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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2023-CA-1344-ME

P.L.B.

APPELLANT

v. APPEAL FROM FRANKLIN FAMILY COURT
HONORABLE SQUIRE WILLIAMS, JUDGE
ACTION NO. 23-AD-00006

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; AND
D.G.B., A MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CALDWELL, CETRULO, AND ECKERLE, JUDGES.

ECKERLE, JUDGE: Appellant, P.L.B. (“Father”), appeals from findings of fact, conclusions of law, and a judgment of the Franklin Family Court terminating his parental rights to his son. Father challenges the sufficiency of the evidence supporting the statutory findings for termination and the finding that termination

would be in the best interests of the child. Although there was evidence showing that Father made some progress toward reunification, we conclude that there was substantial evidence supporting the Family Court's findings of fact and conclusions of law. Hence, we affirm the order and judgment of termination.

Father and J.N.B. ("Mother") are the parents of Appellee, D.G.B. ("Child"), who was born in November 2012. In July 2021, Appellee, the Cabinet for Health and Family Services ("Cabinet") filed petitions on behalf of Child and another, older, sibling, alleging that they were abused or neglected as a result of their parents' ongoing drug abuse and criminal lifestyles. Both children were placed in the Cabinet's custody, where they have remained since that time. Subsequently, Father and Mother stipulated to abuse or neglect as alleged.

The Cabinet compiled a case plan for Father, which was subsequently amended based on his circumstances. In all of his case plans, including the most recent, the Cabinet imposed the following tasks on Father: (1) uphold a drug free lifestyle; (2) keep a lawful job and income and provide verification to the Cabinet; (3) maintain appropriate housing and provide verification; (4) notify his social worker within 72 hours of changes in his contact information; (5) complete mental-health and substance-abuse evaluations and comply with all recommendations; (6) undergo random drug screens, all of which must show negative results; (7) have no unsupervised contact with his children and attend bi-weekly supervised visits; (8)

refrain from any domestic violence; (9) cooperate with the Cabinet; (10) use prescriptions lawfully; (11) finish domestic violence treatment and follow all recommendations; (12) be honest with Cabinet and all providers; and (13) attend parenting classes and follow all recommendations.

On January 12, 2023, the Cabinet filed a petition to terminate the Father's and Mother's parental rights to both children. On June 11, 2023, Mother died. Consequently, the termination petition proceeded only against Father. On September 18, 2023, the Family Court conducted an evidentiary hearing. At the hearing, Father testified that he voluntarily agreed to terminate his parental rights to the older sibling. Thus, the only issue concerned termination of Father's parental rights to Child.

In support of termination, the Cabinet presented the testimony of Christy Marlin, who had been the family case worker since January 2023. Marlin testified about the Cabinet's involvement with the family, as well as Father's progress on his case plan. Father submitted to three drug screens in 2022, one of which was positive, but failed to complete any drug screens after September 2, 2022. Father entered a substance-abuse program in September 2022, but did not document attendance for aftercare treatment. In May 2023, Father began another substance-abuse program, but failed to complete it.

Father did not complete the required mental-health assessment.

Father attended some parenting classes, but he had not completed the program at the time of the hearing. In addition, Father had not completed the required domestic-violence program. Father had a child-support arrearage of approximately \$4,000. But through Federal tax intercepts, he later reduced that arrearage to around \$800.

Father had been incarcerated from March 29, 2023, through August 14, 2023. Father testified that he had been on probation for a theft offense and had participated in a drug-court program that required periodic reporting, random drug testing, and full-time employment. Father attended supervised visits with Child while he was out of jail. However, Marlin testified that Father exhibited a lack of appropriate conversations with Child during these visits. The Cabinet facilitated virtual visitation between Father and Child during the time that Father was incarcerated.

Father began employment two weeks before the hearing. He expected to be working full-time soon, but had not yet completed a full week of work at this job. Father also began living with a friend whom he had met in jail. However, Father was not listed on the lease, and he admitted that the property required attention before it could be considered a suitable home for Child. Marlin testified

that she conducted a walk-through of the residence, and she agreed that it was not yet suitable for Child.

Marlin testified that Child is doing well in foster care and is bonded to his foster family. Child is seeing a therapist due to the loss of his Mother and his separation from his parents. Father testified on his own behalf regarding his efforts to comply with his case plan and reunite with Child. Several witnesses testified on his behalf that Father had a good relationship with Child, and Child had advised the Guardian *ad litem* (“GAL”) that he would like to live with Father again.

On October 17, 2023, the Family Court entered findings of fact, conclusions of law, and a separate judgment terminating Father’s parental rights to Child. The Family Court found that Child had been adjudged to be neglected or abused. The Family Court further found that, for a period of not less than six months, Father had continuously or repeatedly failed or refused to provide or had been substantially incapable of providing essential parental care and protection for Child, and there was no reasonable expectation of improvement in parental care and protection considering the age of Child.

The Family Court next found that, for reasons other than poverty alone, Father had continuously or repeatedly failed to provide or was incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the Child’s well-being, and there was no reasonable

expectation of significant improvement in the immediately foreseeable future considering the age of Child. The Family Court also noted that Child had been in foster care for more than 15 of the most-recent 48 months preceding the filing of the petition.

The Family Court next found that the Cabinet had rendered all reasonable services to Father. Given his lack of progress on his case plan, the Family Court found that no additional services were likely to bring about parental adjustments enabling Child's return to Father within a reasonable time. The Family Court also found that Child was making progress in foster care and was attached to his foster family.

