RENDERED: MARCH 31, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000925-ME

CABINET FOR HEALTH & FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY, AS PETITIONER
AND NEXT FRIEND OF K.E.F., A CHILD — APPELLANT

v.

APPEAL FROM PERRY CIRCUIT COURT
HONORABLE WILLIAM ENGLE III, JUDGE
ACTION NO. 04-AD-00032

A.F; G.F.; AND K.E.F.,
A MINOR CHILD — APPELLEES

OPINION
VACATING AND REMANDING

** ** ** ** **

BEFORE: COMBS, CHIEF JUDGE; DYCHE AND KNOPF, JUDGES.

COMBS, CHIEF JUDGE: The Cabinet for Health and Family Services (the Cabinet) appeals the Findings of Fact, Conclusions of Law, and amended Order, entered on April 19, 2005, and a subsequent final Order, entered on April 28, 2005, of the Perry Circuit Court. The Cabinet had sought to terminate the parental rights of A.F. and her husband, G.F., as to their daughter, K.E.F. After conducting a hearing, the circuit court dismissed the petition of the Cabinet and ordered that K.E.F. remain in the custody of the state. In a subsequent order, the court

overruled the Cabinet's motion to alter, amend, or vacate the judgment as well as its motion for more specific findings of fact. We remand the case to the circuit court for specific findings of fact.

K.E.F, the child who is the subject of this appeal, was born on February 1, 1999.[1] She is described in the record as "medically fragile." She suffers from cerebral palsy and hydrocephalus, a condition of fluid on the brain that required the implantation of a shunt in the back of her head to divert and drain excess fluid from her brain into her stomach. She also suffers from seizures. K.E.F. requires frequent medical attention and regular physical and speech therapy.

On June 21, 2001, the Cabinet opened a case with the family to insure that K.E.F.'s needs were being met by her parents. This decision was based on evidence that K.E.F. was not being taken to all of her scheduled medical appointments and that she was receiving only fifty-percent of her therapy. On July 19, 2001, the Cabinet filed a petition in Perry District Juvenile Court, alleging that K.E.F. was being left unattended and unsupervised in her crib for hours at a time. Following an adjudication hearing, the district court ruled that K.E.F. was

[1] Another child, S.F., died at the U.K. Medical Center on April 16, 1997, at the age of 5½ months. The Perry District Court had also removed her from the care of A.F. and G.F. because of her special medical needs and their failure to provide essential care.

to remain with her parents, who were ordered to cooperate with the Cabinet and the Department for Community Based Services.

Three months later, on October 29, 2003, the Perry District Juvenile Court placed K.E.F. in the temporary custody of the Cabinet. The decision to remove K.E.F. from her parents' custody was based on reports from neighbors and social workers that K.E.F. had been left alone at home crying loudly enough to attract the attention of neighbors while A.F. sat outside or walked up and down the street; that A.F. and G.F. were using illegal drugs; that K.E.F. was found with a plastic bag over her head; that K.E.F. was found in a urine-soaked crib; and that K.E.F. was not being taken to her medical appointments, including consultations with specialists in neurology and orthopedics. The Cabinet placed K.E.F. with foster parents who are specially trained to care for children with serious medical needs.

On November 5, 2003, A.F. and G.F. attended the Cabinet's Case Conference and signed the family case plan that was developed at that conference. The plan outlined their tasks, which included participating in counseling, complying with a Targeted Assessment Program, and cooperating with an evaluation by the University of Kentucky Comprehensive Assessment and Training Services (CATS) Clinic.

The CATS clinic reviewed K.E.F.'s case and issued its findings and recommendations in a sixty-two page report on February 4, 2004. The report concluded in relevant part as follows:

> After careful consideration of both protective and risk factors, the CATS team determined that [K.E.F.] would be at high risk for further neglect if returned to [her parents'] care.
>
> There appeared to be a poor fit between [A.F. and G.F.'s] capacities as parents and [K.E.F.'s] extensive special needs. Their prognosis for change appeared poor as evidenced by their lack of insight and their inability to respond to interventions in the past or services included in their current case plan. The risks for further maltreatment and severe threats to K.E.F.'s well-being are so pervasive that the CATS team could not conceive of a case plan that would sufficiently mitigate these risks in a reasonable amount of time. It is therefore recommended that reunification should not be pursued.

The Cabinet determined that A.F. and G.F.'s efforts to follow the family case plan were unsatisfactory.

On February 18, 2004, a review of the CATS evaluation report was held in Perry District Juvenile Court. The District Court found that "reasonable efforts to preserve or reunify child with her family are not required under KRS 610.127(6)." On March 31, 2004, the court issued an order recommending a change of the permanency goal for K.E.F. to adoption.

The Cabinet filed a petition for involuntary termination of parental rights on August 20, 2004. The action was tried on January 19, 2005. The only witness to testify was Amy Ritchie, a social worker employed by the Cabinet, who had started working with the family on July 27, 2001. The Cabinet's evidence fell into three general categories: (1) that K.E.F. was often left unattended in dirty and unsafe conditions; (2) that A.F. and G.F. were using illegal drugs; and (3) that K.E.F. was not receiving necessary medical services and therapy even though they were provided free of charge. The Cabinet also offered evidence showing that K.E.F.'s condition had improved significantly while in the care of her foster parents. Additionally, the foster parents had stated that they would seriously consider adopting K.E.F. if the parental rights were terminated.

