RENDERED: JANUARY 26, 2024; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2023-CA-0922-ME

B.N.P. APPELLANT

v. APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE MONICA K. MEREDITH, JUDGE
ACTION NO. 21-CI-00690

D.L.V. AND B.P.V. APPELLEES

OPINION
REVERSING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; GOODWINE AND MCNEILL, JUDGES.

THOMPSON, CHIEF JUDGE: B.N.P.[1] (hereinafter "Appellant") appeals from an order of the Bullitt Circuit Court, Family Division, terminating her parental rights to her minor child, who also has the initials B.N.P. (hereinafter "Child"). Appellant argues that the family court erred in terminating her parental rights with no petition for termination having been filed. She also argues that D.L.V. and

[1]We will use the parties' initials because this appeal involves the parental rights to a minor child.

B.P.V. ("Appellees") do not have standing to file a petition for involuntary termination and that the statutory requirements for termination under Kentucky Revised Statutes ("KRS") Chapter 625 were not met. After careful review, we are persuaded by Appellant's argument that the record contains no petition to terminate her parental rights, that the persons or entities who are statutorily entitled to file a petition for termination of parental rights are not parties to the underlying proceeding, that Child is not a party to the proceeding, and that no guardian *ad litem* ("GAL") has been appointed. Accordingly, we reverse the order on appeal.

FACTS AND PROCEDURAL HISTORY

On February 3, 2021, Appellant and Child, born in 2016, were involved in an automobile accident. The accident resulted in serious injuries to both Appellant and Child. After the accident, Appellant was in a coma for several weeks and Child had lasting physical injuries. Appellant allegedly was intoxicated on alcohol or drugs at the time of the accident, resulting in criminal charges.

Appellees are the maternal great-aunt and great-uncle of Child. Two days after the accident, they were granted temporary custody of Child in Bullitt Family Court action No. 21-J-00014-01. A dependency, neglect, and abuse ("DNA") proceeding followed. After regaining consciousness, and while still hospitalized, in May 2021, Appellant stipulated to neglect. Child remained in the

custody of Appellees while Appellant worked through her case plan for reunification.

On August 27, 2021, Appellees filed a petition requesting that they be adjudicated as Child's *de facto* custodians. They also requested sole custody and visitation. Appellant filed a responsive pleading on October 27, 2021, at which time Child had lived with Appellees for just over 8 months. The matter proceeded in Bullitt Family Court, and a hearing on the motion was conducted on September 14, 2022. The hearing resulted in an order denying Appellees' petition. In support of the order, the family court determined that Appellees did not have standing to establish *de facto* custodian status because Child had not resided with Appellees for one year or more per KRS 403.270. In response, and based on the belief that the family court required a more specific pleading, Appellees moved to file a First Amended Petition to conform their pleadings to the theory of the case. A hearing on the motion was scheduled for March 15, 2023.

On February 2, 2023, and while the motion to file a First Amended Petition was pending, Appellees appealed the family court's September 14, 2022 denial of their August 27, 2021 petition to be designated *de facto* custodians. Appellees later moved to dismiss the appeal by way of a motion filed on June 13, 2023. The motion was granted on August 15, 2023.

During the pendency of the appeal, the family court granted Appellees' motion to amend their petition. The amended petition sought sole custody of Child based on their claim that Appellant was an unfit parent and had waived her superior right to custody.

On April 24, 2023, and while Appellees' appeal was still pending, the family court entered an order which forms the basis for the instant appeal. The April 24, 2023 order terminated Appellant's parental rights as to Child. The following day, Appellant, through counsel, filed a motion to vacate the termination order, arguing that no motion to terminate her parental rights had been filed and that no such motion was pending. She then filed a motion to stay enforcement of the April 24, 2023 order.

On May 15, 2023, the family court entered an order addressing the pending motions. The court noted that the case had not proceeded in a traditional manner, that no GAL had been appointed for Child, and that it was not the duty of the family court to practice the case for the parties. The court characterized Appellees' First Amended Petition as "focus[ing] on termination"; determined that it did not want to "confuse the record, at this time, by prematurely voiding or otherwise modifying the orders and judgment now in place"; and, denied Appellant's motions to vacate or stay enforcement of the termination order. This appeal followed.

STANDARD OF REVIEW

A circuit court may involuntarily terminate a party's parental rights if it finds by clear and convincing evidence that 1) the child is abused or neglected as defined by statute; 2) that the termination of parental rights is in the child's best interests; and, 3) that at least one of statutorily enumerated factors exists which demonstrates parental unfitness. KRS 625.090. A trial court has broad latitude in determining whether children fit within the abused or neglected category and whether the abuse or neglect warrants termination. *Department for Human Resources v. Moore*, 552 S.W.2d 672, 675 (Ky. App. 1977).

