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Commonwealth of Kentucky
Court of Appeals

NO. 2023-CA-0150-ME

N. H.

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE MONICA K. MEREDITH, JUDGE
ACTION NO. 22-AD-00013

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; A.S., III; AND
I.J.R.S., A CHILD

APPELLEES

AND

NO. 2023-CA-0152-ME

N. H.

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE MONICA K. MEREDITH, JUDGE
ACTION NO. 22-AD-00014

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND

FAMILY SERVICES; A.S., III; AND,
A.L.S. IV A CHILD

APPELLEES

AND

NO. 2023-CA-0154-ME

N. H.

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE MONICA K. MEREDITH, JUDGE
ACTION NO. 22-AD-00016

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; A.S., III; AND
S.H.D.S., A CHILD

APPELLEES

AND

NO. 2023-CA-0156-ME

N. H.

APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
FAMILY COURT DIVISION
HONORABLE MONICA K. MEREDITH, JUDGE
ACTION NO. 22-AD-00018

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; A.S., III; AND
H.E.S., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: THOMPSON, CHIEF JUDGE; GOODWINE AND TAYLOR,
JUDGES.

TAYLOR, JUDGE: N.H. (Mother) appeals from Findings of Fact, Conclusions of Law and Order Terminating Parental Rights and Judgment of Termination entered by the Bullitt Circuit Court, Family Court Division (family court) on December 28, 2022, in each case involving her four minor children. We affirm.¹

BACKGROUND

This case involves four minor children: I.J.R.S., H.E.S., S.H.D.S., and A.L.S. IV. The parties have a history with the family court and the Cabinet for Health and Family Services (Cabinet) dating back to 2019. Initially, Mother filed a petition for emergency custody against Father in March 2019, which was denied by the family court. In May 2019, Father filed a petition against Mother alleging physical abuse of the children. Father was awarded custody of the children and the children were eventually adjudicated abused or neglected by Mother.

¹ Father's parental rights were also terminated. He did not appeal.

In August 2019, three separate petitions were filed by Mother, maternal grandmother, and the Cabinet, respectively, regarding allegations of sexual abuse of I.J.R.S. by a cousin, who was also a minor. The parties eventually agreed that Father could continue to have custody of the children provided he moved out of the paternal grandmother's home, where the cousin accused of sexually abusing I.J.R.S. frequently visited.

In May 2020, the Cabinet filed a sixth petition for emergency custody because the youngest child, H.E.S., was diagnosed with failure to thrive by his pediatrician. Custody of the children was awarded to the Cabinet and they were placed into foster homes, where they have since remained. The record reflects that, at the time the Cabinet filed the sixth petition in 2020, Mother was not compliant with her case plan and court orders, including drug screening and refraining from substance abuse. In 2020, at the direction of the Cabinet, Mother completed a protective parenting program. And, by April 2021, Mother was providing consistent and clean drug screens. Due to her progress, Mother was granted unsupervised visitation with the children.

The unsupervised visits were short-lived. After the first visit, I.J.R.S. reported an incident of sexual abuse.² The record indicates I.J.R.S. and her sibling,

² Mary Green, Treatment Director for Heritage Children's Services, testified that I.J.R.S. reported abuse by a male friend of Mother. Although she provided a detailed description of the abuse itself, she did not provide a detailed description of the perpetrator.

S.H.D.S., had already been sexually acting out since May 2020, including perpetrating sexual acts on their male siblings. The behavior was so disruptive that I.J.R.S. was removed from the foster home she shared with her siblings. Although S.H.D.S. remained in the same foster home at the time of the termination hearing, cameras were in use in the children's bedrooms to attempt to stop any further acts of sexual abuse by S.H.D.S. toward her siblings. Further, in June 2021, S.H.D.S. broke her collarbone while in Mother's care. Mother was subsequently restricted to supervised visitation with her children at the Cabinet's office. In August 2021, due primarily to the sexually aggressive behavior of I.J.R.S. and S.H.D.S., the children's therapist at Heritage Children Services recommended that visitation with both parents cease. The Cabinet followed this recommendation.

