

RENDERED: JANUARY 12, 2024; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2023-CA-0895-ME

S.M.

APPELLANT

v.

APPEAL FROM KENTON FAMILY COURT
HONORABLE THOMAS A. RAUF, JUDGE
ACTION NO. 23-AD-00006

CABINET FOR HEALTH AND
FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY;
S.N., AN INFANT CHILD; AND W.N.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CETRULO, LAMBERT, AND TAYLOR, JUDGES.

CETRULO, JUDGE: This is an appeal from a judgment terminating parental rights of the biological mother and father to their minor child. Only the mother, S.M., has appealed. Having reviewed the record on appeal, we affirm the Kenton Family Court.

BACKGROUND

This action arose out of a Petition for Termination of Parental Rights filed by the Cabinet for Health and Family Services (“the Cabinet”) against the mother, S.M. (“Mother”), and father, W.N. (“Father”), biological parents of S.N. (“Child”), born in June 2014. The Cabinet had become involved with this family on May 24, 2022, after the Covington Police Department arrested Mother for possession of methamphetamine and drug paraphernalia, and Child was present at the time of Mother’s arrest. A dependency, neglect, and abuse (“DNA”) action was commenced. The Cabinet worker, Taylor Graham, testified that the Cabinet filed a petition for emergency custody because Father was incarcerated at the time of Mother’s arrest, and no other relatives were available. The Kenton Family Court granted that petition and Child was placed in foster care, where she has remained.

While custody remained with the Cabinet, the family court ordered Mother to participate in drug screens and cooperate with the Cabinet. Mother participated in a single drug screen at a detention center in May 2022 and was positive for cocaine, fentanyl, and methamphetamine. The Cabinet held a ten-day meeting to develop a case plan with Mother, but she failed to attend that meeting.

On June 23, 2022, Mother appeared for the adjudication hearing in the DNA action, and she stipulated to a finding of neglect. Thereafter, according to

Cabinet Worker Graham, the Cabinet continued to attempt to negotiate a case plan with Mother by letters, but she failed to respond to those letters. A disposition hearing was held in July 2022, and a motion for contempt was filed against Mother due to her lack of compliance with substance abuse treatment and a positive drug screen. Mother failed to appear for the disposition hearing, and the family court issued a warrant.

Over the next several months, Mother failed to provide proof of completion of any case plan services to the Cabinet. Additionally, Mother did not visit with Child or contact her or provide any support or assistance. Due to the lack of progress, the family court waived the Cabinet's obligation to provide reasonable efforts to Mother. This termination action was filed in January 2023, and the matter was set for hearing in June 2023.

At the time of trial, Mother was in a correctional rehabilitation facility in Ohio. She had been there for 60 days. Mother testified that she participated in mental health, substance abuse, and parenting services while incarcerated and that upon her release, she would enter a sober living facility. Mother testified that she had been sober for at least 90 days. Cabinet Worker Graham testified to her opinion that, due to Child's significant progress while in foster care, it would not be in Child's best interest to wait for Mother to be released from incarceration and work a case plan. Moreover, Cabinet Worker Graham testified that Child has

expressed her desire to remain in the foster home. Based on the testimonial and documentary evidence presented at the hearing, the family court entered Findings of Facts and Conclusions of Law and Judgment Terminating Parental Rights on June 28, 2023. Mother now appeals the family court’s decision, arguing simply that the family court failed to recognize Mother’s progress and determine whether termination of her parental rights was in the child’s best interest under Kentucky Revised Statute (“KRS”) 625.090.

STANDARD OF REVIEW

In reviewing a termination of parental rights action, we must give due regard to the trial court’s opportunity to judge the credibility of the witnesses.

C.H. v. Cabinet for Health & Fam. Servs., 399 S.W.3d 782, 788 (Ky. App. 2013) (quoting *Vinson v. Sorrell*, 136 S.W.3d 465, 470 (Ky. 2004)). Furthermore, under the clearly erroneous standard, “based upon clear and convincing evidence, [] the findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings.” *W.A. v. Cabinet for Health & Fam. Servs., Commonwealth*, 275 S.W.3d 214, 220 (Ky. App. 2008).

Involuntary termination of parental rights actions are governed by KRS 625.090.

KRS 625.090 provides for a tripartite test which allows for parental rights to be involuntarily terminated only upon a finding, based on clear and convincing evidence, that the following three prongs are 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)-(k) exists.

Cabinet for Health & Fam. Servs. v. K.H., 423 S.W.3d 204, 209 (Ky. 2014).

ANALYSIS

Here, Mother does not argue that the family court did not have substantial evidence that the child was neglected as defined in KRS 600.020(1).

Thus, we turn to the second prong – whether the termination of the parent's rights was in the child's best interests. *See id.*

In conducting a best interest analysis, a family court must consider the several factors enumerated in KRS 625.090(3). Those factors include:

(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.

KRS 625.090(3).

In analyzing whether termination was in the best interest of the child, the family court made several relevant findings, including the following: (1) Mother appeared for one Annual Permanency Review via Zoom but otherwise had not worked any type of case plan; (2) Neither parent had provided any type of parental care for Child, called to see how Child was doing, nor sent any type of food or clothing, nor visited with Child since she had been in cabinet custody; and (3) Child was doing very well in her current placement. The Cabinet worker testified to her personal observations of Child's bond with the family and her desire to remain there and be adopted.

With all these findings in the family court's written decision, we cannot say it clearly erred in concluding that termination of Mother's parental rights was in the best interest of Child. To the contrary, there is substantial evidence in the record to support the family court's conclusion. While we applaud

Mother's engagement in treatment, as did the family court, she admittedly had a lot to accomplish before she would ever be able to care for Child, and she had failed to accomplish any of the steps required of her before commencement of the termination proceedings.

Finally, the family court must find at least one of the grounds of parental unfitness provided by KRS 625.090(2). The statute only requires the family court to find the existence of one ground to support termination. However, the family court found that three separate grounds supported termination under KRS 625.090(2):

- a. Respondent parents have abandoned the child for a period of not less than ninety (90) days.
- b. Respondent parents, for a period of not less than six (6) months, continuously or repeatedly failed or refused to provide or proved to be substantially incapable of providing essential parental care and protection for the child and there is no reasonable expectation of improvement in parental care and protection considering the age of the child.
- c. Respondent parents, for reasons other than poverty alone, continuously, or repeatedly failed to provide or proved to be 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 contend that any of these findings were not supported by evidence, but simply argues that she believes Child would do well if permitted to have a relationship with Mother. That may be true, but that alone is not a basis to reverse the family court's decision, which included its consideration of the tripartite test required under KRS 625.090.

Ultimately, the evidence at trial proved that Mother had failed to participate in any case plan, abstain from criminal activity, maintain contact with the child, establish stable housing or employment, or demonstrate any ability to do so in the reasonably foreseeable future.

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*. If the [family] court's factual findings are not clearly erroneous and the legal conclusions are correct, we are limited to determining whether the [family] court abused its discretion in applying the law to the facts.

Cabinet for Health & Fam. Servs. v. H.L.O., 621 S.W.3d 452, 462 (Ky. 2021)
(citation omitted) (citing *L.D. v. J.H.*, 350 S.W.3d 828, 829-30 (Ky. App. 2011)).

Having reviewed the record and being otherwise sufficiently advised, we conclude that substantial evidence supports the family court's findings of fact and that it did not clearly err in its decision to terminate Mother's parental rights. Accordingly, we affirm.

LAMBERT, JUDGE, CONCURS.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY.

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