

RENDERED: December 3, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000222-MR

K.M.W.M.

APPELLANT

v. APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE KEVIN L. GARVEY, JUDGE
ACTION NO. 03-AD-500050

COMMONWEALTH OF KENTUCKY,
CABINET FOR FAMILIES AND CHILDREN;
A.N.S.W., AN INFANT; AND E.E.S., SR.

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: TACKETT, TAYLOR, AND VANMETER, JUDGES.

TAYLOR, JUDGE: K.M.W.M. appeals from a January 23, 2004,
judgment of the Jefferson Family Court terminating her parental
rights to the minor child, A.N.S.W. We Affirm.

In September 2001, the Cabinet for Families and
Children (Cabinet) filed a petition against appellant alleging
risk of abuse or neglect of appellant's five-month old infant,

A.N.S.W.¹ Appellant stipulated to A.N.S.W.'s neglect, but the child was not removed from her custody. Following allegations that another of appellant's children had been physically assaulted by her paramour, the Cabinet filed another petition alleging risk of abuse or neglect in August of 2002. A.N.S.W. was subsequently removed from appellant's home.

In November 2002, the family court found that A.N.S.W. was a neglected child and, thus, committed her to the Cabinet's care and control. This action was subsequently initiated by the Cabinet filing a petition seeking involuntary termination of appellant's parental rights.² By judgment entered January 23, 2004, the circuit court terminated appellant's parental rights. This appeal follows.

In a termination of parental rights case, the findings of fact must be based upon clear and convincing evidence. M.P.S. v. Cabinet for Human Resources, Ky. App., 979 S.W.2d 114 (1998), citing V.S. v. Commonwealth, Cabinet for Human Resources, Ky. App., 706 S.W.2d 420 (1986). Our review is limited to the clearly erroneous standard of Ky. R. Civ. P. (CR) 52.01 and, as such, the family court's findings of fact will not

¹ The petition also alleged risk of abuse or neglect as to appellant's four (4) older children. Appellant's parental rights to those children were terminated in a separate action by the Jefferson Family Court on November 4, 2002.

² A.N.S.W.'s biological father, E.E.S., Sr., consented to a voluntarily termination of his parental rights.

be disturbed on appeal "unless there exists no substantial evidence in the record to support its findings." M.P.S., 979 S.W.2d at 116.

Appellant contends the family court erred by terminating her parental rights to A.N.S.W. Specifically, appellant alleges the circuit court erroneously found, by clear and convincing evidence, that she engaged in conduct sufficient to establish grounds for terminating her parental rights. Appellant further contends the family court erroneously found, by clear and convincing evidence, that termination of her parental rights was in the child's best interest.

In its opinion terminating appellant's parental rights, the family court specifically found, by clear and convincing evidence, that:

1. The child, [A.N.S.W.], is abused and neglected as defined in KRS 600.020(1).
2. The Respondent father has consented to the voluntary termination of his parental rights.
3. The Respondent mother of said child, for a period of not less than six 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 there is no reasonable expectation of improvement in parental care and protection, considering the age of the child.
- 3.[sic] The Respondent mother, 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 there is no reasonable expectation of significant improvement in the parental conduct in the immediately foreseeable future, considering the age of the child.

4.[sic] The Respondent mother has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm.

5.[sic] Termination of parental rights is in the best interest of the child.

A review of the record indicates there was sufficient evidence of a probative and substantial nature to support the family court's findings of fact. See M.S.P., 979 S.W.2d 114. The testimony of appellant's social worker, counselor and psychologist, as well as appellant's own testimony, all support the aforementioned findings of the court.

