

RENDERED: June 17, 2005; 2:00 p.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2003-CA-002176-ME

CABINET FOR FAMILIES AND CHILDREN,  
COMMONWEALTH OF KENTUCKY, (AS NEXT  
FRIEND OF S.D.L., A CHILD)

APPELLANT

v. APPEAL FROM CALLOWAY CIRCUIT COURT  
HONORABLE DENNIS R. FOUST, JUDGE  
ACTION NO. 02-AD-00013

C.L., G.A., JR., AND  
S.D.L., (A CHILD)

APPELLEES

OPINION  
AFFIRMING

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BEFORE: HENRY AND SCHRODER, JUDGES; EMBERTON, SENIOR JUDGE.<sup>1</sup>

EMBERTON, SENIOR JUDGE: The Commonwealth of Kentucky, Cabinet for Families and Children appeals from a decision of the Calloway Circuit Court dismissing its petition to involuntarily terminate the parental rights of C.L. The court granted the Cabinet's petition to terminate the rights of the father, G.A.,

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<sup>1</sup> Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Jr. The Cabinet argues that although the court properly found that the mother has failed to give her child essential parental care and protection for a period of not less than six months, it erred when it ruled that termination of C.L.'s parental rights would not be in the child's best interest.

S.D.L. was born on April 20, 1994, with fetal alcohol syndrome and, in 1998, was committed to the Cabinet as an abused and neglected child. C.L., who had a long-term substance abuse problem, was referred to treatment with the goal of reunification. However, after C.L. failed to complete the recommended treatments, in 2001 the Cabinet sought to change the permanency plan from reunification to termination of parental rights and adoption, and in August, 2002, the Cabinet filed a petition for involuntary termination of parental rights and adoption.

It is apparent that the C.L. has a serious problem with substance dependency and, although she has over the past four years attended some counseling sessions, she has not successfully completed a long term treatment program as required by the Cabinet. At the time of the termination hearing, her dependency problems had not been resolved.

The standard for review is 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. 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.<sup>2</sup>

Once a finding of abuse or neglect is made, the trial court must consider the entire record, including its own observations of the parents, and conclude whether termination would be in the best interest of the child.<sup>3</sup>

Termination of parental rights, while not a criminal matter, encroaches on the parent's constitutional right to parent his or her child and is a procedure that should be employed only where the statutory factors are clearly met.<sup>4</sup> Although the termination procedure is a necessary one for the protection of our most innocent citizens, judicial intervention into the sanctity of the home should be done with caution and scrutiny.

The Cabinet presented evidence that despite continued efforts to reunite C.L. with S.D.L., C.L. has repeatedly failed to complete an alcohol and drug treatment program. However,

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<sup>2</sup> R.C.R. v. Commonwealth, Cabinet for Human Resources, 988 S.W.2d 36, 39 (Ky.App. 1998)(citations omitted).

<sup>3</sup> KRS 625.090.

<sup>4</sup> O.S. v. C.F., 655 S.W.2d 32 (Ky.App. 1983).

there was expert testimony that if C.L. could resolve her addiction issues, she would be a suitable parent. The trial court found that C.L. is making an effort to improve her circumstances and is willing to participate in treatment plans for her alcohol problems. It concluded, therefore, that it was not demonstrated by clear and convincing evidence that there was no reasonable expectation of improvement in parental care and protection.<sup>5</sup>

In summary, we affirm the trial court. We point out that neither the trial court nor this court can possibly predict with certainty whether C.L. will take the steps necessary to recover from her addiction. However, it is reasonable for the trial court to give her the opportunity before her rights are permanently severed from this child. In the meantime, the child will remain in the state's custody. If after a reasonable period of time C.L. does not recover from her addiction, the Cabinet retains the option of filing a petition for involuntary termination.

The order of the Calloway Circuit Court is affirmed.

ALL CONCUR.

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<sup>5</sup> KRS 625.090(2)(e).

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