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Commonwealth of Kentucky
Court of Appeals

NO. 2023-CA-0315-ME

D.K.M.C., NATURAL MOTHER AND
J.A.C.S., NATURAL FATHER

APPELLANTS

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE SQUIRE WILLIAMS, III, JUDGE
ACTION NO. 21-AD-00055

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; AND J.A.C.M.,
III, A CHILD

APPELLEES

AND

NO. 2023-CA-0316-ME

D.K.M.C., NATURAL MOTHER AND
J.A.C.S., NATURAL FATHER

APPELLANTS

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE SQUIRE WILLIAMS, III, JUDGE
ACTION NO. 21-AD-00056

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND

FAMILY SERVICES; AND E.E.C.M.,
A CHILD

APPELLEES

AND

NO. 2023-CA-0318-ME

D.K.M.C., NATURAL MOTHER AND
J.A.C.S., NATURAL FATHER

APPELLANTS

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE SQUIRE WILLIAMS, III, JUDGE
ACTION NO. 21-AD-00057

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; AND I.G.C.M.,
A CHILD

APPELLEES

AND

NO. 2023-CA-0319-ME

D.K.M.C., NATURAL MOTHER AND
J.A.C.S., NATURAL FATHER

APPELLANTS

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE SQUIRE WILLIAMS, III, JUDGE
ACTION NO. 21-AD-00058

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND

FAMILY SERVICES; AND L.S.C.M.,
A CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, GOODWINE, AND LAMBERT, JUDGES.

COMBS, JUDGE: Appellants, D.K.M.C. and J.A.C.S., appeal from Orders of the Franklin Circuit Court terminating their parental rights to their four minor children in these consolidated appeals.¹ After our review, we affirm.

Pertinent to this appeal, D.K.M.C. (Mother) and J.A.C.S. (Father) are the parents of the following four children: J.C., a male born in 2013; E.C., a male born in 2016; I.C., a female born in 2017; and L.C., a male born in 2019 (collectively, the children).²

In October 2019, the Cabinet filed juvenile dependency, neglect, and abuse (DNA) petitions after I.C. -- who was then two years of age -- was taken to the hospital after having been found nonresponsive at home. She was assessed with multiple injuries as well as malnutrition. The court awarded emergency

¹ By Order entered on 08/15/2023, this Court granted the Appellee Cabinet's motion to consolidate.

² There are two older children who have a different father. They were placed in the permanent custody of their maternal grandparents and are not involved in this appeal.

custody to the Cabinet on October 27, 2019. All four of the children have remained continuously in the Cabinet's custody since that time.

A temporary removal hearing was held on November 5, 2019. On January 8, 2020, the family court entered an Agreed Order that the parents undergo a Comprehensive Assessment and Training Services (CATS) Assessment to be paid for by the Cabinet. On February 28, 2020, the parties stipulated to neglect. Disposition was held on May 15, 2020, the children were committed to the Cabinet, and case plans were created for the family.

On May 25, 2021, the CATS assessments were filed in the underlying juvenile proceedings.³ With respect to I.C., the report reflects the following horrific details:

The abuse that resulted in the removal of [the] . . . children was very severe and classified as a near fatality. [I.C.] was admitted to the PICU in critical condition in October 2019, and her injuries were highly specific for non-accidental trauma. At the time of her removal, [I.C.] presented with multiple bruises and abrasions all over her body; an MRI confirmed the presence of a subdural hematoma; she had retinal hemorrhages; fractures to her left foot, including multiple toes fractures; her liver was lacerated; her injuries were in various stages of healing; and she was diagnosed as Failure to Thrive, weighing less than 17 lbs. Records and collateral interview with the children in the home consistently describe [I.C.] as a targeted child who was singled out for maltreatment by [Mother]; she was often not allowed to eat and was

³ The CATS reports were subsequently introduced into the record at the Termination of Parental Rights (TPR) hearing.

