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Commonwealth of Kentucky

Court of Appeals

NO. 2022-CA-0489-ME

A.T.

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE ELISE GIVHAN SPAINHOUR, JUDGE
ACTION NO. 21-AD-00060

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

APPELLEES

AND

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CABINET FOR HEALTH AND
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APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, CHIEF JUDGE; MAZE AND McNEILL, JUDGES.

CLAYTON, CHIEF JUDGE: A.T. (“Mother”) appeals from the Bullitt Circuit Court’s order terminating her parental rights to her son, J.N.T. (“Child”). Mother also filed a separate appeal regarding the same order. By order dated July 26, 2022, we consolidated the appeals for all purposes, including briefing.

After reviewing the record and applicable law, we affirm the circuit court’s order terminating Mother’s parental rights.

FACTUAL AND PROCEDURAL BACKGROUND

Mother is the biological mother of Child, born on May 22, 2020. J.L.T. (“Father”) is the father of Child, as identified on Child’s birth certificate. Father has not appealed the termination of his parental rights.

The circuit court first became involved with Child within two (2) months of his birth. The Cabinet for Health and Family Services (the “Cabinet”) filed a petition in July 2020 alleging Child to be an abused or neglected child due to domestic violence perpetrated in Child’s presence, as well as the parents’ ongoing substance abuse. Specifically, the Cabinet had received a report regarding a domestic violence incident between Father and Child’s maternal grandparents while Father was holding Child.

The circuit court placed Child in the Cabinet's temporary custody and accepted Father's stipulation for Child's abuse and neglect. The circuit court subsequently committed Child to the Cabinet's custody, ordering that the parents have no contact with Child until they made significant progress on their case plans.

After Child's removal, the Cabinet negotiated a case plan with Mother that required Mother to cooperate with the Cabinet, complete Recovery Works' treatment recommendation, and complete the Choices domestic violence victim program. The circuit court also ordered Mother to complete a mental health evaluation and treatment, a substance abuse assessment, a forensic parental capacity evaluation, random drug screens, and to obtain and maintain stable housing.

In September 2020, the circuit court held an adjudication hearing and found that Mother had neglected Child. Additionally, the circuit court ordered Mother's visitation with Child be at the Cabinet's discretion.

For the remainder of 2020, the Cabinet had ongoing concerns regarding domestic violence between Father and Mother and Mother's continued abuse of alcohol and failure to attend drug screens or visitations with Child. As a result, the Cabinet suspended Mother's visitation with Child in October 2020.

On December 6, 2020, Father was arrested for the assault and rape of Mother. Thereafter, on February 3, 2021, the circuit court held a disposition

hearing and adopted the following dispositional orders for Mother: (1) follow discharge instructions from Recovery Works; (2) complete mental health assessment and follow all recommendations; (3) complete protective parenting classes and demonstrate skills learned; (4) complete the batterer's intervention program; (5) complete the Choices Program; (6) complete a forensic parental capacity evaluation and follow all recommendations; (7) submit to random drug screens; (8) obtain and maintain stable housing and employment; and (9) cooperate with the Cabinet.

Due to the lack of significant case plan progress since Child's removal in July 2020, the circuit court also entered a no-contact order between Mother and Child. Thereafter, Mother moved to Montana with a friend and provided no proof that she had worked on any part of her case plan while she was there.

Upon returning to Kentucky in March 2021, Mother participated in domestic violence and parenting classes. The Cabinet allowed Mother to have visitation with Child in March 2021. The juvenile court record also indicated that Mother began drug screening in April 2021. Further, the Cabinet provided Mother with the opportunity to participate in Child's medical and therapy appointments. However, by the end of April 2021, the Cabinet had suspended Mother's visitation with Child again because Mother had stopped attending drug screens and had not

participated in substance abuse services. She had also failed to participate in Child's medical or therapy appointments.

Thereafter, in May 2021, Mother moved to Florida. Since that time, she has had no further contact with Child. Ms. Link testified that after Mother moved to Florida, the Cabinet had ongoing discussions with Mother about her remaining case plan services and had advised Mother that she would need to locate service providers in Florida and supply that information to the Cabinet before it could assist her with any referrals.

In July 2021, the circuit court held a permanency hearing and ordered Mother to complete an updated substance abuse assessment in addition to the previously ordered services. Additionally, the Cabinet filed a motion for the circuit court to change Child's goal to adoption.

On November 8, 2021, the Cabinet initiated this action by filing a petition to terminate Mother's and Father's parental rights to Child. The circuit court held a trial in March 2022. Martha Link, the ongoing Cabinet worker, and both parents testified at trial. Following the hearing, the trial court entered findings of facts, conclusions of law, and a judgment terminating Mother's and Father's parental rights on April 1, 2022. This appeal followed.

We will discuss further facts as they become relevant.

