

Commonwealth Of Kentucky
Court of Appeals

NO. 2007-CA-001246-ME

J.W.C.

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE O. REED RHORER, JUDGE
ACTION NO. 07-AD-00001

KENTUCKY CABINET FOR HEALTH
AND FAMILY SERVICES

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: COMBS, CHIEF JUDGE; DIXON, JUDGE; KNOPF, □ SENIOR JUDGE.

COMBS, CHIEF JUDGE: This is an appeal from a judgment of the Franklin Circuit Court terminating the parental rights of the appellant, J.W.C., to his two children. After concluding that the findings of the trial court were supported by substantial evidence and that the court did not err in its legal conclusions, we affirm the judgment.

J.W.C.'s children were committed to the Cabinet for Health and Family Services in 2002 for approximately thirty (30) days and were returned to their parents after they stipulated neglect. Domestic violence and unsanitary living conditions had

prompted this first removal. They were committed to the Cabinet for a second time on June 17, 2005. At the time of the second removal of the boys by the Cabinet, their parents had been incarcerated and had left them in the care of a non-relative care-giver whose own children had previously been removed with subsequent termination of her parental rights. At this time, the older child was four; the younger child was barely three.

On January 8, 2007, the Cabinet filed a petition for involuntary termination of parental rights in Franklin Circuit Court seeking to terminate permanently the parental rights of J.W.C. and T.B.C. (the children's mother). The Cabinet alleged that J.W.C. and T.B.C. had continuously failed (or refused to provide or had been substantially incapable of providing) essential parental care and protection for the children; had continuously failed to provide (or had been incapable of providing) essential food, clothing, shelter, medical care and education reasonably necessary for the children's well-being; had created a risk of physical or emotional injury to the children; had engaged in patterns of conduct, including alcohol abuse and domestic violence, that had rendered them incapable of caring for the immediate and ongoing needs of the children; had adopted criminal lifestyles that are incompatible with parenting; and had abused and neglected the children's siblings resulting in the removal of those children from their care.

The matter proceeded to a bench trial in Franklin Circuit Court on June 4, 2007. After hearing the proof, the trial court rendered findings of fact, conclusions of law, and a judgment terminating the parental rights of both parents. The court determined that the Cabinet had proven each of its allegations through clear and convincing evidence and that the children's best interests would be served if the parental rights of T.B.C. and J.W.C. were terminated. The children were made wards of the state,

and the court authorized the Cabinet to place them for adoption. Their mother, T.B.C., did not contest the termination of her parental rights. This appeal by J.W.C. followed.

J.W.C. argues that the trial court erred by terminating his parental rights. He contends that the Cabinet presented no evidence beyond the fact of his incarceration to prove that the termination of his parental rights was in the best interests of the children.

We have carefully reviewed the record in light of this argument, and we find no error.

KRS 625.090 provides, in part, as follows:

(1) 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 child is found to be an abused or neglected child, as defined in KRS 600.020(1), by the Circuit Court in this proceeding;

* * * * *

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

(2) 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:

(a) That the parent has abandoned the child for a period of not less than ninety (90) days;

* * * * *

(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;

* * * * *

(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;

* * * * *

(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.

(3) In determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:

* * * * *

(b) Acts of abuse or neglect as defined in KRS 600.020(1) toward any child in the family;

(c) If the child has been placed with the cabinet, whether the cabinet has, prior to the filing of the petition made reasonable efforts as defined in KRS 620.020 to reunite the child with the parents unless one or more of the circumstances enumerated in KRS 610.127 for not requiring reasonable efforts have been substantiated in a written finding by the District Court;

(d) The efforts and adjustments the parent has made in his circumstances, conduct, or conditions to make it in the child's best interest to return him to his home within a reasonable period of time, considering the age of the child;

(e) The physical, emotional, and mental health of the child and the prospects for the improvement of the child's welfare if termination is ordered; and

(f) The payment or the failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so.

The provisions of KRS 600.020(1) define *abused or neglected child* as a child

whose health or welfare is harmed or threatened with harm 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;

* * * * *

(g) Abandons or exploits the child; or

(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. . . .

A trial court's findings of fact in a termination of parental rights proceeding will not be disturbed unless they are clearly erroneous. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114 (Ky.App. 1998). Findings are not clearly erroneous if they are supported by substantial evidence. *Id.*

The trial court based its decision to terminate J.W.C.'s parental rights on the following findings that track and reflect the statutory requirements:

8. [J.W.C. has] failed to protect and preserve the [children's] fundamental rights to a safe and nurturing home; [the children] are abused and neglected children as defined in KRS 600.020; and it is in the best interest of the children that [J.W.C.'s] parental rights be terminated.

9. [J.W.C.] for periods of not less than six months [has] continuously failed or refused to provide or [has] 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 ages of the children.

10. [J.W.C.] for reasons other than poverty alone, [has] continuously failed or refused to provide or [is] 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 the parents' conduct in the immediately foreseeable future, considering the ages of the children.

11. The children have been in foster care under the responsibility of the Cabinet for at least fifteen of the twenty-two months immediately preceding the filing of the petition for termination of parental rights.

12. The Cabinet for Health and Family Services has provided or offered to provide all reasonable services to the family in an effort to keep the family together.

13. Termination of parental rights is in the best interest of the children. . . .

J.W.C. contends that all of the evidence presented by the Cabinet demonstrated that his failure to provide for his children arose solely from his condition of incarceration. He correctly observes that incarceration of a parent cannot be the only basis for a termination of parental rights. *J.H. v. Cabinet for Human Resources*, 704 S.W.2d 661 (Ky.App. 1985). However, a parent's propensity for and dedication to a criminal lifestyle that causes him to be incarcerated **may** support a finding that the parent

has substantially and continuously neglected the child. *Id.* We have declared that such a lifestyle choice is “incompatible with parenting.” *Id.*

The catalogue of instances of tragic abuse and neglect is long and sordid. As a result of having suffered the most severe abuse from infancy, the two young boys have extraordinary educational, social, and psychiatric needs. Despite the children’s clear and grave need for special care, the evidence presented by the Cabinet in this case indicates that J.W.C. provided not even basic care and instead pursued a lifestyle characterized by crime, violence, alcoholism, and drug abuse. J.W.C. has proven himself wholly incapable of providing even minimal care for his children, and there is no reasonable expectation of any significant improvement in his conduct. The trial court’s findings were amply supported by the evidence, and the court did not err by concluding that J.W.C.’s parental rights should be terminated under the statutory criteria.

The judgment of the Franklin Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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