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NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2025-CA-0850-ME

D.R.B.(O).

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ANGELA JOHNSON, JUDGE
ACTION NO. 24-AD-500286

A.C.; L.C.; AND N.I.A.C., A MINOR
CHILD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

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

McNEILL, JUDGE: D.R.B. (now D.R.O.) (“Mother”) appeals from the Jefferson Family Court’s order terminating her parental rights to her minor child, N.B. (“Child”) in this adoption action. After careful review, we affirm.

BACKGROUND

In 2019, the Cabinet filed a dependency, neglect, or abuse (“DNA”) petition in Jefferson Family Court after receiving several reports concerning Mother’s alcohol use while in a caretaking role. In October 2020, Child was placed in the custody of his maternal grandmother, A.C. (“Grandmother”) where he has been ever since. The family court found Child to be abused or neglected and we affirmed this determination on appeal. *D.B. v. Cabinet for Health and Family Services*, Nos. 2023-CA-1167-ME, 2023-CA-1169-ME, 2023-CA-1452-ME, 2024 WL 4311248 (Ky. App. Sep. 27, 2024).

On September 18, 2023, Grandmother and maternal step-grandfather, L.C., (collectively, “Grandparents”) filed a Verified Petition for Adoption Without Consent.¹ In the petition,² they alleged:

The child has been abandoned by the natural mother for over 90 days.

That the Respondent mother, for a period of not less than six months, has continuously or repeatedly failed or refused to provide or have been substantially incapable of providing essential parental care and protection for the child, and that there is no reasonable expectation of improvement in parental care and protection, considering the age of the child.

¹ An Amended Verified Petition for Adoption Without Consent and a Second Amended Verified Petition for Adoption Without Consent were filed on November 20, 2023, and December 20, 2023, respectively.

² The following allegations were in fact omitted from the initial petition but added to the Amended and Second Amended petitions.

That the Respondent mother, for reasons other than poverty alone, have continuously or repeatedly failed to provide or are incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in the parents' conduct in the immediately foreseeable future, considering the age of the child.

At the hearing on the petition, Grandmother testified that Child was placed in her custody in October 2020 and has remained in her custody since. Mother has consistently exercised visitation, but visits ceased from March 2021 to September 2021 after an incident where Mother "smacked" Child as a form of punishment, and Child had a meltdown. After September 2021, visitation resumed at Safe Haven Family Resource Center. Tonesha Hern, Director at Safe Haven, testified that Mother had weekly two-hour supervised visits until she requested the visits be reduced to one hour because she was pregnant and having difficulty interacting with Child. Mother never asked for visitation to return to two hours after her pregnancy.

Grandmother also testified about a recent interaction with Mother at the UPS store in Shelby County, where Mother told her to "look out" and that she was coming "after all of your kids" and that her husband "makes a lot of money." Grandmother perceived this as a threat because Mother had kidnapped (or attempted to kidnap) her adopted children before. Since Child has been in

Grandmother's care, Mother has not attended any of Child's doctor or therapist appointments.

Mother testified that she has not had the opportunity to attend events or doctor's appointments and that she would like to. She claimed that her circumstances in 2024 are different from those in 2020 and that she wants her son back in her care. Mother conceded that she voluntarily lowered her visitation with son to one hour per week and had never moved to increase visitation.

Following the hearing, the family court entered findings of fact and conclusions of law terminating Mother's parental rights to Child and granting the adoption petition.³ It found by clear and convincing evidence that the conditions in KRS⁴ 199.502(1)(e) and (g) were satisfied with respect to Child and that all other requirements for granting the adoption had been met. Mother filed a CR⁵ 59.05 motion to alter, amend, or vacate, which the family court denied, further explaining its findings under KRS 199.502(1)(e):

The Court heard testimony that [Mother] has not attended any medical appointments for the child since an emergency custody order granted [Grandmother] custody of [Child] . . . on October 26, 2020. The child has special needs and has been diagnosed as having autism spectrum disorder, PTSD, and borderline intellectual function. To

³ The family court entered a separate Order and Judgment of Adoption the same day.

⁴ Kentucky Revised Statutes.

⁵ Kentucky Rules of Civil Procedure.

manage these conditions, [Child] sees at least two different medical professionals.

Visitation between the child and [Mother] was paused temporarily because she used corporal punishment during a supervised visit around March 2021. Approximately one year later, [Grandparents] motioned for visitation to be dictated by the child's doctors, alleging that the child had begun regressing due to visitation with [Mother]. The child's regression is particularly concerning to the Court, as it occurred after [Mother] claims to have completed a protective parenting class.

The Petitioners testified that as recently as November 2024, [Mother] confronted them in public with threats to "come for all your kids." They stated that [Mother] had previously kidnapped or attempted to kidnap their adopted children of whom she is the natural mother. This statement indicates to the Court that [Mother]'s priority is not to serve the best interests of the child at issue, but to seek a form of retribution.

[Mother] has fought hard to maintain visitation with the child for the last few years; however, aggressively seeking visitation does not prove she has provided essential care and protection. Utilizing inappropriate methods of discipline with a special needs child, failing to be present for any of the child's medical appointments or seek the information necessary to be present, and contributing to a regression in the child's psychiatric health outweigh the vigorous pursuit of litigation to maintain visitation. [Grandparents] proved clearly and convincingly that for the last several years, [Mother] has repeatedly demonstrated that she is either unwilling or unable to provide essential parental care and protection for [Child].

