NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2018 CJ 0732

STATE OF LOUISIANA

IN THE INTEREST OF D. C.

DATE OF JUDGMENT: SEP 2 1 2018

ON APPEAL FROM THE BOGALUSA CITY COURT
NUMBER J2007-402
STATE OF LOUISIANA

HONORABLE ROBERT J. BLACK, JUDGE

* * * * * *

Sherry Ann Powell
Livingston, Louisiana

Counsel for Appellee
State of Louisiana, Department of
Children and Family Services

Pamela Toney Crawford
Mandeville, Louisiana

Counsel for Appellee
Minor Child, D. C.

Victor L. Papai, Jr.
Franklinton, Louisiana

Counsel for Appellant
Mother, T. C.

* * * * * *

BEFORE: PETTIGREW, WELCH, AND CHUTZ, JJ.

Disposition: AFFIRMED.

CHUTZ, J.

A mother appeals a judgment from the Bogalusa City Court sitting in juvenile jurisdiction (juvenile court),[1] which terminated her parental rights to her daughter, D.C. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

D.C. was born on March 31, 2002 to T.C.[2] In May 2007, she was removed from her parents' custody and guardianship was given to her paternal grandmother, A.J. In August 2007, as A.J. was helping D.C. dry off after her bath, D.C. became visibly upset. D.C. told her grandmother that T.C. "hurt her." D.C. explained that T.C. put her finger in her "cat," which was the term D.C. used to describe her vagina. D.C. also told A.J. that her mother put her mouth on D.C.'s "cat" and made D.C. put her mouth on T.C.'s. D.C. said these instances of sexual abuse by her mother occurred on more than one occasion. T.C. was eventually arrested and convicted of aggravated rape and molestation of a juvenile. She was concurrently sentenced to life imprisonment for aggravated rape and twenty years for molestation of a juvenile. Her appeal of the convictions and sentences were unsuccessful. See ***State v.*** [***T.C.***], 2011-0789 (La. App. 1st Cir. 5/23/12) (unpublished opinion).

On September 27, 2016, D.C. returned to the attention of the State through the Department of Children and Family Services (DCFS).[3] According to D.C., A.J. no longer wanted her, and she had not resided in A.J.'s home for over a year. DCFS's attempts to contact A.J. were unsuccessful. Once put out of her grandmother's home, D.C. resided in the households of several nonrelatives.

---

[1] See La. Ch.C. art. 302(4) (providing for the exercise of juvenile jurisdiction in city courts under specified circumstances).

[2] Because D.C.'s father stipulated to the termination of his parental rights, he has not been referenced in this appeal.

[3] State custody of D.C. in 2007 was through the Office of Community Services. See ***State v.*** [***T.C.***], 2011-0789 (La. App. 1st Cir. 5/23/12) (unpublished opinion).

Because her mother was incarcerated, DCFS concluded D.C. was left at an unreasonable risk of harm if she resided with either T.C. or among the various nonrelatives who had taken her in without any legal paperwork. On October 13, 2016, the juvenile court concluded that D.C. was a child in need of care.

On October 31, 2017, DCFS filed a petition seeking termination of T.C.'s parental rights. A hearing was held on January 9, 2018 at which the juvenile court received testimonial and documentary evidence. On February 22, 2018, the juvenile court issued a judgment terminating T.C.'s parental rights. T.C. appeals.

DISCUSSION

Parents have a natural, fundamental liberty interest to the continuing companionship, care, custody and management of their children, warranting great deference and vigilant protection under the law, and due process requires that a fundamentally fair procedure be followed when the State seeks to terminate the parent-child legal relationship. ***State ex rel. J.A.***, 99-2905 (La. 1/12/00), 752 So.2d 806, 810; ***State In Interest of J.J.S.***, 2014-1574 (La. App. 1st Cir. 7/7/15), 180 So.3d 319, 322. However, a child has a profound interest, often at odds with those of her parents, in terminating parental rights that prevent adoption and inhibit establishing secure, stable, long-term and continuous relationships found in a home with proper parental care. ***State ex rel. J.A.***, 752 So.2d at 810-11. In balancing these interests, the courts of this state have consistently found the interest of the child to be paramount over that of the parent. ***Id.*** at 811; ***State In Interest of J.J.S.***, 180 So.3d at 322; see also La. Ch.C. art. 1001 (setting forth that in all proceedings, the primary concern is to secure the best interest of the child if a ground justifying termination of parental rights is proved).

La. Ch.C. art. 1015 provides the statutory grounds by which a court may involuntarily terminate the rights and privileges of a parent. DCFS need only establish **one ground**, but the trial court must also find that the termination is in

the best interest of the child. La. Ch.C. art. 1037B. Additionally, the State must prove the elements of one of the enumerated grounds of Article 1015 by clear and convincing evidence to sever the parental bond. La. Ch.C. art. 1035. To prove a matter by clear and convincing evidence means to demonstrate that the existence of a disputed fact is highly probable, that is, much more probable than its nonexistence. Accordingly, a two-pronged inquiry is posed in parental termination proceedings: (1) has the State established by clear and convincing evidence at least one ground for termination under Article 1015, and, if so, (2) is the termination in the best interest of the child? ***State In Interest of J.J.S.***, 180 So.3d at 322-23.

