

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000871-ME

N.B.P.

APPELLANT

v. APPEAL FROM BALLARD CIRCUIT COURT
HONORABLE R. JEFFREY HINES, SPECIAL JUDGE
ACTION NO. 09-AD-00001

COMMONWEALTH OF KENTUCKY,
CABINET FOR HEALTH AND FAMILY
SERVICES AS NEXT FRIEND OF
E.N.P., A CHILD, AND Z.W.A.P., A
CHILD; L.A.P.; E.N.P., A CHILD; AND
Z.W.A.P., A CHILD

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: NICKELL AND VANMETER, JUDGES; SHAKE,¹ SENIOR JUDGE.

SHAKE, SENIOR JUDGE: N.B.P. (Father) appeals from Ballard Circuit Court's

Findings of Fact and Conclusions of Law (Order) terminating his parental rights to

¹ Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

the children, E.N.P. (Daughter) and Z.W.A.P. (Son), whom he fathered with L.A.P. (Mother).² The trial court's Order is supported by clear and convincing evidence that the children were abused or neglected and that it is in the children's best interest to have their Father's parental rights terminated. Therefore, we affirm the Ballard Circuit Court Order.

Since its inception, the relationship between Mother and Father has been fraught with domestic violence and drug abuse. Due to their tumultuous relationship and drug abuse, Mother and Father failed to meet the basic needs of Daughter and Son. The children did not receive essential food, shelter, nurturing, or education. While Mother and Father had custody of the children, Daughter was prescribed a device to correct her club foot and Son was prescribed a nebulizer to treat his asthma condition. Although Mother and Father spent a substantial amount of money at this time on alcohol, marijuana, and crack cocaine, Mother maintained that they could not afford to provide these prescribed medical needs for their children.

On two separate occasions, Mother petitioned the Ballard District Court alleging violence by Father. At the termination of parental rights hearing, Mother minimized these incidents and maintained responsibility for the violence. However, Mother and other witnesses at the hearing testified that additional instances of domestic violence occurred and went unreported.

² Mother has two older children from a previous marriage. She does not have custodial rights to the older children based upon a court finding that the children could be endangered if returned to Mother and her current husband, N.B.P.

In 2005, following Mother and Father's separation, Mother was involved in a relationship with Adam Smith. She was also heavily abusing drugs. Mother told Smith that she was not coming home for a few days and asked Smith to take the children to their paternal grandparents' home where Father was staying. When Smith dropped the children off, they were dirty and unkempt.

After three or four days of continuous drug usage, Mother returned home and slept for a long period of time. She was awakened by the Ballard County Sheriff's Department. Following a search of her home, the law enforcement officials found drug paraphernalia and arrested Mother. She was in jail for 30 days before she posted bond.

While Mother was in jail, a caseworker from the Cabinet for Health and Family Services (Cabinet) visited Mother to inform her that the Cabinet was opening a case file on the children and seeking temporary removal. According to the caseworker, the children were temporarily placed in Father's custody.

Following a home evaluation, the paternal grandparents were not approved for placement due to their grandfather's health problems, the grandparent's preference of Daughter, their living conditions, and a narcotics trafficking charge pending against their grandmother. The children's paternal uncle was also considered for placement but was not selected based upon limited income and a new marriage. Eventually the Cabinet changed its goal from temporary removal to permanency.

The children have been in foster care the majority of their young lives. Daughter was three and a half years old and Son was twenty-one months old when they were removed from their parents. Daughter is currently eight years old, and Son is six years old. Mother and Father have reunited.

Throughout these proceedings, Father has failed to provide proof of compliance with prior court orders for assessment for anger management and substance abuse problems. The trial court found that:

[Father]'s persistent refusal to make any significant steps toward treatment for either anger management issues, domestic violence tendencies or education on the issue of having healthy adult relationships [has] severely limited and diminished his ability to parent his two children. Both parents have imposed an interminable period of time in foster care on their children with their failure and refusal to provide for the daily needs [that] both children have for companionship, nurturing and protection.

Although he had numerous jobs in the past, at the time of trial Father was unemployed and was seeking workers' compensation benefits based upon a prior work-related injury. He is also severely behind in child support payments.

At the time of the hearing, Mother and Father resided in a two-bedroom trailer. Mother claimed that if the children were returned to their care, they would have toys and a room to themselves. She testified that she would enroll them in the local school. However, she did not indicate how she and Father would financially afford the children's necessities.

While in foster care, the children have thrived. They have successfully attached to caregivers and appropriately responded to nurturing. Both Daughter and Son have become well adjusted.

On April 6, 2010, the Ballard Circuit Court issued Findings of Fact and Conclusions of Law concerning the termination of Mother's and Father's parental rights. The court concluded that the children were abused or neglected and termination was in their best interest.

Father now appeals from the trial court's findings and conclusions.³ He claims that substantial evidence did not exist to support the trial court's findings that (1) that termination was in the best interest of the children; and (2) reasonable efforts for reunification were made.