Our standard of review in a termination of parental rights action is confined to the clearly erroneous standard based upon clear and convincing evidence, and the findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support them. *V.S. v. Commonwealth, Cabinet for Human Resources*, 706 S.W.2d 420, 424 (Ky. App. 1986). "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." *Rowland v. Holt*, 253 Ky. 718, 70 S.W.2d 5, 9 (1934).

ARGUMENTS AND ANALYSIS

Appellant argues that the Bullitt Family Court committed reversible error in terminating her parental rights as to Child. She asserts that no petition to terminate her parental rights nor adoption proceeding was pending before the Bullitt Family Court. As such, she argues that the April 24, 2023 order was *sua sponte*, wholly unsupported by the record, and made without notice that her parental rights were in jeopardy. Appellant notes that Appellees had first filed a petition to be designated as *de facto* custodians. Appellees later filed their First Amended Petition asking the court to find Appellant to be an unfit parent and granting them custody of Child. Appellant argues that the Bullitt Family Court appears to have misinterpreted the First Amended Petition as a petition to terminate Appellant's parental rights, when the petition merely sought Appellees' designation as Child's custodians.

Appellant argues that she never received notice that the family court intended to treat Appellees' amended petition for custody as a petition to terminate Appellant's parental rights. She maintains that the termination of her parental rights, with no petition to terminate parental rights having been filed, no GAL having been appointed for Child, and no notice to Appellant is an egregious violation of her due process and other fundamental constitutional rights. Appellant also argues that Appellees did not have standing to file a petition to terminate her

parental rights under KRS 625.050, and that the statutory elements under KRS Chapter 625 were not met. She asserts that the Bullitt Family Court did not make specific findings for termination as required by KRS 625.090, and that no confidential case number was assigned as is required in termination cases. In sum, she seeks an order reversing the Bullitt Family Court's April 24, 2023 order terminating her parental rights as to Child. Appellees have not filed a written argument.

We will first consider Appellant's contention that the Bullitt Family Court mistakenly characterized Appellees' First Amended Petition seeking custody as a petition to terminate Appellant's parental rights. In their First Amended Petition, Appellees asserted that "Respondent [Appellant] has lost her superior right to *custody* due to unfitness," and that "[i]t is in the child's best interest that Petitioners [Appellees] be awarded *custody* of the child subject to this action." (Emphasis added.) In its Notice to make the motion at the court's regular motion hour on January 30, 2023, filed on or about January 25, 2023, Appellees stated,

> Petitioners, in response to this Court's order of January 24, 2023, moves [sic] the court to file the first amended petition. In the petition, Petitioners specifically pled that Respondent was unfit (provision 6f), had waived her superior right to *custody* (provision 6g) and in the prayer for relief indicated they sought an award of *sole custody* (prayer for relief, item 2). However, the Court seems to indicate more specific pleading is required to get relief under this theory of the case.

(Emphasis added.)

By its clear and unambiguous language, Appellees' First Amended Petition requests that custody of Child be awarded to Appellees. The language set out in the petition is subject to but one interpretation, and cannot reasonably be characterized as seeking a wholesale termination of Appellant's parental rights as to Child. Though we have no duty to search the record, *Milby v. Mears*, 580 S.W.2d 724, 727 (Ky. App. 1979), we have repeatedly scoured the relevant portions of the record for any indicia that Appellees or others sought a termination of parental rights.[2] We have found no such pleading in the record. Further, Appellees have not cited to any petition to terminate parental rights, having chosen not to participate in this appeal.

KRS 625.090 governs the involuntary termination of parental rights. In it, the General Assembly determined that an involuntary termination proceeding may be initiated by: 1) the Cabinet For Health and Family Services; 2) a child-placing agency licensed by the Cabinet; 3) any county or Commonwealth's attorney; or 4) a parent. KRS 625.090(1)(b)1. and 2. No such person or entity is a party to the underlying action (No. 21-CI-00690), nor has any such person or entity filed a petition for involuntary termination. Further, KRS 625.060(1) provides that

[2] The record consists of many hundreds if not thousands of pages of records, much of which are medical records related to the automobile accident.

the child subject to a termination proceeding shall be made a party. Child herein is not a party to this action, and as asserted by Appellant and acknowledged by the family court, no GAL has been appointed.

CONCLUSION

The Bullitt Family Court erred in characterizing Appellees' First Amended Petition as a petition for involuntary termination of parental rights. No petition for involuntary termination of parental rights is found in the record, and the persons or entities who may file such a petition are not parties to the underlying action. In addition, Child – a necessary party to a termination proceeding – has not been made a party. The termination order is not supported by the record. *V.S. v. Commonwealth, supra*. Appellant's remaining arguments are moot. For these reasons, we reverse the April 24, 2023 order of the Bullitt Family Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Amber L. Cook
Shepherdsville, Kentucky

NO BRIEF FOR APPELLEES.