

RENDERED: FEBRUARY 17, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000206-ME

A.B.

APPELLANT

APPEAL FROM FAYETTE CIRCUIT COURT
v. HONORABLE JO ANN WISE, JUDGE
ACTION NO. 04-AD-00019

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER AND McANULTY, JUDGES; MILLER, SENIOR JUDGE.¹

BARBER, JUDGE: Appellant, A.B., appeals the Fayette Circuit Court determination terminating her parental rights. The Fayette Circuit Court decision is affirmed.

A.B.'s parental rights to two of her children, one born in 1993 and one born in 1999 were terminated by the Fayette Circuit Court. The Court found that A.B.'s continued abuse of alcohol impaired her parenting ability such that she could not

¹Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

maintain a relationship with the children. The oldest child was removed from A.B for a year beginning in October, 1995. In April, 1999 both children were removed from A.B.'s custody and placed with the maternal grandmother for a month. The children were returned to A.B. in May, 1999. In August, 1999 the children were again removed. They were placed with relatives from October 2000 through July 2003. At that time, the children were placed in foster care.

The record shows that the children were provided with food, shelter, toys and clothes at all times relevant to this action. A.B. asserts that under such circumstances, termination of parental rights is improper. The statute provides, however, that termination may occur when the children are abused or neglected, even if physical needs are being met. The problem with A.B was that she failed to remain sober enough to care for the children. The children were repeatedly removed from the home when A.B. was found passed out or too intoxicated to provide care and supervision for the children. A.B. asserts that the Commonwealth failed to show that her actions had a negative impact on the children such that her parental rights should be terminated, as required by MSW v. Department for Human Resources, 928 S.W.2d 355 (Ky.App. 1996). This assertion is unsupported by the record, which contains treatment records for

the parties, as well as testimony of the individuals providing therapy and care for the children.

Testimony was provided at the hearing by the social workers charged with supervision of the children in their foster care placements. It is undisputed that the older child states that he loves his mother; that he wants to live with his mother, and that he has great difficulty adjusting to foster care placement. That said, the child also testified that he recognizes that he cannot have a stable home with his mother. The younger child has adapted well to the foster care placement after extensive treatment for attachment problems, but also expressed love and care for her mother. The children's therapist testified that ongoing contact with A.B. was harmful to both children and made their adjustment more difficult.

The guardian ad litem issued a report showing that despite repeated efforts of the Cabinet, A.B. has been unable to control her alcoholism or provide a stable home for her children. The guardian ad litem also noted the children's Father, B.B.'s, significant criminal history has prevented him from parenting the children for a number of years. The guardian ad litem reported that the children were in a stable foster placement, and that the possibility of adoption exists. The guardian ad litem asserted that the ongoing turmoil between the parents and the foster parents was having an adverse effect on

the children, and recommended termination of parental rights. Alcoholism and incarceration are factors which may be considered by the trial court in determining whether the involuntary termination of parental rights is appropriate. Prater v. Cabinet for Human Resources, Commonwealth of Kentucky, 954 S.W.2d 954, 956 (Ky. 1997).

The trial court has broad discretion in making its rulings in an involuntary termination of parental rights action. R.C.R. v. Commonwealth, Cabinet for Human Resources, 988 S.W.2d 36, 38 (Ky.App. 1998).

Our standard of review is governed by Ky. R. Civ. P. (CR) 52.01, which provides that findings of fact by the circuit court shall not be set aside unless clearly erroneous with due regard being given to the opportunity of the court to judge the credibility of the witnesses.

The record in this case contains evidence showing that the children's needs for support and stability were not met by the parents and that the children suffered as a result. We find no reversible error in the trial court's termination of parental rights.

ALL CONCUR.

BRIEFS FOR APPELLANT:

J. Ross Stinetorf
Lexington, Kentucky

BRIEF FOR APPELLEE:

David W. Mossbrook
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