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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2023-CA-1256-ME

I.T., MOTHER

APPELLANT

v. APPEAL FROM SHELBY FAMILY COURT
HONORABLE S. MARIE HELLARD, JUDGE
ACTION NO. 23-AD-00004

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; B.T., A MINOR
CHILD; AND T.T., NATURAL
FATHER

APPELLEES

AND

NO. 2023-CA-1257-ME

I.T., MOTHER

APPELLANT

v. APPEAL FROM SHELBY FAMILY COURT
HONORABLE S. MARIE HELLARD, JUDGE
ACTION NO. 23-AD-00005

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; A.T., A MINOR

CHILD; AND T.T., NATURAL
FATHER

APPELLEES

AND

NO. 2023-CA-1258-ME

I.T., MOTHER

APPELLANT

v. APPEAL FROM SHELBY FAMILY COURT
HONORABLE S. MARIE HELLARD, JUDGE
ACTION NO. 23-AD-00006

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; D.T., A MINOR
CHILD; AND T.T., NATURAL
FATHER

APPELLEES

AND

NO. 2023-CA-1259-ME

I.T., MOTHER

APPELLANT

v. APPEAL FROM SHELBY FAMILY COURT
HONORABLE S. MARIE HELLARD, JUDGE
ACTION NO. 23-AD-00007

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

CHILD; AND T.T., NATURAL
FATHER

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CALDWELL, CETRULO, AND ECKERLE, JUDGES.

CETRULO, JUDGE: Appellant I.T. (“Mother”), appeals the findings of fact, conclusions of law, and separate judgments of the Shelby County Family Court terminating parental rights to her four minor children. The biological father’s rights were also terminated, but he did not appeal. Having conducted an independent review of the entire record, we affirm each of the four judgments.

FACTUAL AND PROCEDURAL BACKGROUND

The four children were born between August 2011 and July 2016. The children first came to the attention of the Cabinet for Health and Family Services (“Cabinet”) in 2021 when one of the children, diagnosed with severe autistic spectrum disorder, was in a roadway, urinating outside, unsupervised, and with her clothing around her neck. Mother was found sleeping and difficult to rouse. The home was described as a mess with trash, clothing, and food strewn about and hazardous materials inside and outside of the house that were easily accessible to the children. There were no beds for the children, very little food in the home, and it was reported that the children had been left home alone the prior

evening. Although of school age, the oldest child – also diagnosed as severely autistic and non-verbal – was not enrolled in any type of schooling. The two younger children were also very dirty and found in soiled clothing. Emergency custody was granted to the Cabinet on September 16, 2021, and the children have remained in the custody of the Cabinet since that time.

A temporary removal hearing was conducted on September 20, 2021, and Mother was ordered to submit to hair follicle and urine tests and to pay child support. An adjudication hearing was conducted on January 26, 2022, after two continuances. At that time, the family court made a finding of abuse or neglect. A disposition hearing was held on February 16, 2022, and all four children were formally committed to the Cabinet. Mother was ordered to cooperate with the Cabinet, complete substance abuse and mental health assessments and parenting classes, and comply with previously ordered drug screens and orders to pay child support. Review hearings were conducted on May 18, August 24, and November 30, 2022. According to each of those reviews, the children were consistently demonstrating progress in the Cabinet's care, despite their severe limitations, many behavioral issues, and cognitive delays. Mother consistently failed to complete drug screens, attend parenting classes, or pay child support. In the summer of 2022, Mother was found in contempt for failure to pay child support. Mother stipulated to those charges, and served 179 days in jail.

The Cabinet changed its permanency plan from reunification to adoption in August 2022. The petitions to terminate parental rights were filed in January 2023. In June 2023, Mother was arrested for possession of controlled substances, marijuana, drug paraphernalia, and firearms. Through that criminal action, she was referred to a substance abuse treatment facility, but left against medical advice after one day.

As of the date of trial on July 13, 2023, Mother had not complied with the court-ordered drug screen protocol, had not completed the counseling or treatment programs, had not paid child support, and had not visited with the children in over a year and a half.¹ She had not been able to maintain stable or suitable housing, and the Cabinet had no contact with Mother from November 2022 until her arrest in June 2023.

Mother was present at the hearings and was represented by counsel. The family court heard testimony from the Cabinet worker and considered exhibits, including various reports from a court-appointed special advocate, medical records, and Cabinet reports. The family court noted that the children had been placed in either foster homes or institutions as dictated by their many physical/social and behavioral needs and that each of them were significantly

¹ Because of Mother's continued non-compliance with court orders and Cabinet goals, the family court suspended visitation with the children in December 2021 and never reinstated it.

improving. The Cabinet worker outlined the efforts that had been made with the parents before the goal was changed from reunification to adoption in late August after non-compliance with the court orders. Mother testified to the contrary, stating that she had asked for assistance from the Cabinet but had not been provided any help. She and the father testified that they were planning on moving into a different residence at the time that the children were removed from their care. They claimed that the other residence had more of their personal items and beds for the children. They also testified that they both intended to enter substance abuse treatment on the day following the hearing.

