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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2024-CA-0771-ME

D.G. — APPELLANT

v.

APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE JEFFREY L. PRESTON, JUDGE
ACTION NO. 24-AD-00001

CABINET FOR HEALTH AND FAMILY SERVICES, COMMONWEALTH OF KENTUCKY AND L.J.-L.P., A CHILD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: THOMPSON, CHIEF JUDGE; ACREE AND CALDWELL, JUDGES.

ACREE, JUDGE: D.G. (Mother) appeals the Greenup Circuit Court, Family Division's order terminating her parental rights to L.P. (Child). We affirm.

BACKGROUND

Child was born in 2015. Appellee Cabinet for Health and Family Services (Cabinet) became involved in Child's life in 2019. Child's parents stipulated to neglect in January 2020. Child was returned to the parents' care in 2021. The Cabinet became involved in Child's life again in 2023. Child was committed to foster care in January 2023, and Child's parents were determined to have committed neglect in February 2023. Child remains in foster care.

The parents' neglect stemmed from substance abuse. Child was present during his father's non-lethal overdose in 2019. Child's father is now deceased from a subsequent overdose. Even after Child was committed to foster care in January 2023, Mother did not seek treatment for her substance abuse until October 2023, after she was arrested on felony drug charges. During the intervening months, she repeatedly tested positive for illicit substances.

Mother did not sign a case plan with the Cabinet until December 2023. The Cabinet filed a petition for termination of Mother's parental rights in January 2024. Mother has subsequently made progress on her case plan, including completing inpatient treatment for substance abuse and parenting classes. The family court nonetheless terminated her rights in June 2024 by order of record. Mother's appeal followed.

STANDARD OF REVIEW

KRS[1] 625.090 sets forth the grounds for involuntary termination of parental rights. A family court "has wide discretion in terminating parental rights." *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014). We undertake review pursuant to a "clearly erroneous standard which focuses on whether the family court's order of termination was based on clear and convincing evidence." *Id.* Reviewing for clear error, 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." *Id.* As is well-established, "[c]lear 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." *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 117 (Ky. App. 1998). A family court's assessment of evidence as clear and convincing is tested for an abuse of discretion. *A.F. v. L.B.*, 572 S.W.3d 64, 75 (Ky. App. 2019).

ANALYSIS

Pursuant to KRS 625.090(1), a family court "may involuntarily terminate all parental rights of a parent of a named child, if the [family court] finds

[1] Kentucky Revised Statutes.

from the pleadings and by clear and convincing evidence" that the requirements of KRS 625.090(1)(a), (b), and (c) are satisfied. KRS 625.090(1)(c) requires a finding that "[t]ermination would be in the best interest of the child." Mother cites KRS 625.090(3)(c) and (d), which are factors a family court must consider in making the best-interest determination, arguing that her progress on her case plan should have precluded termination. Otherwise, Mother asks, "what was the purpose of the plan?" (Appellant's Br. at 3.) Mother also cites KRS 625.090(4) and (5).

Mother does not develop arguments regarding the applicable provisions of KRS 625.090(3)(c) and (d), KRS 625.090(4), and KRS 625.090(5), but merely asserts "[a]ll of these provisions of the statute apply." (Appellant's Br. at 4.) In fact, discounting Mother's repetition of statutory language, her entire argument spans little more than a page. According to Mother, her progress in working her case plan, and given "[a]ll of these provisions of the statute apply," the family court should have dismissed the petition with direction "that the child remain in the custody of the state" with "a review after a reasonable period of time," pursuant to KRS 625.090(6)(b). (Appellant's Br. at 4-5.) Mother asserts the family court "failed to consider that option." *Id.* at 5.

We concede some struggle in undertaking review because Mother merely contends that various statutory provisions "apply," without discussing any

of the statutory provisions she cites or telling us why they apply. Of course, "[i]t is not our function as an appellate court to research and construct a party's legal arguments[.]" *Hadley v. Citizen Deposit Bank*, 186 S.W.3d 754, 759 (Ky. App. 2005). But, in essence, while Mother "takes no exception to" the family court's findings of fact, (Appellant's Br. at 2), Mother does take exception to the family court's *weighing* of those facts, suggesting her progress should have been accorded more weight.

For example, Mother notes the family court's finding that she "completed major components of her case plan" and "made some efforts and adjustments in her circumstances, conduct, or conditions since October 2023." (Record (R.) 35, 36.) But she characterizes such findings liberally and out of context. For instance, although Mother asserts the family court found she had "a stable place to live," it also found Mother was living with her sister, who "has a history of substance abuse and had not sought to cooperate with the Cabinet." (R. 35.) Based on Mother's failure to cooperate with the Cabinet's efforts to monitor her drug use – for example, by avoiding or failing drug screens and refusing to allow pill counts for prescribed medicines – the family court concluded "there is no reasonable expectation of improvement in parental care and protection, considering the age of the child." (R. 34.)

When we consider the family court's application of the applicable statute, we find no error or abuse of discretion. The family court's duty was to assess "[t]he efforts and adjustments the parent has made in h[er] circumstances, conduct, or conditions" and determine whether those efforts and adjustments "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). The court ruled:

> [T]he Court does not find that the adjustments she has made to her circumstances and conditions make it in [Child]'s best interest to return to her home within a reasonable time period, considering the age of [Child]. In so finding, the Court notes that [Mother] has a significant history of receiving treatment, getting sober, and then relapsing. [Child] is stable in his current placement. In sum, the Court finds that this factor weighs slightly in favor of termination, although the Court is cognizant of the progress [Mother] has made since [Child] first reentered foster care.

(R. 36-37.)

Mother does not explain how the family court's assessment of these facts constitutes error or abuse of discretion. We discern no such error or abuse. The family court appropriately weighed Mother's progress against a troubling history. That history included Child's removal for neglect on a previous occasion, his parents' stipulation to neglect, witnessing his father's overdose, Mother's refusal to utilize Cabinet services before "being arrested for felony drug possession

charges," and her refusal to sign a case plan "until [Child] had been in foster care for an additional eleven (11) months." (R. 36.) This is ample reason to deem Mother's progress insufficient when KRS 625.090(3)(d) is applied.

We cannot disagree with the family court's determination that Child "deserves permanency, stability, and safety" or that Mother has failed to demonstrate she can provide it. (R. 37.)

CONCLUSION

The Greenup Circuit Court, Family Division's June 6, 2024 order terminating Mother's parental rights to Child is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James Lyon, Jr.
Greenup, Kentucky

BRIEF FOR APPELLEE CABINET FOR HEALTH AND FAMILY SERVICES:

Dilissa Milburn
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