

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA


COURT OF APPEAL

FIRST CIRCUIT

2014 CJ 1808

IN THE INTEREST OF K.A.L., A.U.L., K.L.L., AND K.Y.L.

Judgment Rendered: MAY 19 2015

 APPEALED FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
PARISH OF ST. TAMMANY
STATE OF LOUISIANA
DOCKET NUMBER 8733JJ

HONORABLE WILLIAM J. BURRIS, JUDGE

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BEFORE: McDONALD, CRAIN, AND HOLDRIDGE, JJ.

Holdridge, J. concurs in the result.

McDONALD, J.

This is an appeal from a trial court judgment terminating the parental rights of the father, J.L., to his youngest child, K.Y.L.¹ The background of this case is set out in our previous opinion, **In the Interest of K.A.L., A.U.L., K.L.L. and K.Y.L.**, 13-0731 (La. App. 1 Cir. 9/16/13), 2013 WL 5230690 (unpublished) as follows:

The Department of Children and Family Services (DCFS) took four minor children, K.A.L., A.U.L., K.L.L., and K.Y.L. (an infant) into custody pursuant to an instanter order issued on January 18, 2012, after K.Y.L. was discovered wrapped in a towel and lying outside on the back porch of the home crying. The affidavit in support of the instanter order reported that K.L. [the children's mother] had given birth at home alone on January 16, 2012, and placed the child on the porch without seeking medical attention. K.Y.L. was found the next day and was hospitalized in a NICU where he was treated for low temperature and seizure activity and tested positive for amphetamines. The parents had a history of drug use and a tumultuous relationship, and K.L. had a history of mental health issues. The home was in disarray and the three children had head lice. K.L. was arrested for child desertion and second degree cruelty to a juvenile.

On January 25, 2012, the trial court signed an order of continued custody, finding that the children were in need of care and that continued custody was necessary for their safety and protection. J.L. [the children's father] was ordered to submit to a drug screen, and K.L. was ordered to complete a psychological assessment. DCFS placed the three older children with their paternal grandparents, and K.Y.L. was placed in a certified foster home.

After a hearing on April 10, 2012, all four children were adjudicated in need of care, and by trial court judgment dated April 18, 2012, the children were maintained in their placements with a goal of reunification. After a six-month case review hearing, the trial court continued the placement plan in the custody of DCFS with a goal of reunification.

At the twelve-month permanency hearing, the trial court determined that J.L. and K.L. had made inadequate progress toward alleviating or mitigating the causes necessitating placement of the children in foster care and that reunification was impossible. Nine months after the children were removed from the parents' home, the paternal grandparents had determined they could not provide a long-term home for the three oldest children. At the time of the permanency hearing, K.A.L. (who was nearly 18), had been living

¹ To protect and maintain the privacy of the minor children involved in this proceeding, we use the initials used in our prior opinion. See Uniform Rules-Courts of Appeal, Rules 5-1(a) and 5-2; **In the interest of K.A.L., A.U.L., K.L.L. and K.Y.L.**, 13-0731 (La. App. 1 Cir. 9/16/13), 2013 WL 5230690 (unpublished).

with a paternal great-aunt, A.U.L. had been living with the maternal grandparents for several weeks, and K.L.L. had been residing in a certified non-relative foster home for two months.

The trial court approved the case plan providing for the two older children, K.A.L. and A.U.L., to have an alternative permanent living arrangement (K.A.L. with the paternal-great aunt and A.U.L. with the maternal grandparents) and a change of goal for K.L.L. and K.Y.L. from reunification to adoption.

Thereafter, the oldest child, K.A.L., aged out of DCFS care, and A.U.L., fifteen years old, and K.L.L., eight years old, were returned to their father's custody. K.Y.L., now age three, remains in foster care. K.L. has been serving a ten-year prison sentence for the child desertion and second-degree cruelty to a juvenile charges.

