

RENDERED: JULY 21, 2023; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

No. 2023-CA-0115-ME

T.S.G.

APPELLANT

v.

APPEAL FROM JACKSON FAMILY COURT
HONORABLE CLINT HARRIS, JUDGE
ACTION NO. 21-AD-00017

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; AND A.R.G.R.,
A MINOR CHILD

APPELLEES

AND

NO. 2023-CA-0119-ME

T.S.G.

APPELLANT

v.

APPEAL FROM JACKSON FAMILY COURT
HONORABLE CLINT HARRIS, JUDGE
ACTION NO. 21-AD-00018

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND

FAMILY SERVICES; AND
M.A.Y.R., A MINOR CHILD

APPELLEES

AND

NO. 2023-CA-0121-ME

T.S.G.

APPELLANT

v. APPEAL FROM JACKSON FAMILY COURT
HONORABLE CLINT HARRIS, JUDGE
ACTION NO. 21-AD-00019

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

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: THOMPSON, CHIEF JUDGE; EASTON AND KAREM, JUDGES.

EASTON, JUDGE: The Appellant, T.S.G., appeals from the Jackson Family

Court's Order terminating her parental rights to her minor children, A.R.G.R.,

M.A.Y.R., and B.R.G.R. (hereafter "Children"). The Department of Public

Advocacy could find no legitimate basis for appeal and thus filed an "Anders"

brief for T.S.G. *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361

(Ky. App. 2012). These appeals have been consolidated, and we address all three terminations in this Opinion. We affirm the Order of the Jackson Family Court.

FACTUAL AND PROCEDURAL HISTORY

T.S.G. is the mother of the Children. The Children were initially removed from the home on October 31, 2019, upon allegations that T.S.G.'s then-boyfriend (and now husband), S.G., intentionally burned two of the Children's hands on a wood burning stove. T.S.G. failed to seek medical treatment for the Children for the burn injuries. The Cabinet for Health and Family Services ("Cabinet") put a Prevention Plan in place, wherein S.G. was to have no contact with the Children.

At a scheduled forensic interview, S.G. arrived with T.S.G. and the Children in clear violation of the Prevention Plan. The Cabinet then filed a Dependency, Neglect, and Abuse ("DNA") Petition on November 1, 2019. On this date, the family court granted the Cabinet's motion for emergency custody. In addition to the allegations of physical abuse, allegations of sexual abuse by S.G. also arose during the Cabinet's investigation.

The Children's father was absent throughout the DNA case and these proceedings. He is not a party to this appeal. From all accounts, it appears he was uninvolved in the Children's lives.

The family court held an adjudication hearing in the DNA case on December 17, 2019. At this hearing, the court found the Children to be neglected. The Children were initially placed together in the same foster home. Due to behaviors of the Children when together, they were placed in separate homes. All three Children remain in separate adoptive foster homes. Each Child also has her own therapist.

Over the following three years, T.S.G. and S.G. had multiple case plans with the Cabinet. Throughout the entire period of the DNA proceeding, S.G. was ordered to have no contact with the Children. Initially, T.S.G. had supervised visits at the Cabinet office with the Children. At one point, T.S.G.'s visits were increased to include unsupervised overnight visits. Then, in October 2021, one of the Children's therapists, noting disruptive behavior by the Child after visits with T.S.G., recommended that visits be suspended, and the family court suspended visitation. Therapeutic visits in family therapy were reinstated in July 2022.

The Cabinet filed its Petition for Termination of Parental Rights on December 6, 2021. A final hearing was held on December 13, 2022. At this hearing, the Cabinet called two of its case workers, as well as each Child's therapist. The testimony is summarized below.

The first witness to testify was Bradley Scott ("Scott"), who is a former Cabinet supervisor. He testified that both T.S.G. and S.G. had tasks on the

case plans, as both were living in the household. They both were to complete a parenting assessment and parenting classes, as well as mental health assessments. S.G. was also required to complete a sex offender risk assessment, based on the allegations that arose after the filing of the DNA Petition.

Scott testified that T.S.G. did complete her assessments and completed parenting classes. He testified that, to his knowledge, S.G. did not complete the sex offender risk assessment or the mental health assessment while he was with the Cabinet. Scott additionally testified that T.S.G.'s visits with her Children were very inconsistent.

In August 2021, T.S.G. and S.G. were tasked with completing a Protective Parenting Assessment. Though they initially refused to do so, both parties did complete the assessment. T.S.G.'s assessment revealed that she never accepted that abuse or neglect of her Children had ever actually occurred. The assessor also believed T.S.G. had been dishonest with many of her answers. It was recommended that T.S.G. and S.G. should complete parenting classes together, and then attend family therapy with the Children.

