

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000031-ME

T.E.B., JR.

APPELLANT

v. APPEAL FROM WARREN FAMILY COURT
HONORABLE CATHERINE R. HOLDERFIELD, JUDGE
ACTION NO. 06-AD-00006

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: STUMBO AND WINE, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: T.E.B., Jr., (“Father”) appeals the Warren Family Court's termination of his parental rights of T.E.B., III (“Son”). We affirm.

On November 3, 2003, The Commonwealth of Kentucky, Cabinet for Health and Family Services, (“Cabinet”), removed Son from his home after receiving

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

allegations of sexual abuse by Father. Subsequent to Son's removal, Father pled guilty to criminal charges relating to the sexual abuse of Son. On February 2, 2006, the Cabinet filed a petition seeking termination of Father's parental rights to Son.² On September 15, 2006, after a hearing held September 8, 2006, the Warren Family Court entered an order and separate findings of fact and conclusions of law, terminating Father's parental rights. This appeal followed.

Father argues that his rights were terminated solely due to his criminal conviction and because his criminal conviction is under appeal and has not been fully adjudicated, the termination proceedings should be stayed until such time. We do not agree.

When reviewing a family court's determination in a termination of parental rights case, the ruling of the family court will not be disturbed absent a showing that the family court's decision was clearly erroneous, as set forth in Kentucky Rules of Civil Procedure (CR) 52.01. *K.R.L. v. P.A.C.*, 210 S.W.3d 183 (Ky.App. 2006). 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).

The Circuit Court may involuntarily terminate all parental rights of a parent of a named child, if the Circuit Court finds from the pleadings and by clear and convincing evidence that:

(a) 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 Cabinet's petition included Son's mother as a co-respondent. She is not a party to this appeal.

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; and
- (b) Termination would be in the best interest of the child.

KRS 625.090(1). In addition, subsection (2) of KRS 625.090 states “No termination of parental rights shall be ordered unless the Circuit Court also finds by clear and convincing evidence the existence of one (1) or more of the following grounds” and then lists ten potential grounds.

In its findings of fact and conclusions of law, the Warren Family Court included the following:

[Son] is an abused and neglected child as defined in KRS 600.020(1), . . . [Father] has been convicted of a criminal charge relating to the physical or sexual abuse or neglect of any child, . . . [Father] for a period of not less than six (6) months, [has] continuously or repeatedly failed or refused to provide or have been substantially incapable of providing essential parental care and protection for the child and there is no reasonable expectation of improvement in parental care and protection, considering the age of the child, . . . [Father] has allowed the child to be sexually abused or exploited, . . . [Father], 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 there is no reasonable expectation of significant improvement in the parent's conduct in the immediately foreseeable future, considering the age of the child, . . . 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, . . . [Son] was placed after being sexually abused by his father, . . . It is the best interest of [Son] that termination of parental rights be ordered because the child needs the stability provided by CHFS placing him for adoption.

These findings and conclusions directly rebut Father's contention that his rights were terminated only because of his criminal convictions. Because the family court terminated Father's rights under both KRS 625.090(1)(a)(2) and KRS 625.090(1)(a)(3), even if Father's criminal convictions were successfully appealed, the grounds for termination would remain adequate. The family court also found that the Cabinet had exceeded its KRS 625.090(2) requirements, by finding the presence of four additional grounds under KRS 625.090(2), which required only one. We see no clear error in the case at hand.

The standard of proof, clear and convincing evidence, is lower in a termination of parental rights hearing than a criminal conviction, which requires proof beyond a reasonable doubt. Furthermore, a termination hearing is civil in nature, not criminal. Therefore, Father's arguments regarding witnesses, right to a jury trial or guilt beyond a reasonable doubt would be better suited in his criminal appeal.

For the foregoing reasons, the order of the Warren Family Court is
AFFIRMED.

ALL CONCUR.

BRIEF FOR APPELLANT:

Thomas Edward Burke, Jr., *Pro Se*
Eddyville, Kentucky

BRIEF FOR APPELLEE:

Mary Gaines Locke
Munfordville, Kentucky