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Commonwealth of Kentucky
Court of Appeals

NO. 2024-CA-0402-ME

T.P.

APPELLANT

v.

APPEAL FROM SCOTT FAMILY COURT
HONORABLE LISA MORGAN, JUDGE
ACTION NO. 23-AD-00023

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND
FAMILY SERVICES; AND A.C.P., A
MINOR CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: CETRULO, L. JONES, AND McNEILL, JUDGES.

CETRULO, JUDGE: Appellant T.P. (“Mother”) appeals the findings of fact, conclusions of law, and judgment of the Scott Family Court terminating her parental rights. Having reviewed the record in its entirety, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A.C.P. (“Child”) was born in 2009 and is the only child of Mother. A father was never identified. Prior to the filing of this termination action, Child was the subject of at least four investigations concerning Mother. The first was when Child was only a few months old. In 2017, a second allegation was made that Mother was pursuing medically unnecessary interventions and treatments for Child. Upon referral of Cincinnati Children’s Hospital, a dependency, neglect, and abuse (“DNA”) action was filed, and Mother was precluded from making independent medical decisions for Child, subject to oversight by the Cabinet for Health and Family Services (“Cabinet”). Child was placed with the maternal grandmother until March 2019 when Mother was permitted to return to the home with Child and maternal grandmother. Custody was returned to Mother in June 2019, and the case was closed. However, the Cabinet continued to provide some services through October 2020. Mother then withdrew all releases of information. Within months of termination of services by the Cabinet, Child’s condition greatly deteriorated.

In January 2021, an emergency petition was filed on referral of Children’s Hospital of Philadelphia. A team of 13 medical professionals and social workers reported that Child was a victim of medical child abuse. The Cabinet’s report reflected that a multidisciplinary meeting was held with the Cabinet and

doctors from University of Kentucky's Children's Hospital, Cincinnati Children's Hospital, and Children's Hospital of Philadelphia, as well as local pediatricians and social workers. It was the unanimous consensus that Child's case was one of medical child abuse or pediatric condition falsification that had resulted in her undergoing medical procedures that were unnecessary and painful. All agreed that Mother was escalating care and falsifying symptoms. When the previous case had been closed, it was believed that Child had mitochondrial disease, as reported by Mother, and would continue to have serious medical issues. It is now known that she did not have this disease. Based upon these medical experts that all care should be de-escalated immediately and that Mother should have no contact, the family court granted custody to the Cabinet.

At that point, Child was on over 30 medications and had five tubes inserted into her body for feeding, eliminating, or medicating. She was being "homeschooled" by Mother and in a wheelchair. She had returned to a cycle of increasingly significant medical testing and interventions. As the family court noted,

In sum, well before her tenth birthday, [Child] had been taken to five major medical institutions for assessment and treatment, had been hospitalized numerous times, had undergone dozens of surgeries and/or invasive medical procedures, used a wheelchair or leg braces for mobilization, used a specialized car seat for paralytic children, received a trip through the Make A Wish Foundation, and had amassed a medical record that

purportedly exceeded some 40,000 pages. Despite the extensive medical testing and interventions, a diagnosis that could explain [Child's] amorphous maladies was never found – even unusual and difficult to diagnose diseases were ruled out.

The record further reveals that Mother solicited and received thousands of dollars through social media fundraisers and news articles. She reported that Child was unlikely to survive to adulthood. She sought and secured monies through GoFundMe pages, such as for purchase of a power wheelchair, a wheelchair accessible van, medical expenses, and a service dog.

While Child was placed in the Cabinet's custody, Mother did begin an evaluation with Dr. Feinberg, at the expense of the Cabinet. Dr. Feinberg's report, dated December 2021, concluded that Mother had emotionally and medically abused the child¹ and diagnosed Mother with Factitious Disorder by Proxy.²

In September 2022, the family court conducted a full hearing on the DNA action, concluded that Child was abused and neglected and outlined Child's

¹ During this time period, there was also a petition filed by the Cabinet for emotional abuse based upon Child's reports since being removed from Mother's care. Although Child testified in chambers to this abuse, that portion of the petition was later dismissed when Mother declined to complete the emotional injury assessment by the time of trial.