Scott testified the Children were reported to be having very significant behavior issues from their respective foster homes throughout this time period. This led one of the Child's therapists to recommend suspending T.S.G.'s visitation with the Children in October 2021. Visits were indeed stopped at this point.

Scott testified that he believes the Cabinet made reasonable efforts to reunify the family. He testified there were no other services the Cabinet could have provided to T.S.G. which would enable them to return the Children to her custody. Scott stated he expressed to T.S.G. on multiple occasions that her relationship with S.G. was the barrier to having her Children returned to her. He admitted the Cabinet had significant staff turnover during T.S.G.'s case, which led to her having several different case workers.

The Cabinet called Matthew Samples ("Samples") as its next witness. Samples was the final ongoing worker in T.S.G.'s case. He testified he became involved in the case in January 2022. At this point, T.S.G.'s visits were still suspended. Samples testified that T.S.G. was initially very cooperative, but she became noncompliant with her individual counseling. He stated a new case plan was negotiated in July 2022, wherein family therapy was introduced.

Samples testified that since family therapy began and the Children began seeing T.S.G. again, the Children had all regressed in their behaviors. He stated the Children had been making tremendous progress in therapy, but their mental health and behavior declined once visits with their mother began again.

Samples stated he had a lengthy conversation with T.S.G. regarding her relationship with S.G. and what occurred with the Children. He testified she denied the allegations and did not believe that S.G. had hurt her Children. He

testified that S.G. is the Cabinet's primary concern regarding the safety of the Children.

Samples testified all three Children are in separate adoptive homes. He further stated the Children are appropriately attached to their foster families. He believes termination is in the Children's best interests.

The Children's therapists each testified. While each Child has her own therapist, the testimony of the three therapists were all very similar in nature. All three therapists engaged the Children in cognitive behavior therapy and trauma therapy. All three therapists testified they made progress with the Children, and that the most significant progress occurred during the period when T.S.G. was not having visits with the Children.

Confirming the prior testimony of the Cabinet witnesses, all the therapists testified the Children regressed substantially once family therapy began and visits with T.S.G. were reinstated. Behaviors of the Children included physically aggressive behavior, getting in trouble in school, urinating on themselves, nightmares, and outbursts. The therapists also testified the Children had difficulty talking about their trauma and on many occasions refused to do so. All three therapists testified that the Children are terrified of S.G.

After the Cabinet's conclusion of its case, T.S.G. testified as her first witness. She testified she completed all her tasks on her case plans. She claimed

to have missed visits because of being sick or not having transportation. She also stated some of the missed visits were cancelled by the foster families.

T.S.G. testified she had eight different case workers with the Cabinet, two different individual therapists, and three family therapists. She stated it always felt like she was starting over with each new worker and could never make any progress. T.S.G. testified she considered leaving S.G. on several occasions, but she stated her Children told her they weren't scared of him. She testified that she would leave S.G. if that was the only way to get her Children returned to her. She stated that no one ever told her that if she ended her relationship with S.G., she could get custody of the Children back.

Upon questioning by the Guardian *ad Litem* ("GAL"), T.S.G. admitted she and S.G. were now married. When asked specifically if she believed the allegations against S.G., she stated the therapists' testimony "got me to thinking about it." She further stated there was no real evidence of the allegations against S.G.

T.S.G. called S.G. as her only other witness. He testified that he would be willing to leave if he was the only barrier to T.S.G. getting her Children returned to her custody. He stated he loved the Children, and T.S.G. would be able to keep the home where they are currently residing. Notably, he did not deny the

allegations against him. No one asked him a question about the prior neglect and abuse.

The family court ruled from the bench that he was terminating T.S.G.'s parental rights. He stated multiple sections of KRS¹ 625.090 had been met, that the Children had been found to have been abused or neglected, and that it is in the Children's best interests to terminate. He further stated T.S.G. cannot prove by a preponderance of the evidence that the Children will not continue to be abused or neglected if returned to her care. He stated the problem is that she refuses to distance herself from the individual who caused the harm to the Children.

The family court issued a written Order on December 29, 2022. The family court found the Children had been adjudged neglected children by Order entered December 20, 2019. The Order further stated that the Children have remained in foster care under the responsibility of the Cabinet more than 15 cumulative months out of 48 months preceding the filing of the petition to terminate parental rights, pursuant to KRS 625.090(2). The family court found it is in the best interests of the Children for the parents' rights to be terminated, and that the court considered all applicable provisions of KRS 625.090(3)(a)-(f).

¹ Kentucky Revised Statutes.

It is from this order T.S.G. appeals. She argues the Cabinet did not make reasonable efforts to reunite the Children with her, and that the circuit court erred when it granted termination of T.S.G.'s parental rights.