On June 18, 2014, K.Y.L.'s foster parents, B.R. and R.R., filed a petition to terminate parental rights. B.R. and R.R. asserted that for more than one year, the permanent plan for K.Y.L. had been adoption, however, DCFS had failed to petition for termination of K.Y.L.'s parents' rights, therefore, pursuant to La. Ch. C. art. 1004(G), they petitioned for the termination of J.L.'s parental rights so that K.Y.L. would be freed for adoption by them. K.Y.L. had been in their care since approximately January 24, 2012. By amended and supplemental petition, B.R. and R.R. also sought termination of K.L.'s parental rights to K.Y.L.

At a termination of parental rights hearing on September 3, 2014, K.L. stipulated to the termination of her parental rights to K.Y.L. Thereafter, the trial court issued written reasons for judgment setting forth its finding that K.Y.L. had been in state custody for more than one year, and that the foster parents and DCFS had presented clear and convincing evidence that J.L. failed to complete his case plan, and that it was in K.Y.L.'s best interest that J.L.'s parental rights to K.Y.L. be terminated and that K.Y.L. be certified for adoption. The trial court signed a judgment terminating both K.L.'s and J.L.'s parental rights to K.Y.L.

In this appeal, J.L. asserts that the trial court erred in terminating his parental rights to K.Y.L., and makes the following assignments of error:

1. The trial court manifestly erred in finding by “clear and convincing evidence” that appellant failed to substantially comply with the requirements of his [DCFS] case plan as a basis for termination of his parental rights to his child, [K.Y.L.]
2. The trial court manifestly erred in failing to find by “clear and convincing evidence” that the [DCFS] failed to provide any assistance to appellant in finding suitable housing.
3. The trial court manifestly erred in finding by “clear and convincing evidence” that there was no reasonable expectation of significant improvement in appellant’s behavior or condition in the near future.

THE LAW AND ANALYSIS

Title X of the Louisiana Children’s Code governs the involuntary termination of parental rights. **State ex rel. S.M.W.**, 00-3277 (La. 2/21/01), 781 So.2d 223, 1232. Permanent termination of the legal relationship existing between natural parents and children is one of the most drastic actions the State can take against its citizens. However, the primary concern of the courts and the State remains to secure the best interest for the child, including termination of parental rights if justifiable statutory grounds exist and are proven. **State ex rel. S.M.W.**, 781 So.2d at 1238.

The grounds for termination of parental rights are set forth in Children’s Code article 1015, and include:

(4) Abandonment of the child by placing him in the physical custody of a nonparent, or [DCFS], or by otherwise leaving him under circumstances demonstrating an intention to permanently avoid parental responsibility by any of the following:

* * * * *

(b) As of the time the petition is filed, the parent has failed to provide significant contributions to the child’s care and support for any period of six consecutive months.

* * * * *

(5) Unless sooner permitted by the court, at least one year has elapsed since a child was removed from the parent's custody pursuant to a court order; there has been no substantial parental compliance with a case plan for services which has been previously filed by the [DCFS] and approved by the court as necessary for the safe return of the child; and despite earlier intervention, there is no reasonable expectation of significant improvement in the parent's condition or conduct in the near future, considering the child's age and his need for a safe, stable, and permanent home.

In order to terminate parental rights the petitioners need to establish at least one of the statutory grounds set out in La. Ch.C. art. 1015 by clear and convincing evidence. **State ex rel. M.N.H.**, 11-355 (La. App. 3 Cir. 10/19/11), 2011 WL 4953072, *4 (unpublished). Even after finding that one or more of La. Ch.C. art. 1015's statutory grounds has been established, the trial court should not terminate a parent's rights unless it determines that the termination is in the best interests of the child. La. Ch.C. art. 1037(B), **State ex rel. G.J.L.**, 00-3278 (La. 6/29/01), 791 So.2d 80, 86. It is well-settled that an appellate court cannot set aside a juvenile court's findings of fact in the absence of manifest error or unless those findings are clearly wrong. **State ex rel. S.M.W.**, 781 So.2d at 1233 (quoting **In re A.J.F.**, 00-0948 (La. 6/30/00), 764 So.2d 47, 61); **State ex rel. A.T.**, 06-0501 (La. 7/6/06), 936 So.2d 79, 82-83.