Based on these findings, the Family Court concluded that termination of Father's parental rights would be in Child's best interests. The Family Court declined to exercise its discretion to refuse to terminate Father's parental rights under KRS¹ 625.090(5). Father now appeals.

KRS 625.090 sets out a four-part test for an involuntary termination of parental rights: (1) was the child abused or neglected as defined in KRS 600.020(1); (2) did the Cabinet file "a petition with the court pursuant to KRS 620.180 or 625.050;" (3) was termination of the parental rights in the child's best interests; and (4) was at least one of the enumerated termination grounds of KRS

¹ Kentucky Revised Statutes.

625.090(2)(a)-(k) in existence. *See also Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014). Because termination of parental rights involves a fundamental, liberty interest, the statutory findings must be supported by clear and convincing evidence. *K.H.*, 423 S.W.3d at 209. “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.” *Cabinet for Health & Fam. Servs. v. K.S.*, 585 S.W.3d 202, 209 (Ky. 2019) (quoting *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 117 (Ky. App. 1998)).

A family court’s decision must be based upon clear and convincing evidence, and review of this decision on appeal is conducted pursuant to the standard of clear error. CR² 52.01; *see also M.E.C. v. Commonwealth, Cabinet for Health & Fam. Servs.*, 254 S.W.3d 846, 850 (Ky. App. 2008). Accordingly, we review the decision on these prongs to see whether it is supported by substantial evidence, which is evidence “sufficient to induce conviction in the mind of a reasonable person.” *R.M. v. Cabinet for Health & Fam. Servs.*, 620 S.W.3d 32, 37 (Ky. 2021). Appellate review of the decision to terminate parental rights under the clear error standard affords great deference to a family court’s findings and permits a family court “wide discretion in terminating parental rights.” *K.H.*, 423 S.W.3d

² Kentucky Rules of Civil Procedure.

at 211. When the “facts are not seriously disputed[,]” the “appellate courts are disinclined to disturb trial-court findings[.]” *R.M.*, 620 S.W.3d at 38 (footnotes and citations omitted).

Here, Father concedes that Child was previously adjudged to be abused or neglected, KRS 625.090(1)(a), and that the Cabinet filed a termination petition. KRS 625.090(1)(b). However, he first contests the sufficiency of the evidence supporting the Family Court’s findings under KRS 625.090(2)(e) and (g). While Father admits that he has not fully complied with this case plan, he argues that the Family Court failed to give sufficient consideration to the progress that he has made. Specifically, he maintains that he is maintaining sobriety; he has stable housing and employment; he completed an intensive, outpatient program through CommonHealth; he is currently enrolled in parenting classes; he is currently under close supervision by a Drug Court program; he incurred no new criminal charges; he is making payments toward his child-support arrearage; he maintained contact and visitation with Child; and he has a strong, family-support network. Father also emphasizes Child’s desire to live with him again. Father argues that this evidence undermines the Family Court’s conclusions that there is “no reasonable expectation of improvement” in his circumstances in the foreseeable future.

In *M.E.C.*, *supra*, this Court reversed a termination order where the trial court had based its assessment solely on the parent’s past conduct, without any

significant evaluation of future parenting capacity. 254 S.W.3d at 854-55. The Court noted that the statute does not require that the parent completely eradicate all problems immediately. *Id.* at 855. Here, by contrast, there was ample evidence before the Family Court showing that Child was abused or neglected, and that the Cabinet made reasonable reunification efforts.

And, unlike in *M.E.C.*, Father did not comply with the Cabinet's case plan to the best of his ability. The Cabinet notes that much of Father's progress occurred only shortly before the termination hearing, even though he had over two years to work on his case plans. For much of that time, Father made only sporadic and inconsistent efforts to meet these goals. In addition, the Cabinet points out that the Family Court need only find "one or more" of the grounds for termination under KRS 625.090(2). Father does not dispute that Child has been in foster care for more than 15 of the 48 months preceding the filing of the petition. KRS 625.090(2)(j). Although Father's recent efforts are commendable, they neither demonstrate that the Family Court failed to base its decision on sufficient evidence nor that it clearly erred in its finding that there is no reasonable expectation of improvement in his circumstances that would warrant reunification in the foreseeable future. While all hope that Father has finally made the determination to stay on the right path for himself, hope alone is not evidence. And Father has failed to show error of the magnitude that would warrant reversal.

Next, Father disputes the Family Court's findings that termination of his parental rights would be in Child's best interests under KRS 625.090(3). Father again focuses on his recent progress toward his case plan goals and his good relationship with Child. The Family Court addressed the applicable factors under KRS 625.090(3)(b), (c), (d), (e), and (f), noting the prior findings of abuse and neglect; the Cabinet's reasonable efforts toward reunification; Father's lack of progress on his case-plan goals; Child's physical, emotional, and mental health in foster care; and Father's significant child-support arrearage. Although other factors may have warranted a different assessment of whether termination would be in Child's best interests, Father failed to show that the Family Court's findings and conclusions on the factors on which it focused were clearly erroneous. Finally, Father does not argue that the Family Court improperly failed to exercise its discretion under KRS 625.090(5).

Accordingly, while we hope that Father will continue to maintain sobriety, employment, and housing, we affirm the order of the Franklin Family Court terminating Father's parental rights.

ALL CONCUR.

BRIEF FOR APPELLANT:

James Dean Liebman
Frankfort, Kentucky

BRIEF FOR APPELLEE:

Dilissa G. Milburn
Mayfield, Kentucky