punished for drinking water; she ate out of garbage cans and was given scraps from her siblings' leftovers. [Mother] and [Father] have consistently and implausibly suggested [I.C.'s] older siblings caused her injuries

The CATS assessment concluded that:

It seems that [Mother] possesses traits and vulnerabilities that are consistent with a person who has the capacity to perpetrate sadistic and cruel violence against children, there is substantial evidence that she did repeatedly harm [I.C.], she has not taken responsibility for it, and [Father] is unwilling to acknowledge her risk to his children Importantly, her maltreatment of [I.C.] does not appear to be due to simply to poor bonding and postpartum depression. The aforementioned risk factors appear to be chronic, unresolved and would pose risk to any child in her care. Consequently, CATS cannot recommend a case plan for reunification.

(Emphasis original.)

A review was conducted on July 12, 2021. The Cabinet's report reflects that it had met with the parents on June 10, 2021, in order to complete a new case plan addressing the CATS recommendations, but that neither parent had notified the case worker of any progress or completion of these tasks. The Cabinet's assessment was that "[Father] and [Mother] have not started their new case plan and are not willing to take responsibility for the incident. This is concerning." The Cabinet recommended that the court order the

recommendations of the CATS assessment including, but not limited to, random drug screening for Mother to be paid for by the Cabinet.

On October 11, 2021, the Cabinet reported that following the CATS assessment and her updated case plan, Mother completed a mental health assessment at Deaton and Deaton, which recommended that she complete a forensic psychological interview at Whitten Psychological Services. Mother told the Cabinet worker that “she spoke with her attorney and that she would not be completing the forensic interview and that her attorney would take it up with the court.” The report also noted that Mother had tested positive for morphine on August 19, 2021, but that she had no explanation as to why when the Cabinet worker asked her about it. The Cabinet’s assessment was that Father and Mother had made limited progress on their case plans and that they were not willing to take responsibility for the incident. Ultimately, the goal was changed to adoption in November 2021.

On November 5, 2021, the Cabinet filed petitions for the involuntary termination of parental rights in the interest of each of the children. Trial was conducted on September 19 and November 14, 2022. Numerous witnesses testified. Two post-trial depositions were admitted into evidence.

On February 17, 2023, the trial court entered detailed Findings of Fact and Conclusions of Law (FFCL), Orders terminating parental rights, and Orders of Judgment as to each of the four children. Father and Mother appeal.

The right of every parent to raise his or her own child is a fundamental right of utmost constitutional concern. While the Commonwealth of Kentucky may deprive a parent of this right when the circumstances require, KRS^[4] 625.090 ensures this right is protected by measures of due process. Namely, the statute establishes three substantive elements necessary for TPR, all of which the Commonwealth must prove by clear and convincing evidence, (a) starting with a finding of abuse or neglect by the parents, (b) then determining that TPR is in the child’s best interest, and finally (c) that any one of the grounds for termination listed in KRS 625.090(2)(a)-[(k)] exists.

R. M. v. Cabinet for Health and Family Services, 620 S.W.3d 32, 38 (Ky. 2021) (footnote omitted).

Appellants do not dispute that the trial court’s finding regarding the first prong of the tripartite test as to abuse and neglect was proper. Nor do they dispute that grounds for termination exist under KRS 625.090(2)(j) in light of the length of time that the children have been in the Cabinet’s care. Rather, Appellants’ sole argument on appeal focuses on the third element: that there is a “lack of ‘clear and convincing’ proof that termination is in the children’s best interests.”

⁴ Kentucky Revised Statutes.

[T]rial courts are afforded a great deal of discretion in determining whether termination of parental rights is appropriate. A family court's termination of parental rights will be reversed only if it was clearly erroneous and not based upon clear and convincing evidence. Clear and convincing proof does not necessarily mean uncontradicted proof. It is sufficient if there is proof of a probative and substantial nature carrying the weight of evidence sufficient to convince ordinarily prudent minded people. Under this standard, we are obligated to give a great deal of deference to the family court's findings and should not interfere with those findings unless the record is devoid of substantial evidence to support them.

