

RENDERED: SEPTEMBER 8, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000961-ME

B.S.

APPELLANT

v.

APPEAL FROM SIMPSON CIRCUIT COURT
HONORABLE G. SIDNOR BRODERSON, JUDGE
ACTION NO. 15-AD-00007

CABINET FOR HEALTH AND FAMILY
SERVICES, COMMONWEALTH OF KENTUCKY;
S.G.; and B.C.S.

APPELLEES

AND

NO. 2016-CA-001012-ME

S.G.

APPELLANT

v.

APPEAL FROM SIMPSON CIRCUIT COURT
HONORABLE G. SIDNOR BRODERSON, JUDGE
ACTION NO. 15-AD-00007

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, JOHNSON, AND MAZE, JUDGES.

DIXON, JUDGE: B.S. (Father) and S.G. (Mother) appeal from a judgment of the Simpson Circuit Court terminating their parental rights to B.C.S. (Child). Finding no error, we affirm.

In April 2011, the Cabinet initiated dependency and neglect proceedings against Mother and Father after Child tested positive for illegal substances at birth. The parents stipulated to the allegations, and Child was placed in foster care for five months. A court order entered September 19, 2011, provided for Child to return to the parents with the requirement they complete counseling and parenting classes. Approximately two months later, the Cabinet filed a second petition against the parents alleging neglect due to drug use in Child's presence. The parents stipulated to neglect at the adjudication hearing, and Child was placed in the custody of his maternal aunt, H.G. In July 2013, H.G. was granted permanent custody of Child.

In December 2014, H.G. filed a dependency petition on behalf of Child because she was unable to continue providing for his needs.¹ H.G. stipulated

¹ At the time H.G. filed the petition, Child had been in her custody for three years.

to dependency, and the Cabinet placed Child in foster care. Although both parents were personally served with a summons and copy of the petition, neither parent appeared for the temporary removal hearing, adjudication hearing, or disposition hearing.

At a case planning conference in February 2015, the Cabinet administratively changed the permanency goal from reunification to adoption. Neither parent attended the case planning conference. Two months later, the Cabinet filed a motion to waive reasonable efforts. Father appeared at the hearing on the motion, and the court appointed counsel to represent him.² The court subsequently granted the Cabinet's motion to waive reasonable efforts; thereafter, the Cabinet filed a petition to terminate parental rights.

Mother and Father both moved to dismiss the termination petition on due process grounds, alleging the court failed to appoint counsel to represent them during a critical stage of the underlying dependency case, as required by *R.V. v. Commonwealth*, 242 S.W.3d 669 (Ky. App. 2007). The court denied the motions and held a final termination hearing on May 13, 2016.

Mother and Father did not attend the termination hearing. The circuit court rendered findings of fact and conclusions of law and specifically found the statutory requirements for termination were met and that it was in the Child's best interests to terminate the parental rights of Mother and Father.³

² The court appointed a guardian *ad litem* for Mother, who was incarcerated.

³ Pursuant to KRS 625.090, the court found: Child was neglected as defined by KRS 600.020(1); Mother and Father continuously failed to provide essential parental care for Child with no reasonable expectation their conduct would improve; For reasons other than poverty alone,

Mother and Father rely heavily on *R.V.*, *supra*, to support their due process argument. In *R.V.*, our Court explained:

[P]ursuant to both the due process clause of the Fourteenth Amendment to the United States Constitution and KRS 625.080(3) and 620.100(1), that the parental rights of a child may not be terminated unless that 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, unless it can be shown that such proceeding had no effect on the subsequent circuit court termination case.

Id. at 672-73.

Father and Mother contend they were denied due process because they were not represented by counsel in the dependency proceeding, specifically opining it was improper for the Cabinet to administratively change the permanency goal to adoption without seeking court approval. We disagree.

In *R.V.*, the custodial parents were represented by appointed counsel during the dependency proceedings; however, the court discharged the attorneys once the disposition order was rendered. *Id.* at 670. As a result of the discharge, the parents appeared without counsel at the subsequent permanency hearing where the goal was changed from reunification to adoption. *Id.* By depriving the parents of representation at the permanency hearing, the court denied the parents due process. *Id.* at 672.

Mother and Father continuously failed to provide for Child's essential food, clothing, shelter, medical care or education.

The statute cited in *R.V.*, KRS 620.100(1), specifically states the “parent or other person exercising custodial control or supervision” is entitled to appointed counsel in dependency proceedings. In the case at bar, Child had been out of the parents’ custody for approximately three years; consequently, the court was not required to appoint counsel for them in the dependency action. Nevertheless, the record clearly reflects both Mother and Father had actual notice of the dependency petition, yet Father did not appear in court until five months later, at which time counsel was appointed. Further, to the extent Mother and Father imply the Cabinet lacked authority to administratively change the permanency goal to adoption, the statute does not require court approval for a permanency goal change before the Cabinet may file a petition for termination of parental rights. *Commonwealth v. C.V.*, 192 S.W.3d 703, 704 (Ky. App. 2006). We conclude Mother and Father were not denied due process in the underlying dependency action.

Finally, Father challenges the sufficiency of the evidence supporting the court’s decision to terminate his parental rights.

Parental rights “can be involuntarily terminated only if there is clear and convincing evidence that the child has been abandoned, neglected, or abused by the parent whose rights are to be terminated, and that it would be in the best interest of the child to do so.” *Cabinet for Health and Family Services v. A.G.G.*, 190 S.W.3d 338, 342 (Ky. 2006); KRS 625.090. The trial court’s findings of fact are entitled to great deference; accordingly, this Court applies the clearly erroneous standard of review. CR 52.01; *M.P.S. v. Cabinet for Human Resources*, 979

S.W.2d 114, 116 (Ky. App. 1998). Where the record contains substantial evidence to support the trial court's findings, we will not disturb them on appeal. *Id.*

The evidence presented by the Cabinet included the testimony of Father's most recent social worker, Paula Washington. She testified regarding Father's failure to comply with his case plan, which required maintaining a stable job and home, not using drugs, submitting to drug screens, completing parenting classes, and completing a substance abuse assessment. Washington also noted Father's attendance at supervised visitation with Child was sporadic, and Father sometimes fell asleep or talked on the phone during the visit. Washington emphasized Father acknowledged he knew what his case plan required, yet he did not put any consistent effort in completing tasks. Despite Father's argument to the contrary, our review of the record indicates substantial evidence supported the court's determination it was in Child's best interest to terminate parental rights.

For the reasons stated herein, the judgment of the Simpson Circuit Court is affirmed.

ALL CONCUR.

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