

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-000241-MR

C.D.G.

APPELLANT

APPEAL FROM WARREN CIRCUIT COURT
v. HONORABLE MARGARET RYAN HUDDLESTON, JUDGE
ACTION NO. 01-AD-00010

CABINET FOR FAMILIES AND
CHILDREN, COMMONWEALTH
OF KENTUCKY; AND J.M.G.,
A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: BAKER, GUIDUGLI AND SCHRODER, JUDGES.

GUIDUGLI, JUDGE. C.D.G. appeals from an order terminating parental rights and order of judgment of the Warren Circuit Court. We affirm.

On May 9, 1996, C.D.G. gave birth out of wedlock to J.M.G. On February 7, 2001, the Cabinet for Families and Children, Commonwealth of Kentucky (hereinafter "CFC") filed a petition pursuant to KRS 625.050, et seq., seeking the

involuntary termination of C.D.G.'s parental rights as to J.M.G. As a basis for the action, CFC pointed to at least three instances of physical abuse directed at J.M.G. in 1999 and 2000 in which C.D.G. slapped J.M.G. and pinched his legs causing bruising. CFC also noted a possible finding of emotional abuse. The record goes on to describe prior instances of J.M.G. being placed in foster care, and C.D.G.'s alleged behavioral problems including threatening to hit J.M.G., throwing objects, and shoving and kicking him.

On January 4, 2002, a final hearing on the petition was conducted in Warren Circuit Court. Upon taking proof, the court rendered an order and judgment on January 7, 2002, terminating C.D.G.'s parental rights. The court found in relevant part that C.D.G. had inflicted physical injury or emotional harm on J.M.G., and for a period in excess of six months had failed or refused to provide essential care and protection to him. It concluded that J.M.G. met the statutory definition of an abused and neglected child and ordered that full care, custody and control of J.M.G. be vested with CFC. This appeal followed.

C.D.G. now argues that the evidence presented to the Warren Circuit Court does not support its decision to terminate her parental rights and that the trial judge erred in failing to so rule. She maintains that the statutory grounds for

termination have not been met, to wit: that J.M.G. was not abused or neglected; that the court improperly determined that J.M.G.'s best interest required termination; and, that other statutory grounds like continuous infliction of physical injury or emotional harm were not met. She goes on to argue that CFC failed to provide professional medical assistance enabling her to control her behavior. Lastly, she maintains that the court erred in failing to exercise its discretion under KRS 625.090(5) not to terminate her rights since a preponderance of the evidence showed that the abuse or neglect would not continue. In sum, she seeks an order reversing the Warren Circuit Court's order and judgment terminating her parental rights.

As the parties are well-aware, involuntary termination proceedings are adjudicated pursuant to KRS Chapter 600. KRS 625.090 states that,

(1) The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that: . . . (a)(2) The child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding . . . and b) termination would be in the best interest of the child.

It goes on to set forth a list of additional factors, one of which must be found by clear and convincing evidence in order to

support an order of termination. In the matter at bar, the court relied on two such factors, i.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; (KRS 625.090(2)(e)) . . .

and

. . . 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[.] (KRS 625.090(2)(g)).

We have closely studied the record, the written arguments, and the law, and find no error in the trial court's order and judgment terminating C.D.G.'s parental rights. The court expressly found that each of the statutory elements was satisfied, and evidence exists in the record upon which the court properly so found. First, the court found that J.M.G. was "abused and neglected" (KRS 625.090), and the record supports this finding. The record indicates that C.D.G. bit and

slapped J.M.G., struck him in the face and hit him in the mouth with a toy requiring an emergency room visit.

Similarly, evidence exists upon which the court properly concluded that C.D.G. continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care (KRS 625.090(2)(e)) and continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education (KRS 625.090(2)(g)). A finding that either of these factors was met is sufficient to satisfy KRS 625.090(2). Evidence was presented that C.D.G. was unwilling or unable to provide for J.M.G.'s reasonable needs to such a degree that he was placed in foster care for fifteen of the twenty-two months preceding the filing of the petition. Other evidence exists regarding problems C.D.G. experienced with stress, anxiety and anger, and that these difficulties so interfered with her ability to care for J.M.G. that his reasonable needs were not met. We are not persuaded by her argument that CFC failed to provide professional medical assistance enabling her to control her behavior.

Finally, the court concluded that termination of C.D.G.'s parental rights was in J.M.G.'s best interest. The cumulative weight of the evidence supports this conclusion, and the trial court did not err in so ruling.

We are not persuaded by C.D.G.'s argument that the statutory prerequisites for termination were not met. Substantial evidence exists in the record supportive of the trial court's findings, Sherfey v. Sherfey, Ky. App., 74 S.W.3d 777 (2002), and the court properly reached its conclusions of law in accordance with KRS Chapter 600. As such, we find no basis for tampering with its order terminating C.D.G.'s parental rights.

For the foregoing reasons, we affirm the order terminating C.D.G.'s parental rights and the order of judgment entered by the Warren Circuit Court.

ALL CONCUR.

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