The family court entered its findings and conclusions of law as to each child, finding as a matter of law that the children were neglected as defined in Kentucky Revised Statute (“KRS”) 600.020(1); that it was in the best interest of the children that Mother’s parental rights be terminated; that the children had been abandoned for more than 90 days; that Mother had failed to provide for them for more than six months; and that there was no reasonable expectation of improvement in Mother’s situation or conduct in the foreseeable future. The family court also specifically ruled that the Cabinet had attempted to render reasonable services to the family but that Mother had failed to comply and cooperate, leaving the children in foster care for 16 of the most recent 48 months

prior to the filing of the petition. Judgment terminating Mother's rights was entered on each child's case, and this appeal followed.

Counsel for Mother submitted an *A.C.* brief indicating that she could find no meritorious issues that could be presented on her behalf in this appeal.

A.C. v. Cabinet for Health & Family Servs., 362 S.W.3d 361 (Ky. App. 2012).

Mother was given an opportunity to file a supplemental *pro se* brief raising any issues she deemed meritorious, and she has not filed any supplemental pleading.

STANDARD OF REVIEW

The applicable standard of review in a termination of parental rights proceeding is the clearly erroneous standard set forth in Kentucky Rule of Civil Procedure 52.01. *M.E.C. v. Commonwealth, Cabinet for Health & Fam. Servs.*, 254 S.W.3d 846, 850 (Ky. App. 2008). Pursuant to that standard, "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). Substantial evidence has been defined as evidence that a reasonable person "would accept as adequate to support a conclusion[.]" *Moore v. Asente*, 110 S.W.3d 336, 353-54 (Ky. 2003) (citations omitted).

ANALYSIS

There is substantial evidence to support each of the family court's conclusions in regard to the termination of parental rights proceedings. The A.C. brief does not assert any failure by the family court to find the existence of one or more of the 11 grounds of (a) through (k) contained in KRS 625.090(2). The statute requires the family court to find only one of those grounds exists by clear and convincing evidence. *Commonwealth, Cabinet for Health & Fam. Servs. v. T.N.H.*, 302 S.W. 3d 658, 663 (Ky. 2010). Here, the family court specifically found that four grounds existed under KRS 625.090(2). The evidence at trial supported the family court's findings that the children have remained in foster care for 16 cumulative months out of 48 months preceding the filing. *See* KRS 625.090(2)(j). The court found that Mother had failed to maintain stable housing, participate in case plan services, and abstain from drug or alcohol use or a criminal lifestyle. *See* KRS 625.090(2)(a), (e), and (g). Lastly, the family court noted that Mother had been substantially incapable of providing support or parental protection for a period of more than six months, and there was no reasonable expectation of improvement considering the ages of the children. *See* KRS 625.090(2)(e) and (g).

There is no assertion that the children were improperly found to be abused or neglected as required under KRS 625.090(1)(a)1.-2. Indeed, the family

court made an independent and additional finding of neglect at the termination proceedings, even after the prior determination in January 2022. Finally, the family court specifically found that termination was in the best interests of the children, as required by KRS 625.090(1)(c). Based upon all of the evidence contained in the record as to the status of the children when removed and their improvements since removal, there is more than adequate evidence contained within the record to support that finding.

While there was evidence that the children have not been placed together due to their profound developmental delays, all four have improved and are now receiving services. Although Mother testified that the residence that the children were removed from was not their permanent residence, that was not proven. The Mother also testified that she was not given sufficient help to be able to care for these children, contrary to the testimony of the Cabinet worker. However, the family court was entitled to weigh the credibility of all of the witnesses and consider all of the evidence presented in exhibits regarding the children's situation. We give due regard to the opportunity of the family court to judge the credibility of witnesses. *C.H. v. Cabinet for Health & Fam. Servs.*, 399 S.W.3d 782, 788 (Ky. App. 2013) (citation omitted).

In short, all KRS 625.090 requirements which must be met before a court can involuntarily terminate a parent's rights were met here. The Shelby

Family Court correctly determined that the Cabinet properly petitioned for termination and met the burden of proving all requirements of KRS 625.090 by clear and convincing evidence. Substantial evidence exists to support those findings and these judgments. Accordingly, the judgments are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Carrie Cotton
Frankfort, Kentucky

**BRIEF FOR APPELLEE
COMMONWEALTH OF
KENTUCKY, CABINET FOR
HEALTH AND FAMILY
SERVICES:**

Leslie M. Laupp
Covington, Kentucky