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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2022-CA-0694-ME

N.B.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE SHELLEY M. SANTRY, JUDGE
ACTION NO. 21-AD-500309

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

APPELLEES

AND

NO. 2022-CA-0696-ME

N.B.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE SHELLEY M. SANTRY, JUDGE
ACTION NO. 21-AD-500310

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND

FAMILY SERVICES AND F.L.J., A
MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JONES, KAREM, AND LAMBERT, JUDGES.

JONES, JUDGE: Acting with the assistance of her court-appointed counsel, the Appellant, N.B. (“Mother”), appeals two orders from the Jefferson Circuit Court (“family court”) terminating her parental rights to her minor twins, H.L.J. and F.L.J. (hereinafter collectively referred to as “the Twins”). Having reviewed the record and being otherwise sufficiently advised, we affirm the family court’s termination of Mother’s parental rights.

I. BACKGROUND

Mother’s history with the Cabinet for Health and Family Services (“Cabinet”) began long before the Twins’ birth. The Cabinet first became involved with Mother in 2013, after Mother’s son, A.S., tested positive for marijuana shortly after his birth. A.S. and his three older siblings, C.C., A.C., C.C., were ultimately removed from Mother’s care in June 2013 after Mother was arrested for driving under the influence with A.S. in the car. Mother stipulated to neglect and was ordered to complete parenting classes and substance abuse treatment. Another

petition was filed by the Cabinet in February 2014 due to a near fatal incident involving A.S. and Mother's failure to protect the child. Mother was ordered to comply with mental health treatment and complete parenting classes as a result of that petition. In August 2014, Mother agreed to give A.S.'s parental grandmother permanent custody of A.S. Additionally, during the same time period, C.C. was molested by one of Mother's paramours. Ultimately, Mother's rights to the other three children were terminated on July 22, 2019, based on her failure to complete her case plans and follow court orders.

Less than a year later, in May 2020, Mother gave birth to the Twins.¹ After being released from the hospital, the Twins began residing with Mother and Father. In August 2020, law enforcement responded to the family's home for a domestic violence altercation between Mother and Father; law enforcement alerted the Cabinet because the Twins were present in the home during the altercation. The Cabinet moved for and was granted emergency custody of the Twins. After receiving custody of the Twins, the Cabinet discovered that they were behind on necessary medical care raising additional concerns.

¹ M.J. ("Father") is listed on the Twins' birth certificates as their biological father. Father died in December of 2020, and therefore, is not a party to these proceedings. Prior to the termination petitions being filed in July 2021, Mother identified her then-current paramour, T.H., as the Twins' biological father. Subsequent DNA testing excluded T.H. as the Twins' biological father.

The Cabinet filed Dependency, Neglect, and Abuse (“DNA”) petitions against Mother. Mother was ordered to complete a parenting assessment, a mental health assessment, and a UK TAP assessment, as well as to participate in supervised visitation. Mother and Father were additionally ordered not to have contact with one another.

Mother completed her parenting and mental health assessments in October 2020 through Seven Counties. Based on its assessments, Seven Counties recommended Mother complete the protective parenting program and a domestic violence survivors’ group. These recommendations subsequently became court orders in December 2020. Mother also completed her UK TAP assessment in October 2020 and was referred to St. Jude’s for assistance with housing and employment.

In December 2020, prior to starting her domestic violence group therapy, Mother violated the family court’s order not to have contact with Father. According to Mother, she loved Father and wanted to help to him, so she decided to pick Father up from the hospital notwithstanding the no contact order. After leaving the hospital, Mother and Father returned home. Shortly thereafter, the two became embroiled in yet another domestic altercation which terminated when Mother fatally shot Father in self-defense.² The family court ordered Mother to

² Mother was not criminally charged.

complete a domestic violence FORECAST assessment after the incident with Father.

Mother began the domestic violence group in January 2021 and completed the program in May of that same year. On July 7, 2021, Mother entered a stipulation to a finding of neglect as related to the DNA petitions regarding her care of the Twins. The family court ordered that the Twins were to remain in the Cabinet's custody and Mother was to obtain and maintain stable housing and employment.

After the family court's adjudication hearing, the FORECAST report was completed and sent to the Cabinet on July 30, 2021. The report noted concerns with Mother's history of violent relationships, homelessness, and extended periods of unemployment. The report also noted that while Mother had completed the domestic violence group two months prior, it was unclear whether she could implement what she had learned. Therefore, the assessor recommended that Mother complete the PASS parenting program to obtain additional parent education, self-help, and support groups. The assessor also recommended Mother continue her mental health treatment and undergo a full psychological evaluation.

On September 8, 2021, the family court conducted a disposition hearing, which resulted with the Twins remaining in the Cabinet's custody. In addition to the previously ordered services, the family court ordered Mother to

remain clean and sober, complete the psychological evaluation recommended by the FORECAST assessment, attend counseling, and take all medications as prescribed. It is undisputed that Mother did not complete the psychological evaluation as ordered.

