

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001504-MR

E. B.

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE JOAN L. BYER, JUDGE
ACTION NO. 01-FC-002834T

COMMONWEALTH OF KENTUCKY,
CABINET FOR FAMILIES AND CHILDREN;
C. M. B.; AND N. B. B.

APPELLEES

OPINION

AFFIRMING

** **

BEFORE: BARBER, GUIDUGLI AND PAISLEY, JUDGES.

GUIDUGLI, JUDGE. E. B. appeals from a Jefferson Family Court order terminating his parental rights to his children, C. B. and N. B. The Family Court's order terminating his parental rights and transferring custody to the Cabinet for Families and Children (hereinafter "CFC") is supported by clear and convincing evidence that the children are abused and neglected

and that it is in their best interest to have their father's parental rights terminated.¹ Thus, we affirm.

C. B. was born on December 26, 1996, and N. B. was born on January 29, 1995. A third child, D. B., a male, was the older brother of these children. CFC has not moved to terminate parental rights to this third child, and at the time of the termination hearing, he was still residing with his father, E. B. By order of the Jefferson Family Court, dated December 14, 1999, C. B. and N. B. were placed in the temporary custody of CFC. The children are presently in a state approved foster home. On April 16, 2001, CFC filed a petition for involuntary termination of parental rights of the children's biological mother, M. B., and biological father, E. B. The matter came on for a hearing before the Family Court on the following four (4) days: November 1, 2001; November 2, 2001; January 3, 2002; and January 10, 2002. On April 12, 2002, the Family Court issued an order terminating the parental rights of the parents. This appeal by E. B. followed.

E. B. argues that the Family Court erred in terminating his parental rights because (1) CFC failed to prove by clear and convincing evidence the existence of a ground for

¹ M. B., the natural mother of the children, also had her parental rights terminated in that it was found that she had abandoned the children. Although served through a Warning Order Attorney, she did not participate in the termination hearing nor has she filed an appeal in this matter.

terminating his parental rights; (2) CFC failed to comply with its statutory duty to provide services to E. B. and the children; and (3) the court erred in determining that termination was in the children's best interests.

KRS 625.090 sets forth the statutory grounds for termination of one's parental rights. In relevant part, KRS 625.090 provides:

- (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) 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction.

. . .
 - (b) Termination would be in the best interest of the child.
- (2) No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds:
 - (a) That the parent has abandoned the child for a period of not less than ninety (90) days;
 - (b) That the parent has inflicted or allowed to

be inflicted upon the child, by other than accidental means, serious physical injury;

- (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;
- (d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;
- (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;
- (f) That the parent has caused or allowed the child to be sexually abused or exploited;
- (g) That 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;

. . .

- (3) In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:
- (a) Mental illness as defined by KRS 202A.011(9), or mental retardation as defined by KRS 302B.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 and 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.

. . .

In summary, the statute requires a finding (1) that the child, by clear and convincing evidence, was abused or neglected child; (2) that the termination would be in the best interest of the child; and (3) one or more of the factors set out in subsection (2)(a)-(j) are present. See R. C. R. v. Com. Cabinet for Human Resources, Ky. App., 988 S.W.2d 36 (1998). In its order terminating parental rights, the Family Court made the following conclusions of law based upon detailed findings of fact, which convincingly support its conclusions:

1. The Respondent parents, for a period of not less than six (6) months, has (sic) continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the children and there is no reasonable expectation of improvement in parental care and protection considering the ages of the children.

2. The Respondent parents, for reasons other than poverty alone has (sic) continuously or repeatedly failed to provide or is (sic) incapable of providing essential food, clothing, shelter, medical care or education reasonably necessary and available for the children's well-being and there is no reasonable expectation of significant improvement in the parents' conduct in the immediately foreseeable future, considering the ages of the children.

3. That the Respondent mother has abandoned the children for a period of not less than ninety (90) days.

4. That the Respondent father has inflicted or allowed to be inflicted upon

the infant C. J. B., by other than accidental means, serious physical injury.

5. That the Respondent father has caused or allowed the children to be sexually abused or exploited.

6. The Cabinet for Families and Children has rendered or attempted to render all reasonable services to the parents which might be expected to bring about a reunion of the family. No additional services are likely to bring about parental adjustments enabling a return of the children to the parents within a reasonable time, considering the ages of the children.

7. The children's physical, emotional and mental health has improved since removal from Respondent parents' custody and the prospects are for greater improvement in the children's welfare if termination is ordered.