Mother underwent a parenting capacity evaluation and a report was submitted on January 31, 2022. The Cabinet filed petitions for termination of parental rights for each of the children on March 2, 2022. On April 29, 2022, the Cabinet provided Mother an updated case plan, based in part on the recommendations from the parenting capacity evaluation. The updated case plan provided that Mother must complete Parenting After Abuse Program classes (protective parenting classes) with Seven Counties Recovery Services, in accordance with the recommendation of the children's therapist, which Mother declined to do. Although Mother did continue to provide some negative drug

screens, she also continued to no-show for some tests and tested presumptively positive for amphetamines and/or methamphetamine on multiple occasions.³ From July 27 – August 30, 2022, Mother was a no-show for six drug screens. She also failed to contact the Cabinet from August – October 2022. When the Cabinet finally made contact during a home visit in October 2022, a hair follicle test was requested, but Mother refused. A urine screen was completed on October 18, 2022, and was positive for alcohol, according to the testimony of Cabinet worker Aylissa Thomas. The family court conducted an evidentiary hearing on November 18, 2022, and subsequently entered an order terminating Mother’s parental rights to each of her children on December 28, 2022.⁴ This appeal followed.

STANDARD OF REVIEW

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:

³ The laboratory reports contained in the record before us define a presumptive positive as a “preliminary unconfirmed analytical result indicating presence of drug or drug class above the applicable cutoff.”

⁴ Mother did not testify at the evidentiary hearing on November 18, 2022. As the family court duly noted, the allegations made by the Cabinet for Health and Family Services (Cabinet) at the hearing and the evidence presented in support thereof were unrefuted by Mother.

“(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).

The applicable standard of appellate review by the court of findings of fact made by a family court in termination of parental rights proceeding is the clearly erroneous standard set forth in Kentucky Rules of Civil Procedure (CR) 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) (citations 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). Our review proceeds accordingly.

ANALYSIS

In this appeal, Mother’s primary arguments center on her contention that the necessary factor(s) under KRS 625.090(2) were not supported by clear and

convincing evidence.⁵ Of the eleven factors provided in the statute, the family court found the following:

(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;

....

(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[.]

Mother points out she was substantially compliant with her case plan and she should not be penalized for failure to complete a second round of

⁵ Mother does not contest on appeal that the children were neglected as required under Kentucky Revised Statutes (KRS) 625.090(1)(a). Likewise, while Mother briefly states in her brief that termination of her parental rights is not in the children's best interest, she does not expand that argument in relation to the factors the family court considered pursuant to Kentucky Revised Statutes 625.090(3)(a) – (f). Therefore, we must assume the family court did not err in its analysis on these issues.

protective parenting classes in 2022 because completion of the required accountability statement would have violated her Fifth Amendment right against self-incrimination. She also asserts she was not given an opportunity “to provide essential parental care and protection” because visitation was ceased on the recommendation of the children’s therapist. Mother’s Brief at 13. She further argues she produced negative drug screens for more than one year as evidence of compliance with her case plan. Mother’s arguments are unavailing.

Although Mother did complete many of the tasks required in her original case plan, she failed to complete the second round of protective parenting classes and consistently failed to show for testing and produce clean drugs screens in 2022. We need not reach Mother’s Fifth Amendment argument because the Cabinet provided her an opportunity for unsupervised visits in 2021 with the children even before the second round of protective parenting classes – and the required accountability statement – became a part of her case plan. However, after the first unsupervised visit, there was a report of sexual abuse to I.J.R.S. This was in addition to disclosures made by the children that they had witnessed sexual acts between Mother and her paramour.⁶ Soon following the alleged sexual abuse to I.J.R.S., two of the children sustained injuries while in Mother’s care, including a