On July 13, 2021, the Cabinet filed petitions to terminate Mother's parental rights. The family court held a final hearing on March 10, 2022, at which the Twins' foster mother, the family's designated social worker, and Mother testified.

The Twins' foster mother explained she and her husband began caring for the Twins in August 2020 after the Twins were removed from Mother's care. She explained that the Twins were small and medically fragile. H.L.J. was diagnosed as having a hole in her heart, and F.L.J. was behind on her lab work³ and immunizations. The Twins also have retinopathy as a result of their premature birth, severe reflux, and are very prone to ear infections, which required the placement of ear tubes. Foster mother explained that caring for the Twins requires extra vigilance and time due to their numerous health conditions.

Foster mother noted that after the Twins visit with Mother their reflux seems worse, which she attributes to inappropriate snacks given to them by Mother

³ F.L.J. was diagnosed as suffering from elevated Tyrosine levels at birth requiring her to be monitored by frequent lab work.

during her visits. However, foster mother acknowledged that otherwise the Twins appear happy and well-cared for after their supervised visits with Mother.

Foster mother believes the Twins are bonded to her and foster father noting that they call them “Momma” and “Daddy.” She further testified that she and foster father have the resources to meet the Twins’ on-going needs, and that they desire to adopt the Twins if Mother’s parental rights are terminated.

The Cabinet called Ashlea Dodsworth, the family’s designated social worker, to testify next. Ms. Dodsworth chronicled Mother’s history with the Cabinet as related to her older children as well as to the Cabinet’s efforts at reunification of the Twins and Mother. Ms. Dodsworth testified that Mother was generally compliant with working her case plan. She completed an initial mental health evaluation, parenting classes, domestic violence therapy, and the UK TAP assessment. She worked with St. Jude to secure housing and employment. However, Mother did not complete the additional psychological evaluation recommended by the FORECAST assessor and subsequently ordered by the family court. Mother also did not submit proof to the Cabinet that she was still receiving mental health counseling.

Ms. Dodsworth testified that while Mother missed a few supervised visits with the Twins, she was overall compliant, and the Cabinet did not have any concerns with her attendance. According to Ms. Dodsworth, Mother was attentive

to the Twins during her visits. She regularly brought them snacks and hair products. However, other than the few items Mother brought to her supervised visits, she has not otherwise supported the Twins during the time they have been in the Cabinet's custody. Ms. Dodsworth explained that Mother was not granted unsupervised visits because the Cabinet never felt that she was ready to care for the Twins on her own, particularly since Mother brought her new paramour, T.H., to some of her visits.

Ms. Dodsworth testified the Cabinet had provided all reasonable services for reunification, but in her opinion returning the Twins to Mother would place them at risk for future harm. She cited Mother's failure to consistently follow court orders and her pattern of neglect as related to her other children, especially allowing her various paramours to care for them resulting in serious injury to one child and the sexual abuse of another. Ms. Dodsworth testified that Mother was terminated from the FORECAST program after the psychological evaluator unsuccessfully tried numerous times to reach Mother to schedule the evaluation.

Ms. Dodsworth further testified that the Twins had been in the care of foster parents for most of their lives and were bonded to them. She believed that foster parents were able to care for the Twins and to provide them with the supportive care necessary to manage their various health issues.

Mother testified on her own behalf. While Mother acknowledged her past failures, she testified that the domestic violence group therapy she received during these proceedings was transformative, and she believes it provided her with the tools to be a better parent than she had been in the past. She testified that she has overcome her prior substance abuse issues and has been clean and sober for two years.

Mother testified that she currently lives in a two-bedroom, two-bathroom apartment in Indiana, approximately twenty minutes from Louisville, that has ample space for the Twins. Mother admitted that she is not currently employed but explained that this is because she was involved in a motor vehicle accident that rendered her vehicle undriveable. She testified that the accident was not her fault and that once her insurance claim is paid out, she will be able to purchase another vehicle and get a job. Mother explained that she would use daycare to take care of the Twins while she was working, and she has investigated some potential childcare facilities in preparation for the Twins return to her care. Mother is taking business management classes online through Ivy Tech Community College so that she can improve her future employment prospects.

Mother admitted that she struggled to meet the Twins' needs when they were in her care. She testified that Father did not help her, and the Twins had to be on different formulas, which was confusing. While Mother tried to keep up

with their appointments and medical needs, she did not always do so. Mother also acknowledged that her rights to other children were terminated after she failed to follow through on her case plans. Mother explained that she was so beaten down before that she did not care what happened but after being sober and receiving domestic violence therapy, she is a different person today than she was back then and she does very much want to parent the Twins. Mother attributed her failure to complete the required psychological evaluation recommended by her FORECAST assessor to the pandemic and her inability to get it scheduled.

Following the hearing, the family court entered its findings of fact, conclusions of law, and judgments terminating Mother's parental rights. This appeal followed.

