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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2022-CA-0863-ME

W.L.W.

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE ACENA J. BECK, JUDGE
ACTION NO. 20-AD-00104

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
A.D.L.; AND A.D.L., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CETRULO, DIXON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: W.L.W. brings this appeal from Findings of Fact and Conclusions of Law and from a Judgment Terminating Parental Rights entered in the Kenton Circuit Court, Family Court Division, on June 14, 2022, terminating her parental rights to A.D.L., a minor child. We affirm.

On November 17, 2016, W.L.W. gave birth to her fifth child, a daughter, A.D.L. W.L.W. was not married but did identify an individual as A.D.L.'s father on her birth certificate. As the child and her father share the same initials, we will refer to A.D.L.'s biological father as A.L. to avoid any confusion.¹

Prior to A.D.L.'s birth, the Cabinet for Health and Family Services (Cabinet) had an active case with W.L.W. in Grant County, Kentucky, that was opened in 2016. Then, on November 21, 2017, the Cabinet filed a dependency, neglect, and abuse (DNA) petition as to A.D.L. in Grant District Court² (Action No. 17-J-00270-001). The DNA petition contained the following allegations:

The above[-]mentioned child is at risk of harm due to [W.L.W.], natural mother's, inability to provide stable housing for the child, lack of supervision and mental health. CHFS [Cabinet for Health and Family Services] received allegations that [W.L.W.] had fallen asleep while in the caregiving role of [E.T.], 3 years old, at which time child started [a] fire in the home. Collaterals reported fire was started due to meth lab explosion however fire is under investigation and CHFS is awaiting the results. CHFS requested [W.L.W.] to drug screen on 11-17-17 however she failed to screen. CHFS has concerns in regards to [W.L.W.'s] mental health as she stated she was depressed, overwhelmed and had thought about admitting herself to St. Elizabeth Behavioral

¹ All five of W.L.W.'s children had different fathers. A.D.L.'s father, A.L., was a party to the termination of parental rights action below but has not pursued an appeal from the Findings of Fact and Conclusions of Law and Judgment Terminating Parental Rights entered June 14, 2022, which terminated his parental rights to A.D.L.

² As W.L.W. and her children were residing in Grant County, Kentucky, the November 21, 2017, Dependency, Neglect, and Abuse (DNA) Petition in this instance was filed in Grant District Court.

Health Unit. CHFS has had an active on-going case with [W.L.W.] since 2015 due to [W.L.W.'s] inability to maintain housing, employment and domestic altercation with paramour.

DNA Petition at 4, Cabinet's Exhibit 5.

Following a temporary removal hearing in Grant District Court, an order was entered November 29, 2017, granting the Cabinet temporary custody of A.D.L. and placing A.D.L. with her father, A.L. A.L. lived with his parents, who are A.D.L.'s paternal grandparents, in Kenton County, Kentucky.³

An adjudication order was entered February 1, 2018, in the Grant District Court, whereupon the court made a finding of neglect against W.L.W. Following an evidentiary hearing, the Grant District Court ordered that A.D.L. would remain committed to the custody of the Cabinet and that she would continue to live with her father in the paternal grandparents' home.

On October 8, 2018, the Cabinet filed a DNA petition as to A.D.L. (Action No. 18-J-000980-001) in the Kenton Circuit Court, Family Court Division, (family court). In the petition, which included an emergency custody affidavit, it was averred that the paternal grandparents' home, where A.D.L. had been residing

³ According to a DNA Dispositional Report entered in the Grant District Court on February 22, 2018, A.D.L.'s father tested positive for marijuana. Therefore, the Cabinet for Health and Family Services placed A.D.L. with A.L.'s parents, the child's paternal grandparents. As A.L. still lived in the home, his contact with A.D.L. was to "be supervised at all times." February 22, 2018, DNA Dispositional Report at 1, Exhibit 5.

since the November 2017 removal, was in a deplorable condition. The floors were covered in dirt, feces, and urine; the home was infested with roaches and bed bugs that were crawling on the walls and on every surface; the trash was stacked above eye level; the refrigerator was full of spoiled food and mold; and the children's mattresses were covered in dirt and bed bugs. It was likewise alleged that W.L.W. was using methamphetamine and had recently been involved in an altercation with A.L. which resulted in W.L.W. stabbing A.L.

An order of temporary removal was entered on October 15, 2018, removing A.D.L. from the home of her paternal grandparents. The Cabinet retained temporary custody of A.D.L. and placed her with an aunt. A.D.L. was almost immediately removed from the aunt's residence due to the unsanitary conditions at the residence. Then, on October 16, 2018, A.D.L. was placed in a foster home where she has remained. By adjudication order entered on November 2, 2018, the family court ordered that A.D.L. would remain in the temporary custody of the Cabinet and found that A.D.L. was neglected by her father and her paternal grandparents.

Between October of 2018 and May of 2019, W.L.W. did not contact the Cabinet, and the Cabinet's attempts to contact W.L.W. were unsuccessful. Finally, in May of 2019, eighteen months after A.D.L. was removed from W.L.W.'s custody, the Cabinet located and then contacted W.L.W. Thereafter, the

Cabinet established a case plan that required W.L.W. to complete the following tasks: a mental health assessment, a substance abuse assessment, random drug screening, stable employment, stable housing, and parenting classes. The order further provided that W.L.W. would not be permitted to visit with A.D.L. until she completed three consecutive negative drug screens.