STANDARD OF REVIEW

This Court's standard of review of a termination of parental rights case is the clearly erroneous standard in CR² 52.01. The factual findings must be supported by clear and convincing evidence. *M.E.C. v. Commonwealth, Cabinet for Health and Family Services*, 254 S.W.3d 846, 850 (Ky. App. 2008). The findings of the trial court should not be disturbed unless there exists no substantial evidence in the record to support its findings. *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky. App. 1986).

ANALYSIS

KRS 625.090 is the controlling statute regarding the involuntary termination of parental rights. This statute provides a three-prong test which allows parental rights to be involuntarily terminated only upon findings, based on clear and convincing evidence, that (1) the child has been found to be an abused or neglected child as defined in KRS 600.020(1); (2) that termination is in the child's best interests; and (3) at least one of the grounds set out in KRS 625.090(2)(a)-(k)

² Kentucky Rules of Civil Procedure.

is present. *Cabinet for Health & Family Services v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014).

The family court ruled that the first prong had been met in the case herein. We agree. KRS 600.020 outlines what constitutes an “abused or neglected child.” KRS 600.020(1) defines an “abused or neglected child” as “a child whose health or welfare is harmed or threatened with harm” with a list provided of examples.

The family court held an adjudication hearing in the juvenile actions in December 2019 and adjudged the Children to be neglected by Order entered on December 20, 2019. While T.S.G. does not appear to believe or accept the allegations, she does not appeal this finding. Regardless, there is substantial evidence to support a finding of abuse or neglect.

Next, the court must find that at least one of the grounds outlined in KRS 625.090(2) is present. These grounds include:

- (a) That the parent has abandoned the child for a period of not less than ninety (90) days;
- (b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;
- (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;

...

(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;

(f) That the parent has caused or allowed the child to be sexually abused or exploited;

(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;

...

(j) 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[.]

The family court found that the Children had been in foster care for more than fifteen cumulative months out of the forty-eight months preceding the filing of the petition to terminate parental rights. This factual finding is undisputed. The record also could have supported findings under KRS 625.090(2)(b). The family court found additional grounds regarding terminating

the rights of the Children's biological father, although those findings are not germane to this appeal.

For the final consideration in determining the best interest of the child and the existence of a ground for termination, the family court must consider the factors in KRS 625.090(3), which are:

- (a) Mental illness as defined by KRS 202A.011(9), or an intellectual disability as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;
- (b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;
- (c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court;
- (d) The 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;
- (e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and

(f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

T.S.G. alleges the family court's ruling that the Cabinet rendered "all reasonable services" (KRS 625.090(3)(c)) was in error. "Reasonable efforts" is 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[.]" "Preventive services" is defined in KRS 620.020(12) as "those services which are designed to help maintain and strengthen the family unit by preventing or eliminating the need for removal of children from the family[.]" Finally, "reunification services" is defined 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[.]"

We find T.S.G.'s argument that the Cabinet did not make reasonable efforts to have no merit. Two Cabinet workers testified as to the services provided to T.S.G., which included parenting classes and individual counseling. Eventually, family therapy was utilized to attempt to reunify T.S.G. and her Children. While T.S.G. had to contend with the frustrations of the Cabinet's chronic staffing issues,

we must ultimately consider what efforts T.S.G. made to engage in the Cabinet's many reasonable efforts in this case.

Despite T.S.G. completing the tasks required of her by her case plans, the primary issue preventing T.S.G. from regaining custody of her Children was her relationship with S.G. It was S.G. who caused the physical harm to her Children. The most important aspect of the case plans was for S.G. to have no contact with the Children. However, T.S.G. remained in a relationship with him, eventually marrying him. She repeatedly minimized and disregarded the evidence that S.G. was the basis of her Children's trauma.

It is clear from the testimony of the Children's therapists that the Children were extremely fearful of S.G. Despite this, T.S.G. continually minimized the harm and risk of harm S.G. caused the Children. T.S.G. testified that she never believed the allegations against S.G. This corroborated the testimony of the Cabinet workers, who stated that T.S.G. never took the allegations seriously or believed S.G. to be a cause of concern.

There appears to be nothing the Cabinet could have done further to make T.S.G. see that S.G.'s presence in the home presented a severe risk of harm to the Children. Because of this, the family court's findings that T.S.G. could not show by a preponderance of the evidence that the Children would not continue to be abused or neglected are not erroneous. KRS 625.090(5). It was not erroneous

for the family court to believe that T.S.G. would continue to fail to protect the Children from S.G.

CONCLUSION

The findings of the family court pursuant to KRS 625.090 are not clearly erroneous. The Cabinet made reasonable efforts to reunite Children with T.S.G. The Order terminating T.S.G.'s parental rights is AFFIRMED.

ALL CONCUR.

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