

Commonwealth of Kentucky
Court of Appeals

NO. 2023-CA-0529-ME

K.B.-C.

APPELLANT

v.

APPEAL FROM KENTON CIRCUIT COURT
HONORABLE THOMAS A. RAUF, JUDGE
ACTION NO. 22-AD-00078

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

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, JONES, AND McNEILL, JUDGES.

McNEILL, JUDGE: K.B.-C. (Mother), appeals from orders of the Kenton Circuit Court, Family Division, terminating her parental rights to her child, C.C. (Child).

Child was born November 20, 2020. Mother testified at trial that prior to the Child's birth, she was incarcerated for a probation violation. Soon after Child's birth, the Cabinet for Health and Family Services (Cabinet), began receiving

reports with concerns of domestic violence, substance use, and inappropriate parenting. Mother also described incidents of domestic violence involving Child's father, who consented to the termination of his parental rights. As a result of a domestic violence incident involving Child in July 2021, the Cabinet filed a petition for removal. The court granted the petition, and Child was placed in a foster care home. Mother's sole argument on appeal is that the family court "failed to recognize that [she] has made sufficient and sustained progress resulting in her ability to be unified with her child in the foreseeable future." For the following reasons, we affirm.

STANDARD OF REVIEW

We begin by noting a "trial court has wide discretion in terminating parental rights." *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014). As such, "our review is limited to a clearly erroneous standard which focuses on whether the family court's order of termination was based on clear and convincing evidence." *Id.* (citing CR¹ 52.01). "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.S.S. v. J.E.B.*, 638 S.W.3d 354, 360 (Ky. 2022) (citation omitted). "Pursuant to this standard, an

¹ Kentucky Rules of Civil Procedure.

appellate court is obligated to give a great deal of deference to the family court's findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them." *Cabinet for Health and Family Services v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). "Because termination decisions are so factually sensitive, appellate courts are generally loathe [sic] to reverse them, regardless of the outcome." *D.G.R. v. Commonwealth, Cabinet for Health and Family Services*, 364 S.W.3d 106, 113 (Ky. 2012).

ANALYSIS

KRS² 625.090 governs the termination of parental rights in Kentucky. Before terminating parental rights, a court must find by clear and convincing evidence the following: (1) the child is or has been adjudged abused or neglected as defined in KRS 600.020; (2) termination is in the child's best interest; and (3) at least one of the conditions in KRS 625.090(2)(a)-(k) exists. Here, it is undisputed that Child was abused and neglected. The family court determined that termination of parental rights was in Child's best interest pursuant to KRS 625.090(3) for the following reasons:

The Cabinet for Health and Family Services has attempted to render services either directly or by referral in an effort to keep the family together including working with the family while the child was placed in foster care. Respondent mother failed to engage in services and

² Kentucky Revised Statutes.

failed to demonstrate lasting parental changes or improvements.

The child has made improvements since coming into foster care and these improvements are expected to continue.

Lastly, the family court made affirmative findings in accordance with KRS

625.090(2):

(a) That the parent has abandoned the child for a period of not less than ninety (90) days;

...

(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; [and]

...

(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[.]

Mother does not take issue with the first and third prongs of our analysis. Rather, she specifically argues that the court failed to properly consider the following best interest of the child factors under KRS 625.090(3):

(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.³

In support, Mother cites her trial testimony that she has been attending AA meetings at the Life Learning Center and that she "has shown through her efforts, her resolve and desire to be reunited with her child." Mother also emphasizes the severity of the result in cases terminating parental rights and concludes that "[t]his child deserves to know his mother and it does not seem appropriate that he should be permanently removed from his mother."

In contrast, a summary of the family court's findings are as follows:

1) Child has resided in foster care since July 21, 2021; 2) a social worker testified that Mother has not provided any type of food or clothing or shelter for the Child and has not sent anything to assist in his care; 3) Child is in the same home with his sibling, he is doing well there, and that if termination is granted, his foster parents wish to adopt him; 4) the Cabinet has attempted to render services either

³ Mother does not develop her argument under subsection (f).

directly, or by referral, in an effort to keep the family together; 5) Mother failed to engage in those services, and has failed to demonstrate lasting parental changes or improvements, considering the age of the child; 6) there are no further available and reasonable reunification services which may be offered by the Cabinet that would be likely to bring about lasting parental adjustment enabling a return of Child to the parents; and 7) Child has made improvements since coming into foster care and these improvements are expected to continue.

In its findings of facts and conclusions of law, the family court also referenced Mother's testimony that she recently "completed a program at the life-learning center and is active in their programs." Therefore, the court considered her lack of effort to make progress in a manner that would necessitate reunification with the Child, as well as her own testimony concerning her attempt at improvement. *See* KRS 625.090(3)(c) and (d). And as previously stated, the court found that the Child has made improvements since being placed in foster care, and that these improvements are expected to continue. *See* KRS 625.090(3)(e).

The trial testimony also indicates that Mother has had issues with her mental health and substance abuse treatment, including being discharged from a substance abuse program for aggressive behavior. And there are numerous instances where Mother has failed to cooperate with the underlying judicial proceedings and the Cabinet's unification plan. She has also not maintained stable

housing or employment, financially supported the Child, or maintained regular contact with the Child. Therefore, having considered the record and the law, we conclude that the family court's findings were supported by substantial evidence.

CONCLUSION

Based on the foregoing, the Kenton Family Court's judgment terminating Mother's parental rights is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Martin A. Haas, Jr.
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BRIEF FOR APPELLEE
COMMONWEALTH OF
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