

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CJ 0748

STATE OF LOUISIANA
IN THE INTEREST OF
N.F.

Judgment rendered September 14, 2011.

Appealed from the
23rd Judicial District Court
in and for the Parish of Ascension, Louisiana
Trial Court No. 12,170
Honorable Alvin Turner, Jr. Judge

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BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

PETTIGREW, J.

Appellant, E.Y., seeks review of the trial court's judgment terminating her parental rights as to the minor child, N.F., pursuant to La. Ch. Code art. 1015(5).¹ E.Y. argues on appeal that the State of Louisiana, Department of Children and Family Services ("State")² failed to prove by clear and convincing evidence that: (1) termination of her parental rights was appropriate under Article 1015, (2) there was no substantial compliance with the case plan, (3) there was a lack of reasonable expectation of significant improvement in the future, and (4) she intentionally avoided parental responsibility by failing to provide significant contributions to the child's care and support for a period of six consecutive months while financially able to do so. For the reasons that follow, we affirm.

N.F., who was five-months old at the time, originally entered the State's custody by Instanter Order on November 21, 2007. According to the record, the following chain of events prompted the State to take custody of N.F.

The agency received a report on October 18, 2007, which alleged [E.Y.] was going on [that day] to file a protective order against [N.F.'s father, H.F.]. [E.Y.] and [H.F.] had been involved in a fight that resulted in [H.F.] pushing her down and landing almost on top of [N.F.]. [E.Y.] expressed fear that the baby could have been hurt. [H.F.'s other son, H.F.J.] observes all of the fussing and fighting between [E.Y.] and [H.F.] and has begun to call her names and belittle her. [H.F.] does nothing to stop this. On October 24, 2007, [E.Y.] and [H.F.] placed [N.F.] in the provisional custody of [J.R.] and [L.R.]. [E.Y.] threatened to remove [N.F.] from the [home of J.R. and L.R.] on November 19, 2007. On November 21, 2007, the agency obtained custody of [N.F.] by oral instanter order of At the 72 hour hearing held on November 27, 2007, [N.F.] remained in the custody of the State.

¹ The grounds for involuntary termination of parental rights are set forth in La. Ch. Code art. 1015(5) as follows:

Unless sooner permitted by the court, at least one year has elapsed since a child was removed from the parent's custody pursuant to a court order; there has been no substantial parental compliance with a case plan for services which has been previously filed by the department and approved by the court as necessary for the safe return of the child; and despite earlier intervention, there is no reasonable expectation of significant improvement in the parent's condition or conduct in the near future, considering the child's age and his need for a safe, stable, and permanent home.

² See La. R.S. 36:471, creating the department and La. Acts 2010, No. 877, § 3, directing the Louisiana Law Institute to change all references to the "Department of Social Services" to the "Department of Children and Family Services" and all references to either the "Office of Community Services" or the "Office of Family Support" to the "Office of Children and Family Services" throughout the Louisiana Revised Statutes of 1950.

N.F. was subsequently adjudicated a child in need of care on January 18, 2008, and was continued in the State's custody. A case plan with services for the parents was approved by the trial court, and the child's parents, E.Y. and H.F., were ordered to comply so that reunification with N.F. might be achieved. When it became clear to the State that N.F.'s parents were not making sufficient progress towards completion of the initial case plan goal of reunification, the State changed its recommended permanent plan goal for N.F. from reunification to adoption. Following a permanency hearing on March 6, 2009, the trial court agreed with the State and changed the case plan goal to adoption. The trial court ordered monthly supervised visits between N.F. and his parents and further ordered that N.F.'s parents continue to cooperate with the State "and other service providers in working diligently towards the completion of their case plan goals."

A petition for termination of parental rights and certification for adoption was filed on March 18, 2010, seeking to terminate the rights of E.Y. and H.F.³ The State sought termination based on La. Ch. Code art. 1015(4) and (5), noting, in part, as follows:

6.

As to the mother, [E.Y.], [the State] represents that her parental rights be terminated under [La. Ch. Code art.] 1015(4) and (5) and in support thereof alleges:

A. Two years have elapsed since [N.F.] was removed from [E.Y.'s] custody pursuant to a court order; there has been no substantial parental compliance with a case plan for services which has been previously filed by the department and approved by the court as necessary for the safe return of the child; and despite earlier intervention, there is no reasonable expectation of significant improvement in the parent's condition or conduct in the near future, considering the child's age and his need for a safe, stable, and permanent home. **[E.Y.] has a history of domestic abuse which has proven to be dangerous to her self and to [N.F.]. [E.Y.] was pushed by [H.F.] while shopping in a sporting goods store in 2007 and she fell with the baby in her arms almost injuring [N.F.]. Since then, the domestic violence between [E.Y.] and [H.F.] has continued, often involving the police. [E.Y.] has also had other domestic disputes with male partners since [N.F.] entered care.**

B. The initial court approved case plan dated December 21, 2007, indicated a goal of reunification; [H.F.] and [E.Y.] were to provide a permanent stable home for [N.F.] that would meet his health and safety needs and assure that he is not put in an unsafe and hostile environment.

³ We note that H.F. has not appealed the judgment below. Thus, the judgment is final as it relates to the termination of his parental rights to N.F.

Due to continued family violence a safe home cannot be provided for [N.F.] by his mother. [E.Y.] has failed to take necessary measures to protect her self and her child.

C. The agency also asserts that [E.Y.] abandoned her son by not contributing to the costs of his care for a period of two years. [E.Y.] has failed to maintain employment, she has also failed to provide financial contributions to the child's care as prescribed by the case plan.

D. [E.Y.] has not maintained stable housing. She lives with acquaintances or friends, moving frequently. [E.Y.] has given birth to another child currently in state's custody due to abuse/neglect.