A July 10, 2014 report by DCFS found that J.L. had failed to make paternal payments for May and June of 2014; that J.L. had not demonstrated an ability to maintain safe and stable housing, and while he had made some progress with his home, the environment was not suitable for a toddler. The report stated that while J.L. had been given a due date of March 31, 2014 to address all safety issues in the home and create a safe environment for K.Y.L., J.L. had failed to do so. The report further noted that when the case manager would pick up K.Y.L. to transport him for scheduled visitation with J.L., K.Y.L. would scream, cry, and cling to his foster parents. K.Y.L. cried at the beginning of each visit, and would cry out for "mommy" and "daddy". The report also noted that K.Y.L. began sucking his

thumb once the visits were changed from once a month at the DCFS office to once weekly at J.L.'s home.

At the termination of parental rights hearing, photos of J.L.'s home taken between March and August of 2014 were introduced, showing clutter and trash in the home and outside of the home. The pictures were taken at more than one residence. J.L. testified that approximately one month before the hearing, he moved into the home of a female friend who was in the process of buying the home from her parents. They had an arrangement where she paid the house note and J.L. paid the rest of the bills. J.L. testified that this arrangement was temporary. J.L. testified that the house had five bedrooms, and that there were six people living in the house, including himself.

J.L. testified that he was still married to K.L., and he believed the children should have a relationship with her, although he clarified that he expected K.L. to live with her father after her release in 2015. J.L. denied any knowledge of K.L. agreeing to surrender her parental rights to K.Y.L. J.L. testified that he was a brick mason and also did carpentry, and that he was on the job by 6:30 in the morning and returned home between 4:00 and 5:00 in the afternoon. J.L. testified that he would "figure out" how to pay for daycare for K.Y.L. J.L. testified that he was on probation for possession of heroin.² J.L. relied on his oldest daughter, K.A.L., for help with the other children, however, K.A.L. had moved in and out of J.L.'s home over the past few years and at one point was living out-of-state. The trial court noted in its reasons for judgment that it was fearful that K.Y.L. would be "right back in the situation" that he was in at birth. K.L.L.'s former foster mother, T.K., maintained visitation with K.L.L. after she returned to J.L.'s custody. T.K. testified that after K.L.L. was returned to J.L.'s custody, her condition had

² The record shows that J.L. was arrested on December 1, 2011 for theft, possession of heroin, and possession of buprenorphine. The offense was committed on March 2, 2011.

deteriorated, specifically, her hygiene and behavior had worsened to the point that at one point could T.K. could no longer handle weekend-long visits with K.L.L., because K.L.L. “wears me out”. Further, T.K. testified that K.L.L.’s health had worsened after she returned to J.L.’s custody, in particular, she was coughing constantly and had sores all over her body.

Cherie Erkel is a CASA volunteer who has been involved with this case since March 2012. Ms. Erkel testified that in the spring of 2014, the situation at J.L.’s home had declined, as things were breaking and not getting fixed, lights went out in the bedroom and bathroom and weren’t fixed, so there were no lights, and also a door was broken. Ms. Erkel testified that at an unscheduled visit, the home was at its worst, with “debris inside the house, dishes out, food out, uncleaned sheets on the beds and littered floors in the bathrooms . . . with toys and clothes . . . on the floor.” Ms. Erkel testified that J.L. acted like “more of a buddy” than a parent to A.U.L. and K.L.L., and that when A.U.L. and K.L.L. were playing “really rough” with K.Y.L., J.L. “kind of just didn’t, didn’t respond to it, and just let it happen to the point where someone was going to get hurt.” She testified that dangerous objects were left within K.Y.L.’s reach, specifically, a knife outside the front door, a pair of scissors and nail clippers on a coffee table. Ms. Erkel testified that since K.L.L.’s return to J.L.’s custody, she had missed “quite a few” counselor’s appointments, and that she had concerns for K.L.L.’s “overall well-being.” A.U.L., who had been returned to his father’s custody in November of 2013, was arrested for shoplifting in May 2014.