Judy Holt, a social worker for the Cabinet, testified that the Cabinet had an open case file with appellant for many years. Holt stated that the Cabinet had provided appellant and her children with numerous treatment services over the years. She testified the services included individual and group counseling for both appellant and the children, in-home parent aide services, Kentucky Impact for the children and daycare/summer camp referrals for the children. Holt testified that appellant showed no progress during the Cabinet's early work with her and that later progress was followed by setbacks. Holt stated that one of appellant's abusive paramours had

physically assaulted one of her children; following this incident, appellant refused to agree to the terms of a safety plan for the protection of A.N.S.W. This refusal led the Cabinet to seek an Emergency Protective Order, which resulted in A.N.S.W.'s removal from appellant's custody.

Holt also testified regarding specific incidents of domestic violence involving appellant. Holt stated that she recently became aware of a new domestic violence petition filed by appellant. Therein, appellant had alleged that her paramour threatened to kill her, destroyed much of her furniture, put holes in the wall, knocked the door in, refused to leave the residence and physically assaulted her. The petition further alleged that the paramour had been living with appellant for six (6) months and was the father of her unborn child. Holt stated that the information appellant provided in the petition was in direct contradiction to appellant's long-standing assertion, to Holt and other service providers, that this man had not been living with her and that she was not involved in a romantic relationship with him. Finally, Holt also testified that another of appellant's abusive paramours had threatened her with a knife.

Appellant's domestic violence group counselor, Annie Behymer, also testified regarding her knowledge of appellant. Behymer acknowledged some recent progress in appellant's

treatment. Behymer stated that appellant had not always been truthful with her regarding a relationship she continued to have with an abusive paramour. In fact, this paramour had abused an older sibling of A.N.S.W. Behymer further testified that appellant had a long history of domestic violence that included several abusive paramours.

Appellant's psychologist, Jamie Lichstein, also testified regarding her knowledge of appellant. Lichstein confirmed that appellant had a significant history of domestic violence and sexual abuse. She opined that appellant's lack of social and family support led her to return to abusive relationships in times of stress. Lichstein acknowledged that appellant had displayed cognitive distortion regarding the severity and repetitiveness of her own abuse. Lichstein also testified that appellant had expressed thoughts of suicide and had difficulty dealing with her feelings of anger. Finally, Lichstein admitted that she could not definitively state that appellant was capable of providing a safe home for A.N.S.W.

Appellant testified that she had been involved with six (6) different abusive men during her children's lifetime. Appellant acknowledged that three (3) of those men also physically or sexually abused her children. Appellant stated that a previous paramour, once believed to be the father of A.N.S.W., had forced himself into appellant's home in an attempt

to see the child. Appellant acknowledged that a paramour who had sexually assaulted one of her children continues to visit the home of her sister. Despite this knowledge, appellant continued to assert that her sister's home would be an appropriate placement for the children.³

A review of the evidence reveals that the family court's finding that A.N.S.W. was an abused and neglected child was supported by clear and convincing evidence. See Kentucky Revised Statutes (KRS) 625.090. The evidence also demonstrates the family court's finding that termination of appellant's parental rights was in the child's best interest was also supported by clear and convincing evidence. See KRS 625.090. Upon the record as a whole, we are of the opinion there existed clear and convincing evidence supporting the circuit court's termination of appellant's parental rights. See KRS 625.090.

For the foregoing reasons, the January 23, 2004, judgment of the Jefferson Family Court is affirmed.

ALL CONCUR.

³ Appellant's testimony alone would appear to support a finding that A.N.S.W. was abused and neglected. During her testimony, she described an incident where her older children had thrown coins and a bottle at A.N.S.W. when she was only a few months old.

BRIEF FOR APPELLANT:

Elizabeth Dodd Lococo
Dodd & Dodd Attorneys, PLLC
Louisville, Kentucky

BRIEF FOR APPELLEE
COMMONWEALTH OF KENTUCKY,
CABINET FOR FAMILIES AND
CHILDREN:

Erika L. Saylor
Louisville, Kentucky

BRIEF FOR APPELLEE A.N.S.W.,
AN INFANT:

Ellen G. Friedman
Guardian Ad Litem
Louisville, Kentucky