The Family Court heard testimony on four separate days that demonstrated that the children had been subjected to a dysfunctional family environment that included abandonment by the mother, physical, emotional and sexual abuse, lack of supervision and failure to provide child support or other necessities of life to the children since their placement with CFC. Probably the most revealing finding made by the Family Court is set out in numerical paragraph 18 of the court's findings of fact, which states:

18. The testimony and exhibits presented in this trial depict a violent, controlling Respondent father and an absentee Respondent mother. The infant Petitioners exhibit symptomatology consistent with child victims

of sexual abuse and have made concise, consistent allegations of the same against their brother and father. The infants have also suffered from supervisory neglect by their father and aggressive, sometimes violent outbursts from their brother [D. B.]. Nonetheless, the Respondent father continues to accept little responsibility for his actions and fails to embrace the possibility that sexual abuse occurred between his children.

The Respondent father has been offered and has participated in several counseling and treatment services, but his lack of insight, poor judgment, and limited parenting skills continue. The Cabinet has had treatment services available for the Respondent mother but she has failed to come forward and utilize these services, or to maintain any contact with her children in several years. Neither Respondent parent has regularly provided any child support or other necessities of life for the infant Petitioners since their placement with the Cabinet for Families and Children. The Cabinet has made all reasonable efforts to reunite this family yet the family remains at a high risk for future abuse and neglect given that Respondent father is not amenable to sexual abuse treatment for himself and his children.

Termination of parental rights is in the best interest of the children, and the Cabinet for Families and Children has facilities available to accept the care custody and control of [C. M. B.] and [N. B. B.], and is the agency best qualified to receive custody of the children.

The standard of review in a termination of parental rights case is set forth in R. C. R. v. Com. Cabinet for Human Resources, supra, as follows:

The trial court has broad discretion in determining whether the child fits within the abused or neglected category and whether the abuse or neglect warrants termination. Department for Human Resources v. Moore, Ky.App., 552 S.W.2d 672, 675 (1977). This Court's review in a termination of parental rights action is confined to the clearly erroneous standard in CR 52.01 based upon clear and convincing evidence, and the findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings. V. S. v. Commonwealth, Cabinet for Human Resources, Ky.App., 706 S.W.2d 420, 424 (1986). "Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent-minded people." Rowland v. Holt, Ky., 253 Ky. 718, 70 S.W.2d 5, 9 (1934).

Id. at 38-39. The numerous and detailed findings made by the Family Court based upon evidence presented during the hearing convince us that the Family Court did not clearly err when it determined that the children were abandoned, neglected or abused. We also believe that the Family Court's conclusion that parental termination was in the best interests of the children is supported by the evidence. Ample evidence was presented that CFC had attempted to provide numerous services but that there was "no reasonable expectation of significant improvement in the parent(s) conduct in the immediate foreseeable future." Despite E. B.'s contention that CFC failed to provide adequate statutory and regulatory mandated services, a review of the record and

evidence convinces us otherwise. Despite the numerous services provide to E. B. and his children over several years, no real progress had been achieved. The safety and well-being of the children remained a great concern to many of the professionals who dealt with the family. While E. B. obviously disagrees with the conclusions of the professionals and the Family Court, when the testimony is conflicting we may not substitute our decision for the judgment of the trial court. Wells v. Wells, Ky., 412 S.W.2d 568, 571 (1967).

E. B. argues that the Family Court erred in finding that CFC proved by clear and convincing evidence any of the factors set forth in KRS 625.090(1)(a)-(j). As stated previously, the Family Court made specific findings, based upon evidence presented, that the grounds set forth in KRS 625.090(2)(a), (c), (e), (f), and (g) were present. There is substantial evidence to support the Family Court's determination. Thus, we cannot conclude that its findings are clearly erroneous. Nor can we say after review of the record and the findings of fact made by the trial court, that CFC has failed to met its burden of proving its case by clear and convincing evidence as required by KRS 625.090. Santosky v. Kramer, 455 U.S. 745, 102 S. Ct. 1388, 71 L.Ed.2d 599 (1982); O.B.C. and F.D.C. v. Cabinet for Human Resources, Ky. App., 706 S.W.2d 420 (1986); R.C.R. v. Commonwealth Cabinet for Human

Resources, Ky. App., 988 S.W.2d 36, 40 (1998). As such, we reject E. B.'s argument that the evidence did not support the findings made by the Family Court that sufficient grounds for termination of parental rights existed. KRS 625.090.

E. B. also contends that CFC did not comply with its statutory duty to provide mandated regulatory services to his family. A review of the record proves otherwise. The Family Court specifically found that CFC "has rendered or attempted to render all reasonable services to the parents which might be expected to bring about a reunion of the family. No additional services are likely to bring about parental adjustments enabling a return of the children to the parents within a reasonable time, considering the ages of the children." We find no error in these conclusions. The record indicates that CFC had worked with this family for several years and had provided numerous services to the parents and the children. However, little, if any, improvement had occurred and the two young children remained at risk for physical, emotional and sexual abuse. There was clear and convincing evidence in the record to support the court's findings and the findings were not clearly erroneous.

For the foregoing reasons, the orders of the Jefferson Family Court terminating E. B.'s parental rights to C. B. and N. B. are affirmed.

ALL CONCUR.

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