

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000987-ME

R. K., MOTHER

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN M. GEORGE, JUDGE
ACTION NO. 06-AD-500267

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES; D. N. S.; Z. T. K.; W. H. S. JR.,
FATHER

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: LAMBERT AND VANMETER, JUDGES; KNOPF,¹ SENIOR JUDGE.

VANMETER, JUDGE: Appellant R.K. appeals from the orders of the Jefferson Circuit Court, Family Division, terminating her parental rights to two children. For the reasons stated, we affirm.

¹Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

R.K. is the biological mother of two children who were born in June 2001 and February 2003. In May 2003, appellee Cabinet for Health and Family Services (Cabinet) filed verified dependency petitions alleging the following:

Child's mother is disabled (learning disabilities) and receives SSI. The maternal grandmother, [A.S.] is payee for mother's benefits. Children's mother is not capable of caring for them due to her own limitations. [Z.S.] . . . was seen at Kosair on 5/15/03 and diagnosed as failure to thrive. It has been reported that mother's paramour . . . sells the children's food for drugs. It has been reported that the home is full of spoiled rotting food, with ripped open garbage bags and clothes scattered throughout the home. Mother and paramour have a history of crack cocaine use. ECO was granted . . . on 5/15/03.

By agreement, in June 2003 the children were adjudicated dependent but were returned to R.K.'s care. R.K. and the children then resided with R.K.'s grandmother, who died in January 2005. In June 2005, pursuant to an emergency custody order (ECO), the children were returned to the Cabinet's custody. They were placed in a relative's care for several months, and then were placed into foster care after the relative was unable to keep them. R.K. again stipulated that the children were dependent in that she was unable to properly care for them. The Cabinet filed verified dependency petitions, and the children were committed to the Cabinet's care and custody. In July 2006, the Cabinet filed this action seeking the termination of the parental rights of R.K. and appellee W.S.²

² W.S., whom the trial court described as the biological father of one of the children and the putative father of the other, did not appeal from the termination of his parental rights.

After a hearing, the court found that the Cabinet had provided or made reasonable efforts to provide reunification services to the family, as well as “appropriate accommodations for [R.K.'s] mental impairments.” More specifically, the court found that W.S. had abandoned the children, and that both parents had

continuously or repeatedly failed or refused to provide or have been substantially incapable of providing essential parental care and protection for the [children] and there is no reasonable expectation of improvement in parental care and protection, considering the age of each child. Despite the aforesaid reasonable efforts by the Cabinet to reunify the Children with the Respondents, the Respondents engaged in a pattern of conduct that has rendered them incapable of caring for the immediate and ongoing needs of the Children[.]

Further, the court found that while the children spent several months in a relative's care and then seventeen months in the Cabinet's custody and care, the parents “failed to cooperate with the Cabinet or to reach reunification goals set forth in the Cabinet's court-approved case treatment plan.” The children therefore had been unable to return to their parents' custody and care. The court found that the parents,

for reasons other than poverty alone, have continuously or repeatedly failed to provide or are incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the children's well-being and there is no reasonable expectation of significant improvement in parental conduct by either Respondent parent in the immediately foreseeable future, considering the age of each child. On multiple occasions, [R.K.] has stipulated that the Children are dependent children within the meaning of KRS 600.020(1). The Court finds that [R.K.] due to her mental impairments has repeatedly been and continues to be unable to provide essential parental care.

As Ms. Shank testified, while the Children have been in the care and custody of the Cabinet, the Respondents generally have not provided the children with food, shelter, clothing, medical care or educational care due to reasons other than poverty alone. Nor have the Respondents otherwise provided the Children with financial assistance since they have been in the care and custody of the Cabinet.

The Children's physical, mental and emotional needs have been met while in the Cabinet's care and custody and the children are expected to make continuing improvements in these areas upon termination of parental rights. Termination of parental rights is in the best interest of the children, and the Cabinet . . . has facilities available to accept the care, custody and control of the children and is the agency best qualified to receive custody.

The Court has considered evidence pertaining to each enumerated ground in the Cabinet's Petition for Involuntary Termination of Parental Rights and has determined by clear and convincing evidence that the Cabinet has met the burden of proving each ground independently of one another. Each individual ground for termination found in this action is sufficient for termination of parental rights pursuant to KRS 625.090.

