

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-000716-ME

L.L.R.

APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE JOSEPH W. O'REILLY, JUDGE
ACTION NO. 11-AD-500007

W.C. AND K.C.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, LAMBERT, AND TAYLOR, JUDGES.

DIXON, JUDGE: L.L.R. ("Mother") appeals from the Jefferson Circuit Court's judgment terminating her parental rights of T.B.C. ("Child"). Finding no error, we affirm.

Mother is the biological mother of Child, who was born on July 3, 2006. W.C. and K.C. ("Appellees") are Child's paternal grandparents. Appellees

have had physical custody of Child since September 2006, due to Mother's drug and alcohol addiction. In December 2006, Mother stipulated to neglect in a dependency action initiated by the Cabinet for Health and Family Services ("Cabinet"). In June 2009, Appellees were named Child's permanent custodians; thereafter, Appellees filed a petition to adopt Child and to terminate Mother's parental rights.¹ In January 2012, following a lengthy final hearing, the trial court rendered detailed findings of fact and concluded that termination of parental rights was in Child's best interests. By separate judgment, the court ordered the termination of Mother's parental rights and granted the petition for adoption. Mother now appeals, alleging she received ineffective assistance of counsel at the final hearing.

In *Z.T. v. M.T.*, 258 S.W.3d 31 (Ky. App. 2008), our Court explained a parent's right to counsel in termination proceedings:

The law in this Commonwealth is that the due process clause, and KRS 625.080(3) and 620.100(1) require that the parental rights of a child not be terminated unless the parent has been represented by counsel at every critical stage of the proceedings. This includes all critical stages of an underlying dependency proceeding in district court.

It is logical that the parent's right to counsel includes effective representation. However, it does not derive from the Sixth Amendment nor can RCr 11.42 be invoked. We hold that if counsel's errors were so serious that it is apparent from the record that the parent was denied a fair and meaningful opportunity to be heard so that due process was denied, this Court will consider a claim that counsel was ineffective.

¹ In July 2011, Child's biological father voluntarily consented to the adoption.

Id. at 36 (internal citation omitted).

Mother contends counsel rendered ineffective assistance by failing to timely file a pre-trial witness list that included certain witnesses that Mother requested. Mother asserts she advised counsel that these witnesses included her father, her recovery sponsor, and the therapists and supervisors at the Healing Place treatment center. As a result of this alleged error, Mother contends she was unable to present a defense because all of her favorable witnesses were precluded from testifying at trial. Mother speculates that the result of the proceeding would have been different if these witnesses had been allowed to testify regarding Mother's recovery efforts and parenting ability. We disagree.

Our review of the record indicates that trial counsel vigorously defended Mother's interests at the termination hearing and skillfully cross-examined Appellees' witnesses. Mother testified on her own behalf, and she also called her own mother as a witness. On direct examination, counsel elicited favorable testimony about Mother's goals and ongoing recovery from addiction. Despite counsel's zealous representation of Mother, the Appellees presented substantial and compelling evidence that it was in Child's best interests to terminate Mother's parental rights. *M.E.C. v. Commonwealth*, 254 S.W.3d 846, 850 (Ky. App. 2008). We are not persuaded that Mother's complaints about her attorney's performance constituted errors that were so serious that she "was denied a fair and meaningful

opportunity to be heard so that due process was denied[.]” *Z.T.*, 258 S.W.3d at 36.

After careful review, we find no error in the court’s judgment.

Finally, we decline to address Mother’s remaining argument regarding the sufficiency and accuracy of the trial court’s factual findings. In her appellate brief, Mother failed to include citations to evidence in the record supporting her argument that the court erred. CR 76.12(4)(c)(v). It is well settled that “[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).

For the reasons stated herein, we affirm the judgment of the Jefferson Circuit Court.

TAYLOR, JUDGE, CONCURS.

LAMBERT, JUDGE, DISSENTS AND FILES SEPARATE

OPINION.

LAMBERT, JUDGE, DISSENTING: Respectfully I dissent. The Appellant here, who is the natural mother of the child at issue, appeals the decision of the trial court. She alleges that her attorney violated Jefferson County Family Court rules by failing to provide a detailed witness list to the court and opposing counsel no later than 10 days before trial. In fact, Appellant’s counsel did not file said witness list until the day of trial.

The Appellant argues that as a result of this error, four witnesses, favorable to her, were precluded from testifying at trial, which resulted in her inability to fully present her case.

These witnesses appear crucial to Appellant's case; and it does not appear to this writer that she could completely present her case without them. It is interesting to note that all four witnesses were present at trial and prepared to testify.

In conclusion, due to failure of trial counsel to provide effective assistance, thereby denying Appellant her due process rights, I would vacate the Findings and Conclusions herein and remand this case to the Family Court for a new trial.

BRIEF FOR APPELLANT:

J. Clark Baird
Louisville, Kentucky

BRIEF FOR APPELLEE:

Mitchell A. Charney
Stephanie L. Morgan-White
Prospect, Kentucky