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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000716-ME

A. U. AND
S. M. APPELLANTS

v.

APPEAL FROM JEFFERSON FAMILY COURT
HONORABLE DOLLY W. BERRY, JUDGE
ACTION NO. 04-AD-500299

COMMONWEALTH OF KENTUCKY APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; HENRY AND SCHRODER, JUDGES.

COMBS, CHIEF JUDGE: A.U. and S.M. appeal from an order of the Jefferson Family Court that terminated their parental rights to a child, E.C.M., and that transferred custody of E.C.M. to the Cabinet for Health and Family Services. The order is supported by clear and convincing evidence: (1) that the child was abused or neglected while under the appellants' care; (2) that the appellants failed to provide essential care and protection for the child; and (3) that it is in the child's best interest that

the appellants' parental rights be terminated. Therefore, we affirm the order.

A.U. is impaired by severe physical limitations. She suffers from Immobilization Syndrome as a result of a car accident in 2001; she is also handicapped by extreme obesity. She is virtually bedridden and/or is confined to a wheelchair.

She gave birth to E.C.M., a little girl, on December 31, 2002. Because she was physically unable to care for the baby, the Cabinet became involved with the family shortly after the baby's birth. Following a meeting with Cabinet representatives, the parents agreed to abide by a written safety plan designed to insure the baby's well-being. The plan provided that A.U. would never be left alone to care for the baby.

The Cabinet monitored the family for several months without incident. However, following a routine home visit in March 2003, a Cabinet representative secured an emergency custody order upon finding the mother home alone with the baby in filthy and foul-smelling surroundings. The baby was removed from the home.

On March 26, 2003, the Cabinet filed a petition alleging that E.C.M. was a neglected child pursuant to the provisions of KRS 600.020(1). She was committed to the Cabinet's custody, and a full-scale treatment plan was

developed. The plan included individual and family therapy sessions; in-home medical care and physical therapy for A.U.; parenting classes; a drug and alcohol evaluation for the father, S.M.; and domestic violence and anger management classes for A.U. The Cabinet identified numerous issues challenging the family -- including A.U.'s substantial physical limitations and poor hygiene, the unsanitary condition of the home, and the prevalence of domestic violence and substance abuse in the home.

On July 26, 2004, the Cabinet filed a petition for the involuntary termination of the parental rights of A.U. and S.M. On March 3, 2005, the family court issued an order terminating parental rights. This appeal followed.

The appellants argue that the family court erred in terminating their parental rights because the Cabinet failed to prove by clear and convincing evidence that there was no reasonable expectation of improvement in their care of E.C.M. They also contend that the Cabinet failed to expend sufficient efforts to reunify the family -- another alleged ground for reversal of the order of termination of the family court. We disagree.

The involuntary termination of parental rights by a court is governed by the provisions of KRS[1] 625.090. Before a family court may terminate parental rights, it must find by

[1] Kentucky Revised Statutes.

clear and convincing evidence: (1) that the child is an "abused or neglected child as defined by KRS 600.020(1)" and (2) that termination would be in the child's best interest. KRS 625.090(1). Additionally, the court must find the existence of one of the numerous grounds recited in KRS 625.090(2). In this case, the family court concluded that the parents -- for reasons other than poverty alone -- had continuously or repeatedly failed to provide (or are incapable of providing) essential food, clothing, shelter, medical care, or education reasonably necessary for the child's well-being. It also found that there was no reasonable expectation of significant improvement in the parents' conduct in the immediately foreseeable future. KRS 625.090(2)(g).

The appellants first argue that there was no evidence to support the court's findings that they had failed to provide essential parental care for the child and particularly that there was no reasonable expectation of improvement in their care of the child. They contend that testimony from Peggy Kinnetz, the Cabinet's mental health expert, indicated that A.U. had begun to realize the nature and extent of the child's medical problems and special needs. (E.C.M. had been diagnosed with Cerebral Palsy). At most, they claim that this witness was **unable to determine** whether there could be a reasonable expectation of improvement in their care of the child.

We disagree with the appellants' assessment of the evidence. Peggy Kinnetz testified that the parents' progress toward improved care of the child had been exceedingly slow. It was so slow that Kinnetz was unable to project whether or when the parents could be expected to be able to provide proper care for the child. Kinnetz testified that the appellants had **never** shown an ability to identify their parenting problems and the baby's special needs, to address them, or to make good decisions to resolve them. She attributed the parents' overall inability to care for the child to a critical failure to meet and solve problems.

A trial court's determination cannot be set aside unless the findings are shown to have been clearly erroneous. R.C.R. v. Commonwealth Cabinet for Human Resources, 988 S.W.3d 36 (Ky.App. 1998). A ruling is clearly erroneous only where no substantial evidence exists in the record supporting the court's findings. V.S. v. Commonwealth Cabinet for Human Resources, 706 S.W.2d 420 (Ky.App. 1986). The trial court has broad discretion in determining whether a child has been abused or neglected and whether such abuse or neglect warrants the termination of parental rights. R.C.R., supra.

Through the testimony of several witnesses, the Cabinet presented overwhelming evidence to establish that these parents were either unwilling or unable to provide essential

care for the child or to insure her well-being. This evidence also demonstrated that there was no reason to expect any substantial improvement in their ability to care for the child in the future. Consequently, we are not persuaded by the appellants' contention that the evidence failed to support the court's finding that sufficient grounds for termination of parental rights had been presented.

The appellants also argue that the Cabinet failed to prove that reasonable efforts had been made to reunite them with the child prior to termination. Again, we disagree.

The Cabinet presented evidence that the appellants had been offered a broad range of services aimed at improving their ability to care for the child and to meet her special medical needs. These services were provided for a period of more than two years with little or no success. After considering the evidence, the family court concluded that the Cabinet had rendered (or had attempted to render) all services that might reasonably be expected to bring about a successful reunification of the family. The court concluded that no additional services aimed at family reunification were likely to foster improvement within a reasonable time.

The standard of appellate review in a termination of parental rights action is strictly circumscribed. R.C.R., supra. The findings of the court will not be disturbed unless

there is no substantial evidence in the record to support them. We have carefully reviewed the comprehensive findings of the family court in light of the evidence presented by the Cabinet during the hearing. We are not persuaded that the court erred (much less did it clearly err) by determining that adequate reunification services had been provided -- albeit without success.

We find no error in the termination of the appellants' parental rights based on either allegation of error -- the neglect or the reunification arguments. Therefore, the order of the Jefferson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANTS:	BRIEF FOR APPELLEE:
Jackie Alirezay Louisville, Kentucky	Deana H. Cushman Louisville, Kentucky
ORAL ARGUMENT FOR APPELLANTS:	ORAL ARGUMENT FOR APPELLEE:
Jackie Alirezay-Quarles Louisville, Kentucky	G. Thomas Mercer Louisville, Kentucky