² Factitious Disorder by Proxy, first named as Munchausen Syndrome by Proxy, is a mental health disorder in which a caregiver creates the appearance of health problems in another person, typically their child. This form of abuse can put a child in serious danger of injury or unnecessary medical care. See Cleveland Clinic, "*Munchausen Syndrome (Factitious disorder imposed on self)*", (last visited August 8, 2024), <https://my.clevelandclinic.org/health/diseases/9833-munchausen-syndrome-factitious-disorder-imposed-on-self>.

dramatic improvements following removal from Mother's care and control. As of July 2021, Child was without medications, a colostomy bag, g-tube, and leg braces or wheelchair. She was attending school, involved in social and extracurricular activities, and did not wish to return to Mother. Despite years of significant trauma, Child appeared to be a well-adjusted, completely healthy teenager. As found by the family court, "following the total removal [of Mother's] care, custody, control over, and contact with [Child], [her] extensive laundry list of health problems quickly and completely vanished."

In June 2023, the Cabinet filed this action to terminate Mother's parental rights. By the time of filing, Child had been in Cabinet custody, with the same foster mother, for approximately 29 months. Child's therapist and social worker both testified at the hearing conducted in January 2024. Dr. Feinberg, who had performed the parental capacity evaluation, also testified that Mother remained uncommonly rigid in her position that no abuse had occurred. He and Child's therapist conducted lengthy interviews with Child and reported on those findings. The evidence indicated that Mother had not engaged in any treatment for the alleged Factitious Disorder by Proxy. The record did confirm that she began individual counseling as of June 2023, but her counselor testified that she was not familiar with this disorder and was only treating Mother for adjustment disorder

and anxiety and depression. She acknowledged that Mother did not demonstrate any accountability or recognition of her role in Child's medical treatments.

Mother did not testify at the hearing, but primarily defended the termination action by arguing that the Cabinet had not made reasonable efforts to find an appropriate treatment provider for her. The family court addressed this defense in its findings and conclusions, noting that while Mother had completed other aspects of the case plan, she had consistently denied the diagnosis of Factitious Disorder by Proxy, and denied any abuse at all. The family court further noted that the Cabinet had contacted 15 different possible referrals for Mother to participate in treatment, but that none had accepted the referral to treat Mother as those providers would only treat child victims of medical abuse. Ultimately, the family court concluded that, pursuant to Kentucky Revised Statute ("KRS") 625.090, there was clear and convincing evidence that Child had been abused or neglected; that Mother had inflicted emotional harm on Child by other than accidental means; that Mother had failed or refused to provide parental care and protection for Child for a period of more than six months, and that there was no reasonable expectation of improvement considering the age of Child.

Finally, the family court found that it was in Child's best interest for termination to occur due to Mother's mental illness, the prolonged infliction of medical child abuse on Child, the lack of adjustments by Mother to her own

conduct, and the astonishing improvement in Child's health since removal. The court also specifically noted that the Cabinet had made reasonable efforts to reunite with Child, despite the extremely difficult circumstances. Mother appealed.

STANDARD OF REVIEW

Whether termination of a parent's rights is appropriate depends upon whether the statutory requirements contained in KRS 625.090 are met. First, the child must have been found to be an abused or neglected child, as defined by KRS 600.020. KRS 625.090(1)(a). Second, termination must be in the child's best interest. KRS 625.090(1)(c) and KRS 625.090(3). Third, the family court must find the existence of at least one of the grounds or factors contained in KRS 625.090(2). *B.E.K. v. Cabinet for Health & Fam. Servs.*, 487 S.W.3d 457, 464 (Ky. App. 2016). On appeal,

our review is limited to a clearly erroneous standard which focuses on whether the family court's order of termination was based on clear and convincing evidence. Kentucky Rule of Civil Procedure [] 52.01. "Pursuant to this standard, an appellate court is 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." [*Cabinet for Health & Fam. Servs. v. T.N.H.*, 302 S.W.3d [658,] 663 [(Ky. 2010)].

Cabinet for Health & Fam. Servs. v. K.H., 423 S.W.3d 204, 211 (Ky. 2014).

Substantial evidence is “that which is sufficient to induce conviction in the mind of a reasonable person.” *Ball v. Tatum*, 373 S.W.3d 458, 464 (Ky. App. 2012) (internal quotation marks and citation omitted).