The court concluded that clear and convincing evidence showed that the children were neglected, that several separate and independent grounds existed for the termination of parental rights, that additional services were not likely to enable the children to return to their parents within a reasonable time considering the children's ages, and that it was in the children's best interests to terminate parental rights. This appeal followed.

R.K. asserts that the trial court erred by terminating parental rights, as the evidence was insufficient to prove the necessary statutory elements. We disagree.

For purposes of this proceeding KRS 625.090 required the trial court to find that clear and convincing evidence showed that the children were abused or neglected as defined in KRS 600.020(1), that one or more of the grounds enumerated in KRS 625.090(2) existed, and that termination would be in the children's best interests. *See Santosky v. Kramer*, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). On appeal R.K. challenges the first two findings but does not discuss the grounds for the court's finding that termination would be in the children's best interests.

Contrary to R.K.'s claims, clear and convincing evidence supported the court's finding that the children were neglected as defined in KRS 600.020(1). The latter statute defines an "abused or neglected child" as one "whose health or welfare is harmed or threatened with harm[,]" including one whose parent

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

(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[.]

KRS 600.020(1).

Here, the record supports the court's finding that R.K.'s intellectual limitations caused her to be unable to independently provide essential parental care to the children. Her grandmother, who had assisted in caring for the children, had died and there was no evidence that other family resources were available for similar intervention. Further, the record shows that the Cabinet had provided extensive social services to R.K., but her abilities or efforts never increased sufficiently to allow the children's return to her care after their June 2005 removal. Despite R.K.'s assertion that the children's needs were met while they were in foster care, and regardless of her earlier stipulations that the children were dependent, the facts clearly and convincingly demonstrated that R.K. was unable or unwilling to provide the necessary care and protection for her children. The court did not err by finding in this proceeding that the children were neglected. *See* KRS 600.020(1) and 625.090(1)(a)(2).

Next, there is no merit to R.K.'s assertion that the court erred by also finding, by clear and convincing evidence, the existence of one or more of the ten factors enumerated in KRS 625.090(2) as grounds for the termination of parental rights. Those grounds include:

(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;

...

(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;

... 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.

Here, the record shows that the Cabinet provided extensive social services to R.K. and the children for more than six months, but that for more than six months R.K. continued to be unable or unwilling to provide essential parental care and protection for the children, or to sufficiently improve her skills to permit the children's return to her care after their June 2005 removal. We agree with the court's finding that clear and convincing evidence showed the absence of any reasonable expectation that R.K.'s abilities or performance would significantly improve in the immediately foreseeable future. The court did not err by finding that the factors set out in KRS 625.090(2)(e) and (g) were satisfied, and that R.K. failed to provide for the children's care or necessities.

R.K. next asserts that the trial court erred by relying on the fifteen-month figure set out in KRS 625.090(2)(j) as a factor in granting termination. However, our review of the trial court's findings, conclusions and orders show that although the court mentioned the amount of time the children spent in the care and custody of a relative and the Cabinet, the duration of foster care and KRS 625.090(2)(j) were not mentioned as grounds for the termination. Hence, R.K.'s claim regarding the inapplicability of that factor need not be addressed.

Finally, we are not persuaded by R.K.'s argument that the trial court erred by relying on a petition and entering orders which are fatally flawed. R.K. claims that the Cabinet's petition failed to satisfy statutory requirements by identifying the children's specific residences and mailing addresses, and by concisely listing the factual basis for the petition. *See* KRS 625.050. Further, R.K. alleges that the court's orders failed to include, as required by KRS 625.100(1), a statement that “each petitioner is fully aware of the purpose of the proceedings and the consequences of the provisions of this chapter.” However, R.K.'s appellate brief failed to indicate whether these issues were raised below, and we have found nothing in the record to show that they were preserved for appellate review. *See* CR³ 76.12(4)(c)(v). Moreover, R.K. made no written request for additional findings of fact. CR 52.04. We therefore conclude that these issues were waived and are not properly before us on appeal. Further, even if substantiated, the alleged errors would not compel appellate relief in the avoidance of manifest injustice. CR 61.02.

³ Kentucky Rules of Civil Procedure.

The orders of the Jefferson Circuit Court, Family Division, are affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE

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