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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001386-ME

J.D. JR., and
C.D. APPELLANTS

v. APPEAL FROM MCCLEAN CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
ACTION NO. 02-AD-00006

COMMONWEALTH OF KENTUCKY,
CABINET FOR FAMILIES AND CHILDREN,
NEXT FRIEND OF A.H. AND D.D. APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BARBER AND VANMETER, JUDGES; HUDDLESTON, SENIOR JUDGE.[1]

BARBER, JUDGE: Appellants, J.D. and C.D., appeal, with C.D. drafting the brief Pro Se, requesting reversal of the decision of the McClean Circuit Court terminating their parental rights. We affirm the ruling of the McClean Circuit Court.

[1] Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110.(5)(b) of the Kentucky Constitution and KRS 21.580.

Appellants were the parents of three young children. While the parents were ill or resting, they locked the children in the upstairs bedrooms. On March 27, 2002, the twin boys, aged 21 months, were locked in the room from 7:30 to 1:40, and then again from 2:00 to 6:00 p.m. C.D. asserts that she checked on them once at 4:30 but did not remove them from the room. The couple's preschool daughter was also locked in her room during this time. The record indicates that this was Appellants' common practice while they napped or watched movies during the day. Neither J.D. nor C.D. were employed at the time. While the children were unsupervised, a dresser fell on one of the children and he died due to mechanical asphyxiation. The child's twin was in the room with him while he suffocated. Investigation by the Cabinet for Families and Children showed that the house was unclean, and that the children had been fed only snack food rather than nutritious and appropriate meals.

On appeal, C.D. states that she since her son's death she has attended parenting classes, and has obtained a safe and clean residence and employment. C.D. asserts that the house was unclean and the children were unsupervised because she and her husband were unemployed and ill at the time. The record shows that the McClean Circuit Court found the children to be neglected pursuant to KRS 625.090(a)(1). Appellants were convicted of criminal abuse in the second degree for the neglect

of the children. Appellants argued before the circuit court that such neglect was not likely to recur in the future. They asserted that the Cabinet had not made sufficient effort to reunite the family prior to requesting termination of parental rights. No evidence in the record on appeal supports that contention.

The Cabinet asserts that the court was correct in terminating Appellant's parental rights. KRS 625.090 allows such termination where the court finds the clear and convincing evidence that the child has been abused or neglected; the child is adjudged abused or neglected; or the parent has been convicted of a criminal charge relating to the abuse or neglect of the child and the abuse or neglect is likely to recur, and the termination is in the best interests of the child. The trial court has discretion in making such a determination based on the record before the court. RCR v. Cabinet for Families and Children, 988 S.W.2d 36, 38 (Ky.App. 1998).

The circuit court found that the children had routinely been neglected by the parents, and that such neglect was a direct contributing factor to the death of one of the twins. The court found that the two remaining children were at extreme risk of harm or death if they were returned to the parents. The court further found that no relatives were willing or capable of caring for the children. The court also found

that Appellants' incarceration prevented them from providing care for the children for a substantial period of time. While incarceration, standing alone, may not be sufficient grounds for termination of parental rights, the court may consider incarceration in making its determination. J.H. v. Cabinet for Human Resources, 704 S.W.2d 661, 664 (Ky.App. 1983).

The court found that the Cabinet had offered Appellants reasonable reunification services, and that no additional services were likely to bring about lasting parental adjustment enabling a return of the children to the family home. The record is devoid of evidence supporting C.D.'s contention that reunification services were not provided to the family or that the Cabinet acted improperly in requesting termination. Appellants have shown no reversible error in the court's determination. The order of termination is not reversible under such circumstances. O.B.C. v. Cabinet for Human Resources, 705 S.W.2d 954, 956 (Ky.App. 1986). We affirm the circuit court's ruling.

ALL CONCUR.

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