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 In Interest of J.J.S.***, 180 So.3d at 323.

The grounds for termination of parental rights include abandonment of the child by placing her in the physical custody of a nonparent, or DCFS, or by otherwise leaving her under circumstances demonstrating an intention to permanently avoid parental responsibility when, 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. La. Ch.C. art. 1015(5)(b).

DCFS Case Manager, Leann McCray, testified that T.C. had made no financial contributions to D.C.'s care. Ms. McCray explained that the case plan developed for D.C. required that T.C. contribute only $5.00 per month because she was incarcerated. Despite the nominal amount, T.C. had failed to make a single contribution. Ms. McCray stated that sometime before Christmas 2016, she had a telephone conference with T.C. and T.C.'s social worker. During the conversation, Ms. McCray discussed some of the requirements set forth in the case plan with T.C. Ms. McCray was certain that T.C. had received the case plan because T.C. actually read from the case plan to Ms. McCray during the telephone conference.

The record further establishes that as early as October 20, 2016, T.C. had been ordered to make $5.00 monthly financial contributions to D.C.'s care in a DCFS Case Plan. An additional case plan, dated February 7, 2017, likewise required T.C. to make a financial contribution of $5.00 per month to her daughter's care. Both plans set forth the specific DCFS address to which T.C. should tender her monthly contribution.

In her testimony, T.C. acknowledged that she had received the case plan. T.C. testified that she was unable to earn that amount because she was incarcerated. While she stated that she was unaware that she could have asked her mother or another person to provide financial support to D.C. on her behalf and that had she had known, she would have done so, T.C. admitted that she had not made any payments toward the $5.00 monthly financial contribution to D.C.'s care.

A reasonable factual basis exists to support the juvenile court's conclusion that T.C. abandoned D.C. by placing her in the physical custody of DCFS under circumstances demonstrating an intention to permanently avoid parental responsibility. As of October 31, 2017, when DCFS filed the petition to terminate T.C.'s parental rights and certify D.C. eligible for adoption, T.C. had failed to provide even the nominal monthly contribution of $5.00 to D.C.'s care and support for a period of six consecutive months. The clear and convincing evidence demonstrated that T.C. was aware that she was required to pay $5.00 per month in financial contributions from no later than December 2016 and had not done so as of October 31, 2017. Thus, a term that exceeded six consecutive months was established by DCFS.

Although on appeal T.C. asserts that DCFS failed to request financial contributions on her behalf from three individuals T.C. identified as potential caregivers in October 2016, we find her assertion without merit. Parents are

charged with the obligation of supporting their children. See La. C.C. art. 224 (providing that parents are obligated to support, maintain, and educate their child). Thus, it was incumbent on T.C. -- not DCFS -- to contact her mother or another person to make the financial contribution on T.C.'s behalf.

Mindful that T.C. has not challenged the juvenile court's finding that termination of her parental rights to D.C. is in D.C.'s best interest, the record demonstrates it is in D.C.'s best interest that T.C.'s parental rights are terminated. Since the record contains clear and convincing evidence that T.C. abandoned her child by failing to make any financial contributions for D.C.'s care and support for at least six consecutive months from DCFS's October 31, 2017 petition, we find no manifest error.[4]

DECREE

For these reasons, the juvenile court's judgment is affirmed. Appeal costs are assessed against T.C.

AFFIRMED.

---

[4] The juvenile court also granted termination of T.C.'s parental rights on the basis of misconduct by T.C. toward D.C. based on her convictions for aggravated rape and molestation of a juvenile. See La. Ch.C. art. 1015(4)(d) (the grounds for parental termination include misconduct of the parent toward the child which constitutes extreme abuse, cruel and inhuman treatment, or grossly negligent behavior below a reasonable standard of human decency, including but not limited to the conviction, commission, aiding or abetting, attempting, conspiring, or soliciting to commit rape). On appeal, T.C. maintains that she has been granted a new criminal trial by the district court in post-conviction relief of her convictions for aggravated rape and molestation of a juvenile, based on newly discovered evidence. Thus, she insists that the certified copies of her convictions admitted into evidence are insufficient to support termination on the basis of misconduct. The record is devoid of any evidence evincing the veracity of T.C.'s assertion, and she has not provided us with a certified copy of any order of the district court setting aside her convictions and granting her a new trial such that this court could take judicial notice of the alleged relief. See La. C.E. art. 202 (providing for judicial notice of legal matters). Thus, our review is necessarily limited to the evidence contained in this record. See e.g., ***State ex rel. M.S.***, 1999-2190 (La.App. 4th Cir. 6/23/00), 768 So.2d 628, 632 (introduction of mother's guilty plea and subsequent conviction of cruelty to one of her minor children supported involuntary termination of her parental rights for misconduct). Since, however, only one ground is necessary for termination of her parental rights, we pretermit a discussion of whether there is sufficient clear and convincing evidence that T.C. committed such misconduct.