An August 2014 report from DCFS noted that K.Y.L. had started sucking his thumb after visits began taking place at J.L.’s home. The report further noted that K.Y.L. resisted leaving his foster parents when the case manager picked him up for the visits, and that K.Y.L. cried at the beginning of every visit, and would cry out for “mommy” and “daddy” at the visits. The report stated that J.L. had

made minimal progress toward his case plan, he had not demonstrated the ability to maintain a safe and stable home, and that the home was not appropriate for a toddler due to safety concerns. The report recommended that the goal of adoption be approved as the best interest for the safety and well-being of K.Y.L., and that visits with J.L. be reduced to once a month to limit the long-term detriment they might be causing K.Y.L.

After a thorough review of the record, we find no manifest error in the trial court's finding that J.L. had not cooperated with DCFS and showed no attempt to improve over time. The trial court noted that J.L. had clearly failed to clean up his home and declutter it to make it safe for a toddler despite being aware of what was needed, and clearly he was not interested in complying with that requirement. We further find no manifest error in the trial court's determination that there was no reasonable expectation of significant improvement in J.L.'s behavior or condition in the near future. Despite numerous parenting classes and reminders by DCFS that J.L. needed to clean up his home, J.L. failed to do so. Further, the record establishes that J.L. had failed to pay child support for K.Y.L. for nine months after he was taken into foster care, meeting the criteria for termination of parental rights pursuant to La. Ch.C. art. 1015(4)(b).³

In regard to J.L.'s assertion that the trial court manifestly erred in failing to find that DCFS failed to provide him any assistance in finding suitable housing, we note that J.L. stated that he could fix the houses where he lived, as he had carpentry and journeyman skills, and he testified that he made enough money to provide for all of his children.

³ This was established at the hearing by the child support payment record and the testimony of Trina Gibson, foster care supervisor.

There were ongoing concerns from DCFS about basic cleanliness and safety concerns for a toddler living in J.L.'s home. Ms. Erkel noted that when she arrived at the home, the family was often in the midst of cleaning and picking up, indicating that the actual condition of the J.L.'s home was generally *at its best* when the photographs were taken and when DCFS, CASA, and K.Y.L. visited. J.L. had three years from the time K.Y.L. was born to address these concerns. In the meantime, the record shows that K.Y.L. had formed close, loving bonds with his foster parents, whom he considers to be his parents, and that he was thriving in their care. Visits with J.L. and his siblings at J.L.'s home had caused such distress to K.Y.L. that DCFS was recommending that the visits be reduced to avoid permanent detriment to K.Y.L.

The primary concern of the courts remains to determine and insure the best interest of the child, which includes termination of parental rights if justifiable statutory grounds exist and are proven by the State. **State ex rel. J.M.**, 02-2089 (La. 1/28/03), 837 So.2d 1247, 1254. It is paramount that we place the child's best interests above that of his father. Children have the right to live in a safe, secure environment and to be reared by someone who is capable of caring for them. **State ex rel. J.M.**, 837 So.2d at 1256. Despite J.L.'s efforts, it is clear that he is not capable of meeting the needs of a toddler in addition to the two minor children, A.U.L. and K.L.L., he already has in his custody. See **State ex rel. J.M.**, 837 So.2d at 1256.

It is clear that the federal government, just as the State of Louisiana, does not intend for children to remain in foster care permanently. Forcing children to remain in foster care indefinitely, when there is no hope of reuniting them with their families, runs afoul of the state and federal mandates to further the best interests of the child. **State ex rel. J.M.**, 837 So.2d at 1257.

CONCLUSION

For the foregoing reasons, we find no manifest error in the trial court's finding that it is in K.Y.L.'s best interest that J.L.'s parental rights to K.Y.L. be terminated and we affirm the trial court's September 27, 2014 judgment. Costs of this appeal are assessed to J.L.

JUDGMENT AFFIRMED.