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NOT TO BE PUBLISHED

OPINION OF JUNE 10, 2016 WITHDRAWN

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001110-ME 2015-CA-001112-ME, 2015-CA-001113-ME

M.L.W. (FATHER)

APPELLANT

v. APPEALS FROM FAYETTE CIRCUIT COURT
HONORABLE LUCINDA CRONIN MASTERTON, JUDGE
ACTION NO. 14-AD-00321, 14-AD-00319

HEART TO HOME ADOPTION AGENCY;
B.S.P. (MOTHER); and
V.W., I.W., AND L.W. (MINOR CHILDREN)

APPELLEES

OPINION
VACATING AND REMANDING

** ** * * * * *

BEFORE: ACREE, COMBS, AND JONES, JUDGES.

JONES, JUDGE: This consolidated appeal arises out of three orders by the Fayette Circuit Court terminating M.L.W.'s (“Father”) rights to his three minor

children. For the reasons set forth below, we VACATE the trial court's orders and REMAND this matter for additional proceedings.

I. Background

Father has three daughters in common with B.S.P. (“Mother”). The oldest child was born in August of 2011; the middle child was born in June of 2012; and the youngest child was born in October of 2013. Mother and Father have never been married. The children resided almost exclusively with Mother in Bell County, Kentucky, until 2014.

Feeling overwhelmed and ill-equipped to raise three young children, Mother looked into the possibility of putting the children up for adoption. Through an internet search, Mother located Acadia Adoption Center LLC, (“Acadia”), an adoption agency operating in Massachusetts and Maine. Mother contacted Acadia and discussed making an adoption plan for the children. After preliminary discussions with Mother, personnel at Acadia contacted the Appellee, Heart to Home Adoption Agency, LLC (“Heart to Home”), a child placement agency licensed by the Commonwealth of Kentucky. Personnel at Acadia requested Heart to Home to make contact with Mother to determine whether adoption was feasible.

Personnel at Heart to Home contacted Mother. After preliminary discussions, a meeting was arranged. Personnel at Heart to Home met with Mother both at her home and outside of it. The director of Heart to Home, Leigh Shapiro-Walton, described the girls as living in abject poverty when Heart to Home first

encountered them. With Mother's consent, Heart to Home removed the children to a foster family in Lexington, Kentucky.

Eventually, Acadia located two adoptive families for the girls in the northeast. The two younger girls were to be placed with one family and the older girl was to be placed with a second family. Thereafter, on November 26, 2014, Heart to Home petitioned the Fayette Circuit Court to terminate the parental rights of Mother and Father. The trial court appointed separate counsel for Mother and Father and a *guardian ad litem* ("GAL"), Dori Thompson, for the children.

Father contested the termination of his parental rights. On June 24, 2015, the trial court conducted a hearing. Thereafter, the trial court entered findings of fact and conclusions law and orders of termination with respect to each child. On appeal, Father asserts that the trial court's findings of fact are insufficient to support its conclusion that termination is in the children's best interests.

II. Standard of Review

"The trial court has wide discretion in terminating parental rights." *Cabinet for Health & Family Servs. v. K.H.*, 423 S.W.3d 204, 211 (Ky. 2014). "This Court's standard of review in a termination of parental rights action is confined to the clearly erroneous standard in CR 52.01 based upon clear and convincing evidence, and the findings of the trial court will not be disturbed unless there exists no substantial evidence in the record to support its findings." *M.L.C. v. Cabinet for Health & Family Servs.*, 411 S.W.3d 761, 765 (Ky. App. 2013).

"Substantial evidence has been conclusively defined by Kentucky courts as that

which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person." *Bowling v. Nat. Res. & Envtl. Prot. Cabinet*, 891 S.W.2d 406, 409 (Ky. App. 1994).

III. Analysis

Kentucky Revised Statute ("KRS") 625.050(3) provides that a licensed child placing agency, like Heart to Home, may initiate proceedings for involuntary termination of parental rights. The parties in an action for involuntary termination of parental rights shall be: "(a) The petitioner; (b) The cabinet, if not the petitioner; and (c) The biological parents, if known and if their rights have not been previously terminated."¹ *See* KRS 625.060(1)

Termination of a party's parental rights is proper upon satisfaction, by clear and convincing evidence, of a three-part test. *See* KRS 625.090. 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)(b). Third, the family court must find at least one ground of parental unfitness. KRS 625.090(2).