E. [E.Y.] has a diagnosis of bi-polar disorder and is not consistent with taking her prescribed medication.

7.

Any and all other actions and/or inactions will be shown at the trial on the merits of this matter.

8.

[The State] shows that [N.F.] is in an adoptive placement with certified foster parents who are also paternal relatives.

The matter proceeded to a hearing on December 13, 2010, at which time the trial court heard testimony from various witnesses. After considering the testimony and evidence in the record, the trial court noted as follows in oral reasons for judgment:

The child, [N.F.], has been in custody since November 21st, 2007, a period in excess of three years and, thus, clearly more than one year as required by [La. Ch. Code art. 1015(5)].

The various case plans approved by the court set forth the needs that needed to be addressed by [H.F.] and [E.Y.]. Those needs addressed, among other things, a safe and stable home, the need of [E.Y.] to address a substance abuse problem, the need to address domestic violence between [H.F.] and [E.Y.].

Several witnesses testified concerning the compliance of [H.F.] and [E.Y.] with respect to the case plan. Those witnesses were Ms. Fikisha Thomas of The Department of Children and Family Services, Ms. Christie Tate of the same department, Ms. Amanda Jeansonne of CASA, and Ms. [J.R.], the foster mother.

The witnesses consistently stated that [H.F.] and [E.Y.] have failed to abide by the case plan. The court will note that in regards to [E.Y.], she would abide by certain conditions; i.e., the substance abuse recommendation but would revert back to the same conduct of drug use after completion of the substance abuse program.

The trial court concluded that the State had proven, by clear and convincing evidence, the grounds for termination of [E.Y.'s] parental rights under Article 1015(5). Thus, the trial

court found that it was in the child's best interest to terminate E.Y.'s parental rights. The trial court signed a judgment terminating E.Y.'s parental rights and freeing N.F. for adoption on December 17, 2010. This appeal by E.Y. followed.

A court of appeal may not overturn a judgment of a juvenile court absent an error of law or a factual finding that is manifestly erroneous or clearly wrong. **Stobart v. State, Through Department of Transportation and Development**, 617 So.2d 880, 882 (La. 1993); **State, In Interest of GA**, 94-2227, p. 4 (La. App. 1 Cir. 7/27/95), 664 So.2d 106, 110. An appellate court reviews a trial court's findings as to whether parental rights should be terminated according to the manifest error standard. **State ex rel. K.G.**, 2002-2886, p. 4 (La. 3/18/03), 841 So.2d 759, 762. The Louisiana Supreme Court has expressed the unique concerns present in all cases of involuntary termination of parental rights as follows:

In any case to involuntarily terminate parental rights, there are two private interests involved: those of the parents and those of the child. The parents have a natural, fundamental liberty interest to the continuing companionship, care, custody and management of their children warranting great deference and vigilant protection under the law, and due process requires that a fundamentally fair procedure be followed when the state seeks to terminate the parent-child legal relationship. However, the child has a profound interest, often at odds with those of his parents, in terminating parental rights that prevent adoption and inhibit establishing secure, stable, long-term, and continuous relationships found in a home with proper parental care. In balancing these interests, the courts of this state have consistently found the interest of the child to be paramount over that of the parent.

The State's *parens patriae* power allows intervention in the parent-child relationship only under serious circumstances, such as where the State seeks the permanent severance of that relationship in an involuntary termination proceeding. The fundamental purpose of involuntary termination proceedings is to provide the greatest possible protection to a child whose parents are unwilling or unable to provide adequate care for his physical, emotional, and mental health needs and adequate rearing by providing an expeditious judicial process for the termination of all parental rights and responsibilities and to achieve permanency and stability for the child. The focus of an involuntary termination proceeding is not whether the parent should be deprived of custody, but whether it would be in the best interest of the child for all legal relations with the parents to be terminated. As such, the primary concern of the courts and the State remains to secure the best interest for the child, including termination of parental rights if justifiable grounds exist and are proven. Nonetheless, courts must proceed with care and caution as the permanent termination of the legal relationship existing between natural parents and the child is one of the most drastic actions the State can take against its citizens. The

potential loss to the parent is grievous, perhaps more so than the loss of personal freedom caused by incarceration.

Title X of the Children's Code governs the involuntary termination of parental rights. [Article] 1015 provides the statutory grounds by which a court may involuntarily terminate the rights and privileges of parents. The State need establish only one ground ... but the judge must also find that the termination is in the best interest of the child. Additionally, the State must prove the elements of one of the enumerated grounds by clear and convincing evidence to sever the parental bond.

State ex rel. J.A., 99-2905, pp. 7-9 (La. 1/12/00), 752 So.2d 806, 810-811 (citations omitted).

The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents. **State ex rel. SNW v. Mitchell**, 2001-2128, p. 8 (La. 11/28/01), 800 So.2d 809, 814 (quoting **Santosky v. Kramer**, 455 U.S. 745, 753, 102 S.Ct. 1388, 1394-1395, 71 L.Ed.2d 599, 606 (1982)). A corollary principle is that in an involuntarily termination of parental rights proceeding, a court must delicately balance the natural parent's fundamental right and the child's right to a permanent home. **Mitchell**, 2001-2128 at 8, 800 So.2d at 814-815.

We have thoroughly reviewed the record in this matter and the history leading up to the State's petition for termination of E.Y.'s parental rights. The record clearly and convincingly demonstrates that it was in the best interest of N.F. that E.Y.'s parental rights be terminated and he be cleared for adoption. The trial court's conclusion is supported by the evidence and, therefore, not manifestly erroneous.

For the above and foregoing reasons, the judgment of the trial court is affirmed. All costs associated with this appeal are assessed against appellant, E.Y. We issue this memorandum opinion in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.1B.

AFFIRMED.