

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001223-ME

S.G.

APPELLANT

v. APPEAL FROM JOHNSON CIRCUIT COURT
HONORABLE JOHN DAVID PRESTON, JUDGE
ACTION NO. 04-AD-00012

CABINET FOR HEALTH AND FAMILY SERVICES,
COMMONWEALTH OF KENTUCKY; P.W.J., JR.;
J.L.; T.J.; AND K.L.

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: DYCHE, McANULTY, AND TACKETT,¹ JUDGES.

TACKETT, JUDGE: S.L.G. (hereinafter "Mother") appeals from the order of the Johnson Family Court terminating her parental rights to her children T.L.J. and K.M.L. Mother argues on appeal that the court's finding that termination was in the best interest of the children was clearly erroneous. We affirm.

¹ This opinion was completed and concurred in prior to Judge Julia K. Tackett's retirement effective June 1, 2006. Release of the opinion was delayed by administrative handling.

This case began in 2001 when the Department for Community Based Services (CBS) in Lawrence County began an investigation of allegations that Mother had left T.L.J. with an improper caretaker. The investigating social worker found the child wheezing badly and in need of a breathing treatment, while the Mother had not sent medication to the babysitter. The child was approximately nine months old at the time of this incident. The caretaker herself had only recently been released from a hospital and was still fitted with a catheter. The social worker reported that during this investigation, Mother came to the social worker's office inebriated and unable to stand by herself. Floyd County police confirmed her intoxication, and Mother acknowledged after being referred to the health department for a drug test that she had used marijuana, Lorcet, and Xanax. That matter was ultimately informally adjudicated in October 2001. The appellant's mother was named custodian-caretaker and the appellant was ordered to complete a program before she could request that the court return the child to her. CBS opened a case plan with the Mother, which was reviewed every six months.

Mother was referred to substance abuse treatment on an outpatient basis. She did not show for most of the scheduled drug tests, and tested positive on two of the occasions she did show, although she did test negative twice. She also had great

difficulty maintaining a stable residence, and moved from place to place very frequently in the period of CBS supervision, moving approximately 20 times between residences of family and friends.

A neglect petition was filed in 2003 based upon the conditions of the children's grandmother's home, but the petition was filed against Appellant and not the grandmother. A finding of neglect was made against the Appellant in August 2003, but the case plan was implemented with the grandmother. At this time, Appellant was serving a short jail term for a hit-and-run accident with property damage, having struck a parked car without leaving a note and then failing to make restitution, a condition of probation. The children were placed with Randall and Wilma Lemaster, but by October 2003 the children were placed in the custody of the cabinet after the Lemasters were unable to continue caring for the children.

The Cabinet was relieved of the obligation to work with Appellant in February 2004 after a history of little progress toward resolving her inability to provide a stable environment and her drug abuse issues. In August 2004, the Cabinet changed its goal to adoption of the children and filed a petition for involuntary termination of parental rights. The Cabinet was then ordered in November 2004 to work toward return of the children to the grandmother because it had failed to name

her in the previous neglect petition, and so there was neither a finding of neglect nor an effort at reunification with her. Even so, the Cabinet continued to work toward adoption and termination, and in December 2004 the Cabinet was relieved of the obligation to seek reunification with the grandmother because the grandmother's husband had a history of domestic abuse.

After a hearing, the court found the Cabinet had shown by clear and convincing evidence that termination was in the best interest of the children. The court specifically found that Appellant had failed to comply with her case plan, had exposed the children to her drug abuse, had failed to cooperate with drug treatment, and failed to establish a suitable, stable residence. K.M.L.'s father had filed a voluntary petition for termination of his rights, and T.L.J.'s father was found to have abandoned her through having no contact for a period greater than six months, as required by statute for such a finding. The court also found that the Cabinet had shown that it had made reasonable efforts and rendered or offered services to the family toward the goals of rehabilitation and reunification, but the family had not made such efforts that it would be in the best interest of the children to be returned to the parents within a reasonably foreseeable time. Accordingly, the court

found that parental rights should be terminated. This appeal followed.

Appellant cites Wright v. Howard, 711 S.W.2d 492 (Ky. App. 1986) and L.B.A. v. H.A. and F.A., Kentucky Cabinet for Human Resources, M.L.A., an infant, and J.A., 731 S.W.2d 834 (Ky. App. 1987) in support of her position that she was placed in a "Catch-22" situation where she had no duty to care for the children, as they had been placed with the grandmother, yet was found to be an unsuitable parent due to her moving and drug abuse issues. We do not find support for this position in those cases. As the family court noted, Wright involved a situation where a father's rights had been terminated because the father was prohibited from contact with the child, with no support order entered, and this Court held that in those circumstances, no finding that the father abandoned the children could be made because it could not be shown by clear and convincing evidence that the father's lack of contact evidenced a purpose to forego all parental duties and claims to the children. L.B.A. involved a situation where the mother had never had custody of the child. Here, as the Cabinet notes, the Mother has had custody in the past and her parental skills have been shown to be severely lacking. This case is instead similar to Commonwealth, Cabinet for Families and Children v. G.C.W., 139 S.W.3d 172 (Ky. App. 2004), where the Cabinet had made numerous case plans and the

mother had failed to make progress with those plans, and the evidence showed that she was unable or unwilling to care for the children.

With respect to whether the Cabinet carried its burden of clear and convincing evidence, we are permitted to disturb the court's findings only on a showing of clear error, and there has been none here. The Mother cannot show that the court's factual findings are erroneous, and we perceive no clear error given all the evidence presented at the hearing. The court's conclusions are sound and shall be affirmed.

For the foregoing reasons, the decision of the Johnson Family Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

David J. Porter
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BRIEF FOR APPELLEE, CABINET
FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF
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