M.S.S. v. J.E.B., 638 S.W.3d 354, 359-60 (Ky. 2022) (cleaned up).

In determining the child's best interest, the court must consider the six factors set forth in KRS 625.090(3). In the case before us, the trial court meticulously addressed each of those factors at pages 8-11 of its FFCL.

With respect to the first factor, KRS 625.090(3)(a) (Mental illness as defined by KRS 202A.011(9) or intellectual disability as defined by KRS 202B.010(9) that renders the parent consistently unable to care for the child's needs), the court stated: “[w]hile multiple therapists and evaluators have been consulted, none have [*sic*] identified any specific mental illness that warranted the parents' malfeasance or nonfeasance with these children.”

Next, the court determined that:

Regarding the second factor, for “[a]cts of abuse or neglect . . . toward any child in the family,” KRS 625.090(3)(b), the totality of the evidence presented at

trial is sufficient to convince this Court that the Petitioner children have been abused or neglected within the meaning of KRS 600.020(1). This resulted from the Petitioner children, and their siblings, being subjected to inappropriate physical harm and neglect of their material, emotional, and healthcare needs. The Petitioner children have been further abused or neglected by the Respondent parents' failure or inability to comply with this Court's remedial orders and the Cabinet's court-approved case treatment plan so that the Petitioner children could be safely returned to parental custody, and by the failure or ability of the Respondent parents to do what is necessary to materially support the children.

Regarding the third factor, for the Cabinet's "reasonable efforts . . . to reunite the child with the parent" KRS 625.090(3)(c), it is clear to this Court that the Cabinet made appropriate referrals to parenting classes, supervised visitation sessions, mental health counseling, and various other services. The Cabinet social workers testified that, under the circumstances of this case, they were unaware of any other services which the Cabinet could provide or refer the Respondent parents to that would allow for the safe reunification of the Respondent parents with the Petitioner children within a reasonable period, considering the ages of each child. With due consideration given to the next factor, set forth in KRS 625.090(3)(d), this Court finds itself in agreement with that assessment.

The next, fourth, factor concerns "[t]he 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[.]" KRS 625.090(3)(d). Regarding this factor, the Cabinet's caseworker testified that as of the date of the filing of the petition in this TPR action, the Respondent parents have not been fully compliant with the Court's remedial orders out of the aforesaid DNA actions, particularly with

respect to completion of counseling, forensic evaluations, and anger management classes (for the father), among others. As a result of all the foregoing and more, the Petitioner child has been unable to return safely to parental custody and care

Regarding the fifth factor set forth in KRS 625.090(3)(e), it is clear to this Court that the Petitioner 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. The Cabinet social workers testified that they have visited regularly with the Petitioner children in the foster home and the children are doing much better since removal from parental custody and are attached to the foster parents.

The final factor this Court is required to consider is the parent's "payment or . . . failure to pay a reasonable portion of substitute physical care and maintenance if financially able to do so. KRS 625.090(3)(f). The Respondents both were ordered to pay child support for the Petitioner children. This Court ordered the Respondent father to pay \$421.50 per month on February 24, 2021. . . . This Court also ordered the Respondent mother to pay \$320.00 per month on July 21, 2021. . . . However both parents had significant arrearages in the thousands of dollars as of the trial in this action, Aside from bringing a meal and toiletry items to visits with their children, the Respondents made no other regular, material provision for these children.

