

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000952-ME

R. D. G.

APPELLANT

v.

APPEAL FROM BUTLER CIRCUIT COURT
HONORABLE MICHAEL L. MCKOWN, JUDGE
ACTION NO. 06-AD-00002

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES, AS NEXT FRIEND OF
R. J. G., A CHILD; AND R. J. E.

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: NICKELL, THOMPSON AND VANMETER, JUDGES.

VANMETER, JUDGE: R.D.G. appeals from an order entered by the Butler Circuit Court, Family Division, terminating his parental rights. For the reasons stated, we affirm.

This matter concerns a child who was born in January 2005 to homeless parents who were not married to one another. When she was two days old, the child was removed from the parents and placed into foster care for a number of reasons including

the drug usage of the mother and the pending criminal issues of the father, R.D.G. The parents subsequently participated in scheduled visitation, and R.D.G. attempted to follow a treatment plan which included maintaining a home for the child, paying child support, using no drugs or alcohol, and staying out of legal trouble. Unfortunately, since late November or early December 2005, R.D.G. has been incarcerated and is serving a ten-year sentence on a charge of manufacturing methamphetamine. He expects to first become eligible for parole in March 2008.

Appellee Commonwealth of Kentucky, Cabinet for Health and Family Services (Cabinet) filed a petition in February 2006 seeking the termination of the parental rights (TPR) of both parents. The court granted the petition after a final hearing in March 2007. The mother did not appeal, but R.D.G.'s appeal followed.

R.D.G. asserts that the trial court erred by finding that the Cabinet proved, by clear and convincing evidence, that the child was abused or neglected for purposes of KRS 625.090(1)(a). We disagree.

KRS 625.090(1)(a) permits a circuit court to terminate parental rights if it finds, based on the pleadings and clear and convincing evidence, that the child is abused or neglected as defined in KRS 600.020(1), that TPR would be in the child's best interest, and that one of the grounds set out in KRS 625.090(2) exists. In pertinent part, KRS 600.020(1) defines an abused or neglected child as one who suffers harm or the threat of harm to his health or welfare when his parent:

(c) Engages in a pattern of conduct that renders the parent incapable of caring for the immediate and ongoing needs of

the child including, but not limited to, parental incapacity due to alcohol and other drug abuse as defined in KRS 222.005;
(d) Continuously or repeatedly fails or refuses to provide essential parental care and protection for the child, considering the age of the child;

. . . .

(h) Does not provide the child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary for the child's well-being. . . .; [or]

(i) Fails to make sufficient progress toward identified goals as set forth in the court-approved case plan to allow for the safe return of the child to the parent that results in the child remaining committed to the cabinet and remaining in foster care for fifteen (15) of the most recent twenty-two (22) months.

Here, as of the March 2007 hearing, the child had been in foster care for all twenty-six months of her life. KRS 600.020(1)(i). Although the videotape of the hearing reflects that R.D.G. took an interest in the child and attempted to meet the goals set for the return of her custody to him, even he admits that he has been incarcerated and unable to provide for the child since late 2005. Thus, despite any progress made prior to that date, clear and convincing evidence shows that since late 2005, R.D.G. has been unable to satisfy KRS 600.020(1) (c), (d), and (h) by providing for the child's immediate and ongoing needs and protection. It follows that the trial court did not err by finding that for purposes of KRS 625.090(1), the child was neglected as defined in KRS 600.020(1).

R.D.G. also asserts that the trial court erred by finding that the Cabinet proved, by clear and convincing evidence, that grounds for TPR exist as set out in KRS 625.090(2)(e) and (g). We disagree.

A circuit court may terminate parental rights if it finds both that TPR would be in the child's best interest and that, “from the pleadings and by clear and convincing evidence[,]” the child not only is abused or neglected, but also

(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; [or]

. . . .

(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[.]

KRS 625.090(2)(e) and (g). Here, despite his earlier efforts and progress, clear and convincing evidence shows that R.D.G. has been engaged in a longstanding pattern of criminal conduct, and that he has been continuously incarcerated and unable to provide essential parental care and protection for the child since late 2005. At the time of the March 2007 hearing, no reasonable expectation existed that R.D.G.'s ability to care for the child might improve before the passage of at least another twelve months, since R.D.G. will not become even eligible for parole until March 2008. Thus, no reasonable expectation existed that R.D.G.'s ability to care for the very young child would improve in the immediate future considering the very young age of the child and the fact that the

child has never been in R.D.G.'s care except during supervised visitation. *See* KRS 625.090(2) (e) and (g). It follows that the court did not err by finding that clear and convincing evidence satisfied the conditions set out in KRS 625.090(e) and (g), and by finding that the termination of R.D.G.'s parental rights was in the child's best interest.

The court's order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Justin S. Keown
Hartford, Kentucky

BRIEF FOR APPELLEE

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES:

Mary Gaines Locke
Munfordville, Kentucky