[Mother] has availed herself to classes on anger management and protective parenting techniques. The November 2024 incident indicates that [Mother] has not

changed her conduct as a result of the services she has received. The issues pertaining to parental care and protection remain outstanding. Considering the age of the child and his unique needs due to his diagnoses and intellectual functioning, the Court cannot find a reasonable expectation of improvement.

This appeal followed.

STANDARD OF REVIEW

“An adoption without the consent of a living biological parent is, in effect, a proceeding to terminate that parent’s parental rights.” *M.S.S. v. J.E.B.*, 638 S.W.3d 354, 359 (Ky. 2022) (citations omitted). “Parental rights are a fundamental liberty interest protected by the Fourteenth Amendment of the United States Constitution.” *Id.* (internal quotation marks and citations omitted). Consequently, “termination of parental rights is a grave action which the courts must conduct with utmost caution.” *Id.* (internal quotation marks and citation omitted). “Our review of findings of fact in adoption actions involving terminations of parental rights is confined to the clearly erroneous standard set forth in CR 52.01.” *A.F. v. L.B.*, 572 S.W.3d 64, 69-70 (Ky. App. 2019) (citation omitted). However, “to pass constitutional muster, the evidence supporting termination must be clear and convincing.” *R.P., Jr. v. T.A.C.*, 469 S.W.3d 425, 427 (Ky. App. 2015) (citing *Santosky v. Kramer*, 455 U.S. 745, 769-70, 102 S. Ct. 1388, 1403, 71 L. Ed. 2d 599 (1982)).

ANALYSIS

Mother first argues her due process rights were violated because she did not have counsel until after the Cabinet had completed its investigation and made its report pursuant to KRS 199.510. She contends she was denied the opportunity to be heard. This argument is not preserved for review. Further, Mother has not requested palpable error review under CR 61.02.

“Absent extreme circumstances amounting to a substantial miscarriage of justice, an appellate court will not engage in palpable error review . . . unless such a request is made and briefed by the appellant.” *Shepherd v. Commonwealth*, 251 S.W.3d 309, 316 (Ky. 2008), *as modified on denial of reh’g* (May 22, 2008) (citations omitted). Here, there are no extreme circumstances amounting to a substantial miscarriage of justice. Mother was represented at the hearing on the petition for adoption without consent and had the opportunity to challenge the Cabinet’s recommendation. *See A.F.*, 572 S.W.3d at 73-74 (finding that mother and father were not prejudiced by their lack of input into the Cabinet’s investigative report, where both testified at the hearing and were given the “opportunity to convince the court that both the report and the petition were arbitrary or unreasonable, including the Cabinet’s best-interests determination.”). Therefore, we decline to further address this argument.

Next, Mother argues the family court erred in finding that “for a period of not less than six (6) months, [Mother] has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child, and that there is no reasonable expectation of improvement” under KRS 199.502(1)(e). She claims the court made this finding “without citing to any evidence, testimony, or exhibits, that led to the trial court’s conclusion[,]” and that the evidence was, in fact, to the contrary.

Indeed, the family court’s initial order did not cite specific evidence to justify its finding that the conditions of KRS 199.502(1)(e) were met with respect to Child as to Mother. However, it subsequently set forth its reasoning in its order denying Mother’s motion to alter, amend, or vacate, as quoted above. Specifically, the family court found that Grandparents had proved by clear and convincing evidence that for the last several years Mother has been “either unwilling or unable to provide essential parental care and protection for [Child].”

The Court noted that Child has special needs and sees at least two medical professionals, yet Mother has not attended (or sought out the information so that she could attend) any of Child’s medical appointments in over four years. It also pointed to allegations that the Child’s behavior was regressing after visitations with Mother, which the court found “particularly concerning” as it occurred after Mother claimed to have completed a protective parenting class, as

well as the fact that Mother had once used corporal punishment on the Child during a supervised visitation. As further evidence Mother had failed to provide parental care and protection for Child, the court credited Grandmother's testimony that Mother threatened in public to "come for all your kids," which "indicate[d] . . . that [Mother]'s priority is not to serve the best interests of the child at issue, but to seek a form of retribution." The family court cited the above incident as demonstrating that Mother "has not changed her conduct," despite having finished parenting and anger management classes. Based upon the above, the court could not find a reasonable expectation of improvement, "[c]onsidering the age of the child and his unique needs due to his diagnoses and intellectual functioning[.]"

"[T]rial courts are afforded a 'great deal of discretion' in determining whether termination of parental rights is appropriate [under KRS 199.502(1)]." *M.S.S.*, 638 S.W.3d at 359 (citation omitted). "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." *Id.* at 359-60 (citations omitted). "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." *Id.* at 360 (internal quotation marks and citation omitted).

Here, the family court's finding that for a period of not less than six months, Mother has failed or refused to provide essential parental care and protection for Child, and there is no reasonable expectation of improvement, was supported by substantial evidence and based on clear and convincing evidence. While Mother points to evidence challenging the family court's findings, "[i]t was within the trial court's discretion to believe [certain evidence] to the exclusion of other evidence." *Moore v. Asente*, 110 S.W.3d 336, 355 (Ky. 2003). Therefore, we find no error.

Finally, Mother takes issue with several of the family court's findings of fact (for instance, the finding that she never filed a formal answer to the petition). However, because her concerns are not relevant to the resolution of the appeal, we decline to address them.

CONCLUSION

Based on the foregoing, the Jefferson Family Court's order terminating Mother's parental rights under KRS 199.502 is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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