ANALYSIS

Mother does not contest the family court’s finding that Child was neglected, the first prong of the three-prong analysis required by the statute. Child was previously adjudicated abused or neglected in September 2022, and there is no argument that this was not proven. On appeal, Mother continues to argue that the Cabinet failed in its duty to provide services necessary for reunification and further argues that termination of her rights was not in the best interest of Child. Quite simply, we disagree.

The next prong is whether the Cabinet proved that one or more grounds of KRS 625.090(2) exist. The statute requires only one of the grounds be proven by clear and convincing evidence. *T.N.H.*, 302 S.W.3d at 663. The family court found several grounds. First, the record confirmed that Child had been in foster care since January 2021, meeting one of the statutory grounds for termination. *See* KRS 625.090(2)(j). The family court also noted that Mother had been incapable of providing support or parental protection for a period of more than six months, and there was no reasonable expectation of improvement in

Mother's conduct in the immediately foreseeable future, considering the age of the child, a second and third prong for termination. *See* KRS 625.090(2)(e), (g).

Mother argues that the basis for this finding was a direct result of the no contact order imposed by the family court. However, that ruling was expressly temporary. It was also clearly required to protect Child's health and to rule out the possibility that Mother's influence was the basis for Child's numerous and detrimental medical interventions. That ruling also was supported by Child's testimony wherein she expressed concerns about seeing her mother. As the family court held, the no contact order could have been removed had Mother obtained treatment for the diagnosis of Factitious Disorder by Proxy and if Child's medical professionals had recommended contact.

The evidence at trial was that Mother refused to acknowledge having the disorder or take any responsibility for Child's removal. Mother still did not admit her role and responsibility for Child's abuse and did not seek treatment for Factitious Disorder by Proxy. Without that acknowledgement by Mother, the family court found there was no reasonable expectation of improvement in Mother's conduct or illness such as to safely permit reunification.³ These findings

³ The family court also noted that the statutory requirement upon the Cabinet to provide reasonable efforts at reunification can be waived if a court determines that a parent has a mental illness that places the child at substantial risk of injury. KRS 625.090(3)(c); KRS 610.127. The family court did hold that it had waived reasonable efforts in August 2023 as part of the DNA

were supported by testimony of several witnesses. Again, Mother declined to testify.

On appeal, Mother also asserts that the Cabinet failed to make reasonable efforts to provide services necessary for reunification. In short, she argues that the Cabinet failed to provide her with an appropriately qualified practitioner to treat her Factitious Disorder. In so arguing, Mother asserts that this case is not dissimilar to *K.D.H. v. Cabinet for Health and Family Services*, wherein this Court found that the mother's case plan was "lacking any reasonable prospect of satisfactory completion given her circumstances." 630 S.W.3d 729, 737 (Ky. App. 2021). We find this case quite distinguishable from *K.D.H.* There, we found that "the Cabinet prematurely sought to discontinue reasonable efforts to reunite this family and failed to meet its burden to establish grounds for termination." *Id.* at 741. In *K.D.H.*, the mother had passed more than 50 drug screens at her expense, completed all required assessments, paid for and exercised supervised visitation with her children, modified her living arrangements to protect her children, and demonstrated consistent and reasonable efforts to have her children returned to her. *Id.* at 739.

action. However, we do not decide this issue on that basis, but agree with the family court's further holding that the Cabinet made sufficient reasonable efforts in this case.

We turn instead to a more analogous decision by our Supreme Court in *Cabinet for Health & Family Services v. K.H.*, 423 S.W.3d 204 (Ky. 2014). Therein, the Court noted that the statute defines reasonable efforts as “the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available . . . which are necessary to enable the child to safely live at home[.]” *Id.* at 212 (quoting KRS 620.020(11)). Here, the evidence demonstrated that preventative services utilized after Child’s initial removal were not effective. The Cabinet received another referral for suspected medical abuse within months of custody being returned to Mother. After the second removal, Child’s own medical team recommended that Mother have no contact with Child. The family court ordered that there would be no contact until Mother completed an assessment and began treatment, *and* resumption of contact was recommended by Child’s treating providers. There is no indication that such resumption of contact was ever recommended.