Father's appeal primarily relates to the trial court's conclusion that termination was in the children's best interests. The termination statute directs that,

¹The statute clarifies that all parties other than petitioner shall be named as respondents. *See* KRS 625.060(2).

in determining the best interest of the child and the existence of a ground for termination, the trial court is required to consider the following factors set forth in KRS 625.090(2):

(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.

As related to the best interest prong, the trial court's findings and conclusions are virtually the same in each case:

10. That the Petition has pled and proved by clear and convincing evidence that it is in the best interest of for [sic] . . . that the Parental Rights of Respondent [Father] in and to her be terminated.

11. That the Hon. Dori H. Thompson was appointed Guardian ad Litem for the Infant Respondent on December 15, 2014. That she has met with the Infant Respondent and her prospective adoptive parents; that said GAL took an active part in the evidentiary hearing in this matter held on May 26, 2015; that she filed her Report herein in which she concluded that it is her belief that it is in the best interest of the Infant Respondent that the parental rights of [Father] be terminated. A copy of said Report is in the record herein.

Paragraph 10 is a conclusion of law. It is not a factual finding.

Paragraph 11 is also not a proper "factual finding"; it is simply a description of a report filed by the GAL. These two paragraphs are the only analysis by the trial court on the best interest prong.

"Consideration of matters affecting the welfare and future of children are among the most important duties undertaken by the courts of this Commonwealth. In compliance with these duties, it is imperative that the trial courts make the requisite findings of fact and conclusions of law to support their orders." *Keifer v. Keifer*, 354 S.W.3d 123, 125-26 (Ky. 2011). Upon review, we are compelled to conclude that the trial court did not make adequate findings regarding the best interest of the children. The trial court's order simply states in wholly-conclusory terms that termination of Father's parental rights is in the children's best interests. The trial court did not include any specific written facts to support its conclusion.

KRS 625.090 is clear that a trial court must make individualized findings of fact when termination is sought. Subsection (6) states: "[u]pon the conclusion of proof and argument of counsel, the Trial Court shall enter findings of fact, conclusions of law, and a decision as to each parent-respondent . . ." KRS 625.090(6). Our Supreme Court has been clear that written, particularized findings are essential in cases involving the welfare and future of children. *Keifer*, 354 S.W.3d at 125–26. Remand is required if the trial court fails to support its conclusions with appropriate written findings of fact. *Anderson v. Johnson*, 350 S.W.3d 453 (Ky. 2011). Therefore, we must vacate the termination orders and remand these actions for further action by the trial court.

While neither party raised Heart to Home's failure to add the Cabinet to these proceedings, we believe that on remand the trial court should direct Heart to Home to add the Cabinet and allow the Cabinet an opportunity to participate in a meaningful way prior to issuance of a new decision.²

III. Conclusion

We are cognizant that Mother wishes for the children to be adopted. We do not doubt that it is her sincere belief that adoption will provide the children with more opportunities in life than either she or Father can provide them.

² Pursuant to KRS 625.060(1)(b) the Cabinet should have been made a party in the proceedings below. We believe the Cabinet's involvement could have assisted the trial court in assessing whether Father might be able to work a case plan. Additionally, we believe the Cabinet may have had some insight into whether this proposed adoption in which the girls were split between two families was appropriate in this case. Adding the Cabinet as a party on remand is necessary to comply with our adoption statutes. *See R.M. v. R.B.*, 281 S.W.3d 293, 298 (Ky. App. 2009) ("Without the Cabinet's Report, the circuit court could not grant the adoption as a matter of law.").

Mother's desire for the children to enjoy a better life is noble. The decision, however, is not Mother's to make alone. Father has rights equal to Mother's rights.

Neither Mother nor Heart to Home can force Father to voluntarily terminate his parental rights. If Father will not agree, certain steps must be taken before termination can be ordered by the court. If Father is to be denied his right to parent the children, the termination statutes must be strictly followed. Strict compliance is required so that we can be certain that the most sacred of all bonds, the bond between parent and child, is only severed where the circumstances demand it.

For the reasons set forth above, the orders of termination with respect to Father are VACATED. This matter is REMANDED to the trial court for further proceedings in compliance with the instructions contained herein.

ALL CONCUR.

BRIEF FOR APPELLANT:

Thomas L. Conn
Lexington, Kentucky

BRIEF FOR APPELLEE:

Gladys Beck Green
Versailles, Kentucky