II. STANDARD OF REVIEW

Kentucky Revised Statutes ("KRS") 625.090 sets forth the requirements which must be met before a court in Kentucky can involuntarily terminate a parent's rights to her child. First, as it concerns these appeals, the family court must determine that child is an abused or neglected child or that the child was previously determined to be an abused or neglected child by a court of competent jurisdiction. KRS 625.090(1)(a)1.-2. Second, a petition seeking the termination of parental rights must have been filed by the Cabinet pursuant to KRS 620.180. KRS 625.090(1)(b). Third, the family court must find that termination is

in the best interest of the child. KRS 625.090(1)(c). Finally, the family court must find by clear and convincing evidence the existence of one or more of the eleven grounds (a) through (k) listed in KRS 625.090(2). Even if all these requirements are met, the family court may choose in its discretion not to terminate a parent's parental rights if the parent has established by a preponderance of the evidence that the child will not continue to be an abused or neglected child if returned to the parent. KRS 625.090(5).

Termination of parental rights cases are tried in private hearings before the family court. KRS 625.080. After the hearing, the family court is required to make findings of fact and conclusions of law supporting its decision on the termination petition. *Id.* “Broad discretion is afforded to [family] courts to determine whether parental rights should be terminated, and our review is limited to a clearly erroneous standard.” *Cabinet for Health and Family Services v. H.L.O.*, 621 S.W.3d 452, 462 (Ky. 2021).

Factual findings which are supported by substantial evidence of record are not clearly erroneous. *R. M. v. Cabinet for Health and Family Services*, 620 S.W.3d 32, 37 (Ky. 2021). “Substantial evidence is that which is sufficient to induce conviction in the mind of a reasonable person.” *Id.* “When the findings are supported by substantial evidence, then appellate review is limited to whether the

facts support the legal conclusions which we review *de novo*.” *H.L.O.*, 621 S.W.3d at 462.

III. ANALYSIS

On appeal, Mother argues the family court erred when it concluded that the Cabinet proved the existence of one or more termination grounds as required by KRS 625.090(2). While the statute only requires the family court to find the existence of one ground to support termination, in this case, the family court found three separate grounds supported termination under KRS 625.090(2):

(e) That the parent, for a period of not less than six (6) months, 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;

...

(g) That the parent, for reasons other than poverty alone, has continuously or 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;

[and]

(h) That:

1. The parent's parental rights to another child have been involuntarily terminated;
2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and
3. The conditions or factors which were the basis for the previous termination finding have not been corrected.

For her part, Mother does not deny that she failed to support and provide for the Twins for over six months or that her parental rights to her other children were terminated. However, she does take issue with the family court's conclusions that she has failed to remedy her situation such that returning the Twins to her risks exposing them to future harm. To this end, she notes that the Cabinet admitted that she completed her case plans except for having her psychological evaluation performed. She also notes that family court failed to take into consideration that she became unemployed after she lost her vehicle in a wreck that was not her fault.

We have reviewed the family court's findings and conclude that each is supported by substantial evidence. While Mother attributes her failure to obtain her psychological evaluation on the pandemic, as the family court noted, Ms. Dodsworth testified that the evaluator tried to reach Mother to schedule the examination upwards of seven times, before Mother was dismissed from the FORECAST program.

The family court explained that it had deep concerns about Mother's psychological well-being and stability, especially in relation to her relationships. As noted above, shortly before the termination hearing, Mother suddenly claimed that the Twins were fathered by her then-current paramour, T.H., who she brought with her to some of her supervised visitations. After genetic testing excluded T.H., Mother admitted that she did not meet T.H. until after the Twins' birth and knew that he was not their biological father – she just wanted him to be instead of Father. Later, as the family court observed, Mother refused to answer questions about T.H., and while the family court could clearly hear a male voice in the background during the remote video hearing, Mother denied that there was anyone with her.

“The termination of parental rights is a particularly fact-sensitive inquiry, so appellate courts are disinclined to disturb [family]-court findings, perhaps especially in a case like this where the facts are not seriously disputed.” *R.M.*, 620 S.W.3d at 38 (footnote omitted). The family court had the benefit of hearing the witnesses testify and judging their credibility. Mother's behavior in the hearing caused the family court to have great concerns about her ability to care for the Twins and make sound judgments that would protect them from the kind of abuse and neglect that resulted in the termination of her parental rights to her older children. Her behavior in combination with her past failure to complete her case

plans caused the family court to conclude that despite the fact Mother had made some strides forward, she had not done so to the extent needed to allow the Twins to be returned to her. We cannot conclude that the family court abused its discretion in this regard.

Mother has improved substantially from where she started, but we cannot disagree there is still a risk of substantial harm. “[O]ur natural empathy with the parents is overcome by an unemotional review of the trial court’s record.” *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky. App. 1986). Simply, “[t]he risks are too great to experiment further with the children’s future.” *Id.*

III. CONCLUSION

For the foregoing reasons, we affirm the orders of the Jefferson Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Emily H. Funk
Louisville, Kentucky

BRIEF FOR APPELLEE:

Leslie M. Laupp
Covington, Kentucky