The standard of review for a trial court's decision to terminate parental rights is a clearly erroneous standard which requires the court's decision to be based upon clear and convincing evidence. Kentucky Rules of Civil Procedure (CR) 52.01; *M.P.S. v. Cabinet for Human Res.*, 979 S.W.2d 114, 116-17 (Ky. App. 1998). A court's decision will not be disturbed concerning a termination of parental rights unless the decision was not based upon substantial evidence. *M.E.C. v. Commonwealth, Cabinet for Health & Family Servs.*, 254 S.W.3d 846, 851 (Ky. App. 2008).

This standard of review reflects the law's protection of the parent-child relationship. While termination proceedings are not criminal matters, they

³ Mother did not appeal from the trial court's findings of fact and conclusions of law.

“[encroach] on the parent’s constitutional right to parent his or her child, and therefore, is a procedure that should only be employed when the statutory mandates are clearly met.” *Id.* These proceedings must be regarded with the utmost caution.

KRS 625.090 provides for the involuntary termination of parental rights upon the court’s finding that clear and convincing evidence establishes that “a child is or has previously been adjudged, abused or neglected, and that termination is in the child’s best interest. Then, the circuit court must find the existence of one or more of ten specific grounds set forth in KRS 625.090(2).” *Id.*

In this case, the trial court found, under KRS 625.090(2)(g), that Mother and Father,

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 that there is no reasonable expectation of significant improvement in the parent[s’] conduct in the immediately foreseeable future . . .

This finding was based upon Mother’s and Father’s delinquent child support payments, unemployment, and unwillingness to make significant changes.

First, the record supports the trial court’s conclusion that the children were abused or neglected. “The trial court has broad discretion in determining whether the child fits within the abuse or neglected category and whether the abuse or neglect warrants termination.” *R.C.R. v. Commonwealth, Cabinet for Human*

Res., 988 S.W.2d 36, 38 (Ky.App. 1999) citing *Department for Human Res. v. Moore*, 552 SW.2d 672, 675 (Ky.App. 1977). The testimonies of caseworkers, cabinet officials, and Mother indicate that the children were denied fundamental necessities due to Mother's and Father's violent relationship and repeated drug abuse.

The parties failed to properly maintain their children's medical needs, hygiene, and a secure and safe home environment. While in the custody of their parents, repeated acts of domestic violence and volatile behavior occurred. In addition, Mother and Father used drugs and kept drugs and drug paraphernalia in their home. This evidence provides a substantial basis for the trial court's finding of abuse or neglect.

Second, the trial court's finding that termination of parental rights was in the best interest of the children was also based upon substantial evidence. At the time of the hearing, the children had spent the vast majority of their lives in foster care. They were well adjusted and forming healthy bonds with their caregivers. Conversely, Father has not made the necessary changes required for him to properly care for his children.

Father has repeatedly failed to attend domestic violence classes, anger management classes, and parenting classes provided. He also has declined to cooperate with the Cabinet and avail himself and his children of services offered. Father's failure to address his violent behavior provided the trial court with a substantial basis to conclude that termination was in the children's best interest.

Finally, the record also supports the trial court's finding that Father had previously failed to provide the children's necessities and that there is no reasonable expectation of significant improvement in their conduct. Mother's testimony indicated that she and Father reside together and plan to raise the children in their home. However, there have been no resolutions to the substance abuse and violence issues. This failure provides ample basis for the trial court's findings.

Next, Father claims that the Cabinet did not make reasonable efforts to reunify the children with him. As reunification is a goal in family courts, KRS 625.090 (3) (c) requires the Cabinet to make reasonable efforts to reunite families prior to seeking termination. *See M.E.C. v. Commonwealth, Cabinet for Health & Family Servs.*, 254 S.W.3d at 852. KRS 620.020 defines "reasonable efforts" as, "the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community in accordance with the state plan . . . which are necessary to enable the child to safely live at home." KRS 620.020(11). Testimony of various witnesses indicated that Father was given periodic visitation. However, the Father's failure to address his anger problems and violent behavior precluded any reasonable opportunity for reunification.

Father argues that the Cabinet should have placed the children in relatives' homes. The Cabinet presented evidence to support its decision to deny placement with paternal relatives. Even if the children had been placed with

relatives, nothing suggests the children would have spent an increased amount of time with their Father due to his failure to seek treatment for his anger and violent behavior. Father failed to demonstrate how placing the children with relatives would have furthered reunification. The Cabinet's failure to place the children in the homes of relatives was not the primary obstacle. Given the children's success in foster care, Father's refusal to participate in necessary services, and the testimonies of the Cabinet workers concerning placement with paternal relatives, substantial evidence exists to support the court's conclusion that the Cabinet made reasonable efforts toward reunification.

Accordingly, the Ballard Circuit Court Order is affirmed.

ALL CONCUR.

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