⁶ The dates of these incidents are unclear from the record before us.

broken collar bone by S.H.D.S. And, Mary Green, Treatment Director for Heritage Children's Services, testified that involving Mother in therapy for the sexually aggressive behavior displayed by I.J.R.S. and S.H.D.S. could retrigger these negative behavior traits, which is why the decision was made to cease visitation and not begin family therapy.⁷

Although Mother had completed some protective parenting classes in 2020 prior to her unsupervised visitation with the children in 2021, it is clear from the record before this Court that she failed to utilize any knowledge or skills therefrom and again failed to protect her children.⁸ Merely attending the protective parenting classes was a “minimal threshold step[], and the results did not support reunification.” *R. M. v. Cabinet for Health and Fam. Servs.*, 620 S.W.3d 32, 42 (Ky. 2021). The Cabinet concluded that the initial protective parenting classes were ineffective and thus ordered additional classes in 2022 which she failed to attend. Accordingly, the family court's conclusion that Mother is incapable of providing essential parental care and protection for the children with no reasonable

⁷ Ms. Green also testified she was actively seeking enhanced therapeutic services for the children regarding sexual abuse and sexualized behaviors, but at the time of the termination hearing, the young age of the children was a barrier to receiving approval for those services.

⁸ Mother's original case plan in 2020, stated Mother “will complete protective parenting classes through Centerstone, will be an active participant, and will practice the skills learned during contact with the children.” It is unclear from the record when Mother completed her first round of protective parenting classes, but Cabinet for Health and Family Services does not dispute that she did complete some classes prior to receiving unsupervised visitation in 2021.

prospect for improvement under KRS 625.090(2)(e) is supported by the record in this case.

Turning to KRS 625.090(2)(g), we note there was no evidence presented regarding child support orders or noncompliance on Mother's part. However, there was also no evidence presented that Mother provided support to the children regardless of whether orders were in place. "Kentucky law imposes a duty upon a parent – and not the state – to support his or her child regardless of whether or not a child support order has been entered against the parent." *C.A.W. v. Cabinet For Health & Fam. Servs., Commonwealth*, 391 S.W.3d 400, 406 (Ky. App. 2013) (citation omitted). In fact, the only evidence presented was the testimony of the Cabinet worker Aylissa Thomas, who stated that Mother brought snacks and gifts for the children to visits. Otherwise, there was no evidence that Mother provided essential food, clothing, shelter, medical care, or education for the children during 2021-2022. Because Mother did not testify and did not call any witnesses, the evidence from the Commonwealth is unrefuted. Accordingly, we discern no error.

We now turn to KRS 625.090(2)(j). Although Mother concedes the children were in the custody of the Cabinet for fifteen of the last forty-eight months preceding the filing of the petitions for termination of parental rights, she argues it was the behavior of the children, rather than her own actions, that has

resulted in the children being in the Cabinet custody for this length of time. In other words, Mother continues to fail to accept accountability or responsibility for the care of her children. The statute does not differentiate between any reasons *why* a child might be in the Cabinet custody for a minimum of fifteen of the forty-eight months preceding the filing of the petition, nor does it contain language that tolls the applicable time frame due to unresolved behavioral or mental health issues of the children involved. “The goal of the statute is to prevent children from lingering in foster care.” *Cabinet for Health and Fam. Servs. v. H.L.O.*, 621 S.W.3d 452, 464 (Ky. 2021) (citations omitted). And, based on the evidence presented, we must agree with the Cabinet that Mother’s conduct contributed to the negative behavior exhibited by the children. Thus, we again find no error in the family court’s finding that the ground supporting termination set forth in KRS 625.090(2)(j) was established by the evidence presented.

Accordingly, for the foregoing reasons, the orders terminating Mother’s parental rights to her four children and Judgment of Termination entered by the Bullitt Circuit Court, Family Court Division in each case, are affirmed.

ALL CONCUR.

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