From the totality of the evidence presented, this Court is not persuaded that the Petitioner children would not continue to be abused or neglected as described in KRS 600.020(1) if returned to parental custody. Even if this Court had been persuaded that the Petitioner children would not continue to be abused or neglected if returned to parental custody, under the circumstances of this case,

this Court would not be inclined to exercise the discretion granted to it by KRS 625.090(5) to do so. Instead this Court has concluded that termination of parental rights is in the best interest of the Petitioner children

Appellants selectively point to evidence that may have supported a more favorable finding with respect to some of the best-interest factors. In essence, Appellants are asking us to reweigh the evidence and to impermissibly substitute our judgment for that of the trial court. “[J]udging the credibility of witnesses and weighing evidence are tasks within the exclusive province of the trial court.” *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). “[A] reviewing court is not permitted to substitute its judgment for that of the family court, unless its findings are clearly erroneous. A factual finding is not clearly erroneous if it is supported by substantial evidence.” *Bailey v. Bailey*, 231 S.W.3d 793, 796 (Ky. App. 2007) (cleaned up).

Overwhelming -- as distinguished from substantial -- evidence supports the trial court’s findings in the case before us. Megan Kohler, the CATS team leader, testified that the team’s recommendation for this family was “no reunification.” Kohler explained that Mother has “an aversion to this child.” She testified that there would be risk to the other children even without this child. Kohler discussed Mother’s incredibly high scores on measures of anger and aggression. She noted that Mother described with complete detachment what happened to I.C. and that Mother has **no empathy** for her children. Kohler

testified that this behavior is not post-partum depression two years after the birth of a child; that Mother had another child after I.C. was born; and that post-partum depression cannot be the full explanation of what happened with I.C. Kohler also testified that Father is a risk factor because he was not protective. He did not intervene, and he was not willing to acknowledge the horrors that were being perpetrated.

The testimony of Macy Hutcherson, an ongoing social worker for the Cabinet, established that each parent had child support arrearages. The parents have not lived together since approximately December 2021. The Cabinet had received a report of a domestic violence dispute in 2021 between the parents after the children's removal. According to Hutcherson, Mother had been living in a friend's apartment and had since moved into their previous home. Father did not have stable housing. She did not think that Father had completed domestic violence classes. Mother had not provided the recommended forensic mental health evaluation.⁵

⁵ Although Appellants argue in their brief that Mother ultimately accomplished this evaluation on her own with Ms. Gutierrez, Ms. Gutierrez testified by deposition that she did not provide a forensic mental health evaluation. Instead, she performed a psychological evaluation. As the trial court correctly found, Mother "to date had yet to successfully complete a *forensic* mental health evaluation, which is more extensive and aggressive than typical mental health evaluations." (Emphasis original.)

Ms. Hutcherson testified regarding her observation of supervised visitation with the children: that the parents appeared to struggle to engage with the children, especially I.C.; that at times, the parents had brought gifts for the three boys, but not for I.C.; that the visits are often chaotic and that the only child Hutcherson has really seen disciplined is I.C. Hutcherson has had to redirect the parents when they engaged in inappropriate conversations with the children.

According to Hutcherson, the children have been placed together in the same foster home. The three boys have been together since removal. Initially, I.C. was in a medically-complex home, but she has been in the same foster home with her brothers since March 2021. I.C. has made significant progress in foster care. The other children have progressed as well. The home is a potential adoptive placement for the children.

Hutcherson did not know of anything more that the Cabinet could offer that could result in reunification in the foreseeable future.

Daniel Stevens, the children's therapist, testified that he began working with the children -- except for the baby, L.C. -- at the beginning of April 2022. He meets with them individually twice monthly, and one visit per month is an in-home, in-person visit. According to Stevens, the children are very apprehensive and guarded about talking about any past trauma. They are not ready for family therapy with the parents. Stevens does not believe that reunification

would be appropriate for these children due the severity of the harm that I.C. has endured and suffered. Stevens testified that the children are very comfortable and happy with the foster mom, “it’s very good.” The children are affectionate with her, especially the younger ones. I.C. is much healthier now. The children are well cared for and their mental health has improved. Stevens believes that the foster mother is capable of providing for these children long term.

We conclude that the trial court correctly determined that the termination of Father’s and Mother’s parental rights is in the best interest of each of the children. Accordingly, we affirm.

ALL CONCUR.

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