ANALYSIS

i. Standard of Review

An appellate court will only reverse a trial court's decision to terminate a parent's rights if such a decision is clearly erroneous, meaning there is no substantial, clear, and convincing evidence to support the decision. Kentucky Rules of Civil Procedure ("CR") 52.01; *Commonwealth, Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). "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." *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 117 (Ky. App. 1998) (quoting *Rowland v. Holt*, 253 Ky. 718, 726, 70 S.W.2d 5, 9 (1934)). Therefore, we will not disturb the circuit court's findings unless no substantial evidence exists in the record to support its findings. *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky. App. 1986) (citation omitted).

ii. Discussion

The grounds for a circuit court's involuntary termination of parental rights are outlined in Kentucky Revised Statute ("KRS") 625.090, which provides that a circuit court may involuntarily terminate a parent's rights only if the court finds, by clear and convincing evidence, that a child is abused or neglected as

defined in KRS 600.020(1), that termination is in the child's best interests, and the existence of one or more specific grounds set out in KRS 625.090(2). KRS 625.090(1)(a)-(c) and (2); *M.B. v. D.W.*, 236 S.W.3d 31, 34 (Ky. App. 2007). Further, KRS 625.090(3) lays out factors for the trial court to consider in determining the child's best interests and the existence of grounds for termination.

In this case, the circuit court complied with all relevant statutory mandates to terminate Mother's parental rights to Child. First, the record reflects that the circuit court had previously found Mother to have abused or neglected Child in a previous proceeding.

Moreover, the circuit court made an independent finding of abuse and neglect under KRS 625.090(1)(a) after the termination hearing, and we find substantial evidence in the record to support such findings. Mother created or allowed to be created a risk of physical or emotional injury upon Child other than by accidental means by subjecting him to scenes of domestic violence in the home, to substance abuse by his caregivers, and to neglect of his material, emotional, and healthcare needs. KRS 600.020(1)(a)2.

Moreover, Mother's failure or inability to comply with the court's orders and the Cabinet's court-approved case plan prevented the circuit court from returning Child to Mother's custody safely and resulted in Child remaining in

foster care for fifteen (15) cumulative months out of forty-eight (48) months. KRS 600.020(1)(a)9.

This Court has found a parent’s “actions and failure to comply with the [c]ase [p]lan are substantial enough, standing alone, to support a finding under each element of KRS 625.090[.]” *P.S. v. Cabinet for Health and Family Services*, 596 S.W.3d 110, 116 (Ky. App. 2020). Additionally, Mother’s lack of compliance, coupled with the knowledge that the Cabinet required her compliance to have contact and maintain a relationship with Child, demonstrated that Mother had “evince[d] a settled purpose to forego all parental duties and relinquish all parental claims to [Child].” *O.S. v. C.F.*, 655 S.W.2d 32, 34 (Ky. App. 1983). Moreover, Mother abdicated her parental responsibility to Child by relocating to Florida and failing to comply with her case plan to participate in supervised visitation. Accordingly, we affirm the trial court’s finding of neglect and abuse regarding Child.

Next, the circuit court correctly found that the Cabinet had met multiple grounds of KRS 625.090(2). The statute only requires the existence of one of the grounds to be proven by clear and convincing evidence. In this case, the Cabinet presented clear and convincing evidence to support its conclusion under KRS 625.090(2)(a) that Mother had abandoned Child for more than ninety (90) days. Ms. Link testified the Cabinet had attempted to maintain ongoing contact

with Mother to engage her in services. However, despite the Cabinet's assistance, Mother had not visited with Child since April 2021, or approximately eleven (11) months at the time of the March 2022 trial.

In *C.A.W. v. Cabinet for Health and Family Services, Commonwealth*, 391 S.W.3d 400, 405 (Ky. App. 2013), this Court upheld a finding of abandonment where supervised visitation was suspended due to the parent's noncompliance with court orders and the parents having no other contact with the children after the court suspended the visitation. Similarly, Mother has not had any contact with Child for more than ninety (90) days due to Mother's sporadic compliance with the court's orders. Moreover, Mother's failure to comply with the court orders that would have allowed contact with her son demonstrated "a settled purpose to forego all parental duties and relinquish all parental claims to" Child. *O.S.*, 655 S.W.2d at 34. Therefore, the circuit court correctly made a finding of abandonment under KRS 625.090(2)(a).

Additionally, substantial evidence also supported the circuit court's finding that, for more than six months, Mother had failed to provide "essential parental care and protection" or the necessities of life and that there was no realistic expectation of resumption of parenting in the immediately foreseeable future. KRS 625.090(2)(e) and (g). The circuit court supported its conclusions with findings that Mother had not meaningfully participated in the Cabinet's case

plans and that there was no reasonable expectation of improvement in parental care and protection considering Child's age.

For example, the record reflects that Mother failed to maintain consistent contact with the Cabinet and Child. Moreover, after completing inpatient treatment on January 29, 2021, Mother was court-ordered to complete outpatient substance abuse treatment and drug screens three times a week. Since then, Mother consistently failed to drug screen or participate in treatment to demonstrate her sobriety. As a result, Child had remained in the Cabinet's custody since 2020.

Additionally, Mother has also failed to consistently meet the material needs of Child despite her testimony that she has had employment since Child's removal. Although Mother testified that she could financially support her son, she also testified that she could not afford the cost of drug screens or parenting classes.