While Mother did complete a parenting assessment with Dr. Feinberg, and reportedly was in counseling, she never signed a release of information to permit verification of or the extent of her treatment. She did not testify as to any acknowledgement of her illness or diagnosis or her role in Child’s years of extensive and apparently largely unnecessary treatment. According to the

witnesses who did testify at trial, Mother continued to deny the abuse had occurred and still believed she was only helping her child.

Without acknowledgement from Mother of her mental illness and her responsibility for Child's abuse, it is unclear what other services the Cabinet could have offered while still protecting Child. Moreover, while arguing that the Cabinet failed to provide services, Mother presented no evidence of what additional services would bring about a lasting parental change to allow the safe return of Child to her care. As this Court has previously noted, a parent's "greatest stumbling block" to retaining parental rights is sometimes refusing to accept responsibility for the abuse. *K.M.E. v. Commonwealth*, 565 S.W.3d 648, 658 (Ky. App. 2018).

Mother asserts that she has maintained stable employment, housing, and income and is more than capable of meeting Child's needs. Mother asserts she is "a highly skilled traveling nurse, perfectly fit, other than with regard to making medical decisions for [her] child." Frankly, that argument causes us even more concern than if Mother was unable to easily seek help for her mental illness. She has the ability and resources to seek appropriate treatment and declined to do so. She exhibited no recognition of her role in causing harm to Child and indeed continued to deny the overmedicalization and its effects on her daughter, despite the marked improvement of Child immediately after removal. As the family court

specifically held, Mother never displayed any remorse for her actions or empathy for Child. She continued to attempt to control Child even after removal by monitoring her activities on a tablet, refusing to allow her to travel on vacation with her foster family, and even withholding her service dog from her. Based upon substantial evidence, the family court properly determined that there was no reasonable expectation of significant improvement in Mother's conduct to allow for reunification.

Next, Mother argues that there was insufficient evidence for the finding as to the third prong – that termination was in Child's best interest under KRS 625.090(1)(c). To determine the child's best interest, the family court must consider the six factors outlined in KRS 625.090(3), as detailed in *K.H.*, 423 S.W.3d at 212. Specifically, KRS 625.090(3)(a)-(f) states that

[i]n determining the best interest of the child and the existence of a ground for termination, the Circuit Court shall consider the following factors:

(a) Mental illness as defined by KRS 202A.011(9), or an intellectual disability as defined by KRS 202B.010(9) of the parent as certified by a qualified mental health professional, which renders the parent consistently unable to care for the immediate and ongoing physical or psychological needs of the child for extended periods of time;

(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 family court herein considered the factors and found it was in Child's best interest for termination to occur based upon Mother's untreated mental illness; the prolonged infliction of medical child abuse resulting in extensive physical, mental, and emotional trauma to Child; the Cabinet's efforts to reunite; and, the total lack of efforts and adjustments to her conduct on Mother's part, considering the age of Child.

In addressing Mother's efforts, under KRS 625.090(3)(d), the family court pointed out the lack of remorse or even relief by Mother that Child was now in good health. As the court observed, prior to removal, Mother controlled every

aspect of Child's life. She was homeschooled, isolated from peers and community, infantilized to the point that she was not allowed to bathe alone or wash her own hair, and at times confined to a wheelchair without medical necessity. We agree with the family court that "[her] young childhood was comparable to physical and psychological imprisonment, and [Mother] still perceives nothing wrong."

Most poignantly, the family court considered Child's health, under KRS 625.090(3)(e), as follows:

The astonishing improvement in [Child's] physical, mental, and emotional health since being removed from her mother's custody and placed in her pre-adoptive foster home, and the virtual certainty of a decline in her overall health if she were to return to her mother's care, or even resume contact with her, without [Mother] meaningfully participating in effective therapy for Factitious Disorder by Proxy . . . which she has yet to do in the three years since removal, or in the six and a half years since the concerns of medical child abuse were first raised by [Child's] doctors and brought before the Court. The time for [Child] to have certainty and permanency is long overdue.

Clear and convincing evidence supports the family court's findings that termination of Mother's parental rights was appropriate. The findings and conclusions were based upon substantial evidence, and the statutory prerequisites were all proven. Accordingly, we affirm the Scott Family Court.

ALL CONCUR.

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