Over the next few years, W.L.W. repeatedly failed to complete the required tasks on her case plan. For example, the record reflects W.L.W. was to submit to random drug screens, but she was very inconsistent in her compliance. In November and December of 2019, W.L.W. had four drug screens that were positive for THC, and then she missed five screens. Between January of 2020 and June of 2020, W.L.W. had six negative screens but missed twenty-two scheduled drug screens. Although W.L.W. had three consecutive negative drug screens in June of 2020, W.L.W. never contacted the Cabinet to request visitation with A.D.L. W.L.W. also failed to submit to any drug screens from October of 2020 until March of 2021. The Cabinet was additionally concerned about W.L.W.'s inability to maintain stable housing. On multiple occasions, W.L.W. avoided permitting the Cabinet to visit where she was reportedly living and often would not answer the door when the Cabinet came for a scheduled visit. W.L.W. also failed to follow through with her required mental health assessment. W.L.W. reported to the Cabinet that she completed an assessment with NorthKey while she was

working with the Cabinet in Grant County. However, NorthKey reported that W.L.W.'s initial intake was over the phone on December 8, 2018, that she attended one appointment on January 2, 2019, and that she missed her next two appointments. Thereafter, NorthKey closed W.L.W.'s active file. W.L.W.'s overall lack of progress on these required tasks was paramount to the Cabinet's decision to pursue termination of parental rights.

On July 28, 2020, the Cabinet filed a Petition for Involuntary Termination of Parental Rights in the Kenton Family Court. Following an evidentiary hearing before the family court on April 22, 2022, the court entered on June 14, 2022, Findings of Fact and Conclusions of Law and Judgment Terminating Parental Rights as concerns W.L.W.'s parental rights to A.D.L. This appeal follows.

The applicable standard of appellate review by the court of findings of fact made by a family court in a termination of parental rights proceeding is the clearly erroneous standard set forth in Kentucky Rules of Civil Procedure 52.01. Therein, the family court's findings of fact will not be set aside if supported by substantial evidence. *M.L.C. v. Cabinet for Health and Family Servs.*, 411 S.W.3d 761, 765 (Ky. App. 2013) (citation omitted). Substantial evidence is evidence of a probative value that a reasonable person would accept as adequate to support a conclusion. *Moore v. Asente*, 110 S.W.3d 336, 353-54 (Ky. 2003).

In Kentucky, the procedure for the involuntary termination of parental rights is set out in Kentucky Revised Statutes (KRS) 625.090. Under KRS 625.090, parental rights may be terminated only if the family court finds by clear and convincing evidence that the following three-prong analysis has been 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.” *Cabinet for Health and Family Servs. v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014). Our review proceeds accordingly.

The primary argument raised by W.L.W. in this appeal is that under the third prong of the termination of parental rights analysis, there was insufficient evidence to support the findings of fact made by the family court pursuant to KRS 625.090(2)(e).

KRS 625.090(2) provides, in relevant part:

(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[.]

More particularly, W.L.W. maintains that Dr. Connor, who performed a psychological and parenting evaluation of W.L.W., testified that there was a

reasonable expectation that in as little as six months, W.L.W. could be emotionally capable of providing parental care and protection for A.D.L.

In the case *sub judice*, it is worth emphasizing again that between October 2018 and May 2019, W.L.W. failed to contact the Cabinet. So, for some seven months immediately following A.D.L.'s placement in the foster home in 2018, W.L.W. did not actively pursue the return of A.D.L. W.L.W. also complains that her assessment was not conducted by Dr. Connor until 2021. However, W.L.W. omits from her argument that she significantly contributed to the delay of the assessment by failing to contact the Cabinet. Dr. Connor also testified that he could not verify with any certainty that W.L.W. could safely parent A.D.L. And, when W.L.W. was given a case plan by the Cabinet, she was unable to make any substantiative progress. For example, W.L.W. failed to establish she had secured stable housing, which was a major component of her case plan. Testimony established that when the social workers would come for a scheduled visit to the house where W.L.W. reportedly lived, W.L.W. would not answer the door or was not at home. These factors, when taken together, provide clear and convincing evidence that W.L.W. had, for a period of more than six months, continuously failed to provide or was substantially incapable of providing essential parental care and protection for A.D.L.; and there was no reasonable expectation of significant improvement in the foreseeable future. Sadly, this situation is the quintessential

example of too little too late as concerns W.L.W.'s attempt to reunite with her child. W.L.W.'s progress during the almost five-year period following A.D.L.'s removal from her custody was insufficient to prevent the termination of W.L.W.'s parental rights. And, we also note that during this same period of time, A.D.L. continued to flourish in the placement with her foster parents where she has resided since October of 2018.

Based on our review of the record, we are of the opinion that there was clear and convincing evidence to support the family court's findings of fact relevant to the factors considered by the family court under KRS 625.090(2). Thus, we conclude that the family court did not err by terminating W.L.W.'s parental rights to A.D.L.

We view any remaining contentions of error raised by W.L.W. to be moot or without merit.⁴

For the foregoing reasons, the June 14, 2022, Findings of Fact and Conclusions of Law and Judgment Terminating Parental Rights entered by the Kenton Family Court are affirmed.

⁴ Although the argument in W.L.W.'s brief is unclear, she also refers to the family court's error in regard to its findings under Kentucky Revised Statutes (KRS) 625.090(2)(g). However, any such contention is moot as we have concluded substantial evidence supported the circuit court's findings of fact as to KRS 625.090(2)(e), and satisfaction of only one of the grounds set forth in KRS 625.090(2)(a)-(j) is necessary for termination of parental rights. *See W.L.C. v. Commonwealth Cabinet for Health and Family Services*, 484 S.W.3d 737, 743 (Ky. App. 2016) (holding that proof of only one ground of KRS 625.090(2)(a)-(j) is required).

ALL CONCUR.

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