Mother argues the trial court's finding pursuant to KRS 625.090(2)(g) is erroneous because the foster parent had refused Mother's assistance and that the Cabinet failed to timely provide her information to set up child support payments. However, Kentucky law imposes a duty upon a parent to support his or her child regardless of whether the circuit court has entered a child support order regarding the parent. Moreover, our Supreme Court has previously emphasized: "[j]ust because the child, and the parent for that matter, are committed to the Cabinet does

not mean that the parent has no further responsibilities to the child.” *T.N.H.*, 302 S.W.3d at 662. Thus, Mother failed to remedy the concerns that caused Child’s removal and failed to put herself in a position to provide parental care and protection or the necessities of life.

Moreover, there was no evidence that Mother could achieve stability to care for Child suitably in the foreseeable future. Although the trial court may not rely entirely on past behavior when considering the possibility of reasonable improvement on the parent’s part, it may look to a parent’s past behavior to predict future actions, and due regard shall be given to the opportunity of the trial court to judge the credibility of witnesses. *Id.* at 663 (citation omitted). Mother failed to establish any improved ability to parent her son and meet his specific medical needs.

Additionally, Mother is not the only party whose interests are at stake, and one must balance the expectation of parental improvement with considering Child’s age. After twenty (20) months in foster care, Child deserves permanency and stability. The circuit court appropriately considered Mother’s history of noncompliance with the court’s remedial orders to make an educated prediction about Mother’s future and correctly determined there was no reasonable expectation of improvement. Accordingly, we affirm the circuit court’s findings under KRS 625.090(2).

Finally, the circuit court considered each of the best interest factors and correctly found that the Cabinet proved by clear and convincing evidence that it was in Child's best interest to terminate Mother's parental rights. KRS 625.090(3). When reviewing a circuit court's determination of the best interest prong of the parental termination test, we review for an abuse of discretion. *Young v. Holmes*, 295 S.W.3d 144, 146 (Ky. App. 2009) (citations omitted). "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." *D.J.D. v. Cabinet for Health and Family Services*, 350 S.W.3d 833, 837 (Ky. App. 2011) (citation omitted).

The record also supported the court's findings in this regard, including the evidence that acts of abuse or neglect had occurred against Child under KRS 625.090(3)(b). Moreover, the circuit court considered that the Cabinet had made reasonable efforts to reunite Mother with Child. KRS 625.090(3)(c). Testimony included that the Cabinet offered Mother substance abuse and mental health assessments, drug screens, case planning, ongoing communication with the caseworker, and various other services. The foregoing is sufficient to conclude that the Cabinet made reasonable efforts in this case. *See C.A.W.*, 391 S.W.3d at 405.

A circuit court must also consider “[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[.]” KRS 625.090(3)(d). In this case, the social worker’s testimony regarding Mother’s insufficient case plan progress and inability to maintain sobriety indicated that the circuit court appropriately determined termination was in Child’s best interest. As stated in *C.A.W.*, “[w]hile [Mother] [may] have taken some positive steps, the record indicates that they are just the first steps on the long road toward reunification and were not sufficient adjustments to [her] circumstances to warrant reunification with [her] children[.]” 391 S.W.3d at 405-06.

Finally, the record reflects that the Cabinet was meeting Child’s physical, mental, and emotional needs while in the Cabinet’s care and custody. KRS 625.090(3)(e). The Cabinet social worker testified that she had visited with Child in his foster home and that he was doing very well since his removal from Mother’s custody. Further, Child was attached to his foster parent. Further, the record indicates that Child would continue improving if the circuit court ordered the termination of Mother’s parental rights. Therefore, the circuit court correctly concluded that it was in Child’s best interest to terminate Mother’s parental rights.

Finally, Mother argues that the circuit court arbitrarily refused to consider evidence she offered in support of her motion to alter, amend, or vacate. However, we cannot fashion a remedy for the simple reason that we do not have jurisdiction over the trial court’s denial of a CR 59.05 motion. “Orders denying CR 59.05 relief ‘are interlocutory, *i.e.*, non-final and non-appealable and cannot be made so by including the finality recitations.’” *Hoffman v. Hoffman*, 500 S.W.3d 234, 236 (Ky. App. 2016) (quoting *Tax Ease Lien Investments 1, LLC v. Brown*, 340 S.W.3d 99, 103 (Ky. App. 2011)); *see also* *Mingey v. Cline Leasing Service, Inc.*, 707 S.W.2d 794, 796 (Ky. App. 1986) (“Unlike a ruling denying a motion for relief under CR 60.02, a ruling on a CR 59.05 motion is not a final or an appealable order. There is no authority in the rules to ask for reconsideration of a mere order which rules on a motion to reconsider a judgment.”) (citation omitted). The Court of Appeals lacks jurisdiction to hear cases from interlocutory orders. KRS 22A.020; *Cassetty v. Commonwealth*, 495 S.W.3d 129, 131 (Ky. 2016). While there are a few exceptions to that general rule, none of those exceptions address orders on CR 59.05 motions. *Id.* at 131 n.2.

CONCLUSION

For the foregoing reasons, we affirm the Bullitt Circuit Court’s order.

ALL CONCUR.

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