The circuit court denied the Cabinet's petition. This appeal followed.

KRS[2] 625.090(1) provides that a circuit court may involuntarily terminate parental rights only if it finds by clear and convincing evidence that the child is abused or neglected and that termination would be in the best interest of the child. The statute provides three different grounds for finding that a child is abused or neglected:

[2] Kentucky Revised Statutes.

> 1. The child has been adjudged to be an abused or neglected child, as defined in KRS 600.020(1), by a court of competent jurisdiction;
>
> 2. The child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding; or
>
> 3. The parent has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child and that physical or sexual abuse, neglect, or emotional injury to the child named in the present termination action is likely to occur if the parental rights are not terminated[.]
>
> In addition, under KRS 625.090(2), the court must also find by clear and convincing evidence the existence of one or more of the following grounds:
>
> (a) That the parent has abandoned the child for a period of not less than ninety (90) days;
>
> (b) That the parent has inflicted or allowed to be inflicted upon the child, by other than accidental means, serious physical injury;
>
> (c) That the parent has continuously or repeatedly inflicted or allowed to be inflicted upon the child, by other than accidental means, physical injury or emotional harm;
>
> (d) That the parent has been convicted of a felony that involved the infliction of serious physical injury to any child;
>
> (e) That the parent, for a period of not less than six (6) 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 that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child;

(f) That the parent has caused or allowed the child to be sexually abused or exploited;

(g) That the parent, 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 that there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child;

(h) That:

1. The parent's parental rights to another child have been involuntarily terminated;

2. The child named in the present termination action was born subsequent to or during the pendency of the previous termination; and

3. The conditions or factors which were the basis for the previous termination finding have not been corrected;

(i) That the parent has been convicted in a criminal proceeding of having caused or contributed to the death of another child as a result of physical or sexual abuse or neglect; or

(j) That the child has been in foster care under the responsibility of the cabinet for fifteen (15) of the most recent twenty-two

> (22) months preceding the filing of the petition to terminate parental rights.

The Cabinet argues that the evidence it presented at the hearing fulfilled these statutory requirements for termination. Furthermore, the Cabinet contends that it was entitled to prevail in this action because the evidence was uncontroverted. Neither parent testified, nor was any evidence presented on their behalf.

The trial court for its findings of fact stated as follows:

> The Cabinet has not proven, by clear and convincing evidence, that [K.E.F.] is an abused or neglected child as defined by KRS 600.020(1).
>
> The Cabinet has not proven, by clear and convincing evidence, that termination would be in the best interest of the child, [K.E.F.].
>
> The Cabinet has not proven, by clear and convincing evidence, the grounds for termination as required by KRS 625.090.

While more specific and detailed findings are necessary in order to provide an adequate record for this Court to review on appeal, we note that the Cabinet has already complied with several of the statutory criteria critical to establishing its *prima facie* case.

We appreciate the fact that the judge was most assuredly sympathetic and sensitive throughout the hearing.

However, 625.090 requires more analysis over the numerous factors to be considered. CR[3] 52.01 requires that the facts be found specifically. "In all actions tried upon the facts without a jury . . . the court shall find the facts specifically and state separately its conclusions of law thereon and render an appropriate judgment[.]" CR 52.01.

> We, as an appellate court, are not unmindful that the most burdensome and frustrating work of the trial court is its task in decision making associated with nonjury trials under CR 52.01 and that the bulk of this burden is in family law cases. However, our Supreme Court, in its rule making and supervisory capacity, has placed the utmost trust and responsibility in the trial courts by adopting CR 52.01. The rule states that the facts shall be found "specifically." The rule is mandatory on the trial courts. We cite *Fleming v. Rife*, Ky., 328 S.W.2d 151 (1959) and *Standard Farm Stores v. Dixon*, Ky., 339 S.W.2d 440 (1960).
>
> The cornerstone of CR 52.01 is the trial court's findings of fact. It aids the reviewing court by giving it a clear understanding of the grounds and basis of the trial court's judgment, and its judgment will usually not be disturbed on appeal if there is evidence in the record to support the findings. The Supreme Court of the United States, emphasizing the importance of the trial court fact-finding function, said that judges, " . . . will give more careful consideration to the problem if they are required to state not only the end result of their inquiry, but the process by which they reached it." *U.S. v. Merz*, 376 U.S. 192, 84 S.Ct. 639, 11 L.Ed.2d 629 (1964).

[3] Kentucky Rules of Civil Procedure.

Stafford v. Stafford, 618 S.W.2d 578, 580 (Ky.App. 1981)(overruled on other grounds by Largent v. Largent, 643 S.W.2d 261 (Ky. 1982)).

The Cabinet argues that it was entitled to prevail because the evidence it presented constituted an unchallenged *prima facie* case, and as we have observed, we tend to agree with that contention. However, we note that KRS 625.090 requires the trial court to make findings under the "clear and convincing" standard. In order for a party to prevail under that standard, it is not sufficient merely to present unrefuted evidence to the court. The evidence also must satisfy the requirement that it be clear and convincing both in quantity and quality to the satisfaction of the trial court. We cannot usurp this necessary function of the trial court.

Therefore, we vacate the orders of the Perry Circuit Court and remand this case for more specific findings of fact pursuant to KRS 625.090 and CR 52.01.

ALL CONCUR.

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