental rights in the Calloway Family Court as to each of the two children.

The family court conducted a final hearing on March 22, 2022. On March 28, 2022, the family court entered detailed findings of fact and conclusions of law (FFCL), orders terminating parental rights, and orders of judgment as to each of the two children, which we discuss below as relevant to the issues before us.

Mother appeals. In *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 210 (Ky. 2014), our Supreme Court explained as follows:

KRS^[2] 625.090 provides for a tripartite test which allows for parental rights to be involuntarily terminated only upon a finding, based on clear and convincing evidence, that the following three prongs are satisfied: (1) the child is found or has been adjudged to be an abused or neglected child as defined in KRS 600.020(1); (2) termination of the parent's rights is in the child's best interests; and (3) at least one of the termination grounds enumerated in KRS 625.090(2)(a)-(j) exists.

The standard governing our review is whether the trial court's findings are clearly erroneous. CR³ 52.01.

The trial court has a great deal of discretion in an involuntary termination of parental rights action. . . . [F]indings of fact of the trial court will not be disturbed unless no substantial evidence exists in the record to support its findings. 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.

C.A.W. v. Cabinet For Health & Family Services, Commonwealth, 391 S.W.3d 400, 403 (Ky. App. 2013) (internal quotation marks and citations omitted).

Mother raises no issue regarding the first two prongs of the tripartite test. Rather, she contends the trial court's determination -- that the Cabinet

² Kentucky Revised Statutes.

³ Kentucky Rules of Civil Procedure.

considered all available relatives and was not able to find any appropriate relatives -- is not supported by the evidence. Mother argues that this alleged omission is not harmless error because:

The failure of the Cabinet to find or approve relative placement set in motion the fifteen (15) month time frame found in KRS 625.090(2)(j) related to foster placement. The Court found that the children had been in foster care more than fifteen (15) months and used that finding to support termination of J.S.'s parental rights.

The third prong of the tripartite test, KRS 625.090(2), provides that “[n]o termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence” that one or more of several enumerated grounds exist. Among them, KRS 625.090(2)(j) provides that “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[.]” Proof of only one ground is required. *W.L.C. v. Commonwealth Cabinet for Health and Fam. Servs.*, 484 S.W.3d 737, 743 (Ky. App. 2016).

Mother does not dispute that the children were in foster care for 15 out of the 48 months preceding the filing of the petitions. Regardless, the family court did not rely solely upon KRS 625.090(2)(j) as grounds for termination of Mother's parental rights. The family court also found that grounds exist as to each of the children under KRS 625.090(2)(d),(e), and (g); and that grounds exist under

KRS 625.090(2)(b) as to D.N.S. Mother does not challenge those findings.

Clearly, the third prong of the tripartite test is satisfied.

Moreover, contrary to her allegation, substantial evidence exists to support the trial court's determination that "the Cabinet considered all available relatives and were [*sic*] not able to find any appropriate relatives." Indeed, Mother's counsel appears to concede as much in her closing argument: that Mother acknowledged that she was "one of those people who didn't have somebody that would take her kids. She had a mother in Tennessee, and she didn't have anybody around who was going to be okay for the Cabinet to take her children." This admission directly refutes the only ground upon which Mother bases her appeal.

Exhibits in the record before us include certified records from the underlying DNA cases. The Cabinet's dispositional report filed November 13, 2020, in Case No. 20-J-00070-01, regarding D.N.S., reflects that: "After learning that [Mother's] parents were aware of [D.N.S.'s] being in [Mother's] care and did not report this to the Cabinet, the Cabinet would not be able to safely place him with the maternal grandparents." (Commonwealth's Exhibit 5, No. 21-AD-00038.) The Cabinet's dispositional report filed November 13, 2020, in Case No. 20-J-00050-001, regarding N.R.S., states that: "The Cabinet contacted maternal grandmother, [P.H.,] for placement. [Social service worker] completed an

[Interstate Compact for Placement of Children] referral and received a call in July 2020 stating that she was no longer interested in taking [N.R.S.]”

(Commonwealth’s Exhibit 5, No. 21-AD-00039.)

Mother also argues that KRS 625.090(2)(j) “violates the constitutional rights of a parent because it violates equal protection for a party without family placement[.]”

In challenging the constitutionality of any statute, one must comply with KRS 418.075(2), which requires as follows:

In any appeal to the Kentucky Court of Appeals . . . which involves the constitutional validity of a statute, the Attorney General shall, before the filing of the appellant’s brief, be served with a copy of the pleading, paper, or other documents which initiate the appeal in the appellate forum. This notice shall specify the challenged statute and the nature of the alleged constitutional defect.

Mother did not serve a copy of the notices of appeal upon the Attorney General nor did she otherwise comply with the statute. Consequently, we cannot review the matter.

[O]ur Supreme Court has made clear that strict compliance with KRS 418.075 is necessary and that courts cannot review constitutional challenges to statutes -- including challenges to statutes “as applied” to particular cases or circumstances -- when the Attorney General has not been notified of such challenges. Thus, we must decline to opine on Mother’s constitutional challenge.

L.G.A. v. W.R.O., 638 S.W.3d 472, 475 (Ky. App. 2021) (citation omitted).

We affirm the orders of the Calloway Family Court.
ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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