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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000991-ME

J.S.H.

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT
HONORABLE RON JOHNSON, JUDGE
ACTION NO. 03-AD-00007

CABINET FOR HEALTH AND
FAMILY SERVICES AND
COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND JOHNSON, JUDGES; AND HUDDLESTON, SENIOR
JUDGE.¹

BARBER, JUDGE: Appellant, JSH, appeals the Harlan Circuit
Court's Judgment and Order terminating his parental rights to
three minor children, who are all under the age of 10. We
affirm the trial court's rulings.

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.

Appellee, Cabinet for Health and Family Services (Cabinet), filed a motion for involuntary termination of parental rights on May 8, 2003. A hearing was held before the circuit court. J.S.H. admitted to oxycontin addiction, alcohol abuse and domestic violence. Both parents of the children had previously been jailed for fighting, and had been arrested while under the influence of drugs or alcohol. The children had been repeatedly removed from the home. One of the children is medically fragile and requires ongoing medical attention by her caregiver. The parents had failed to comply with case management plans, or to remain in contact with the Cabinet.

S.H. is the children's biological mother. Her parental rights had been terminated on December 1, 2003. J.S.H. was placed on a six month probationary period by the court. The terms of this probation included weekly attendance at AA and Comprehensive Care; that J.S.H. find a residence apart from his mother's house; that J.S.H. maintain regular visitation with the children; and that J.S.H. submit to random drug testing. He was also required to attend to his daughter's medical needs. Additionally, J.S.H. failed to provide the required regular child support for the children.

The record contains a handwritten request from the maternal grandmother asking that the children be placed with her. The court noted that the Cabinet stated that Tennessee had

performed a home evaluation on the maternal grandmother and found that her home was not an appropriate placement for the children. In fact, the home evaluation on the maternal grandmother was never completed, as she failed to provide her new address and updated information to the Tennessee Cabinet. Tennessee did perform a home evaluation on the biological mother of the children, and found that placement with her would not be proper. The maternal grandmother failed to appear at the termination proceedings, and took no further action toward obtaining care or custody of the children.

A second hearing was held in March 2004, on the Cabinet's motion to terminate J.S.H.'s parental rights. At that time the court found that J.S.H. had failed to comply with the court's terms during the probationary period. He had obtained no residence; had failed to regularly attend the required counseling; had failed to take drug tests when asked, and had been arrested for DUI. J.S.H.'s parental rights were therefore terminated by the court.

We apply a clearly erroneous standard when reviewing a circuit court's determination in a termination of parental rights action. V.S. v. Commonwealth of Kentucky, Cabinet for Human Resources, 706 S.W.2d 420, 424 (Ky.App. 1986). The ruling of the circuit court will not be disturbed absent a showing that the trial court's ruling was clearly erroneous. N.S. v. C &

M.S., 642 S.W.2d 589 (Ky., 1982). A decision in a termination case is not clearly erroneous where there is substantial evidence in the record to support the trial court's findings of fact. R.C.R. v. Commonwealth, Cabinet for Human Resources, 988 S.W.2d 36, 38 (Ky.App. 1998). We find that the record contains substantial evidence supporting the trial court's ruling.

J.S.H. asserts that the court failed to make legally required findings that the children at issue were abused or neglected, and that termination of his parental rights was in the best interest of the children. J.S.H. alleges that such findings are required by law. KRS 600.020(1); KRS 625.090; Commonwealth of Kentucky, Cabinet for Families and Children v. T.L.M, et al, 139 S.W.3d 172, 175 (Ky., 2004). The court's judgment states that the children were neglected as defined in KRS 600.020, and that the best interests of the children were served by termination. These specific findings of fact are supported by documentary evidence contained in the record on appeal.

J.S.H. asserts that the court's ruling did not sufficiently define the alleged neglect. The record contains ample evidence of parental neglect on the part of J.S.H., including ongoing drug abuse and alcohol abuse in front of the children; driving under the influence of alcohol with the children in the car; inappropriate and aggressive behavior in

the presence of the children; and failure to provide sufficient care for the children. The evidence is sufficient to support a finding of neglect.

The court's ruling notes that J.S.H. failed to comply with the terms of the probation, and that his parental rights should be terminated due to his non-compliance. The court found that J.S.H. "has failed to protect and preserve his children's fundamental rights to a safe and nurturing home, and has neglected [the children]. . . ." J.S.H. claims that the court failed to take into account his seeking and holding full-time employment and his regular attendance at AA meetings when ruling on the termination proceeding. The court's findings of fact in the judgment appealed from include a finding that J.S.H. failed to attend regular counseling at Comprehensive Care, as required by the terms of probation, and a finding that J.S.H. was not honest when questioned by his counselor regarding suspected drinking. The court also found that J.S.H. refused to promptly comply with requests for drug testing, and that J.S.H. had failed to obtain a residence of his own, but rather remained living with his mother.

Based on the evidence before it, the court held that J.S.H. "has 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. . . ." J.S.H. has not shown that the court was clearly erroneous in its finding that he failed to comply with the probationary terms agreed to by the parties.

Therefore, we affirm the trial court's decision.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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