

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-000122-ME

G.D.C. AND E.G.C., JR.

APPELLANTS

v. APPEAL FROM MADISON CIRCUIT COURT
HONORABLE JUDGE NORA J. SHEPHERD
ACTION NO. 13-AD-00001

G.B.R.; R.R.; AND
H.G.C. (MINOR CHILD)

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; JONES AND NICKELL, JUDGES.

JONES, JUDGE: This appeal arises out of the Madison Circuit Court's November 8, 2013 Findings of Fact, Conclusions of Law, Termination of Parental Rights & Judgment of Adoption, and its December 17, 2013 order denying the Appellants' motions for additional findings and to alter, vacate or amend the prior judgment.

For the reasons more fully explained below, we AFFIRM.

I. BACKGROUND

Appellants, Natural Parents, were married on July 4, 2008. Later that month, Child was born. Natural Parents were unable to maintain stable housing as they cared for Child. They lived in a series of rentals, but were eventually evicted for non-payment of rent. Thereafter, they lived with Child, for a time, with various relatives.

During this time period, Natural Parents frequently allowed Child to stay with Adoptive Mother and Adoptive Father.¹ Adoptive Mother testified that over time the visits became longer. Eventually, Natural Parents left Child with Adoptive Parents for an extended period of time. As a result, in March 2012, Adoptive Mother filed a petition seeking permanent custody of Child, which was granted in December of 2012. As part of the custody order, Natural Parents were awarded "supervised timesharing."²

On January 10, 2013, Adoptive Parents filed a verified petition seeking termination of Natural Parents' parental rights and seeking adoption of Child. Natural Parents were served with the petition, appointed counsel, and filed a response asking the court to deny the petition. The court also appointed a guardian ad litem for Child.

¹ Adoptive Mother is Child's Paternal Grandmother and Adoptive Father is Child's Paternal Step-Grandfather.

² Although Natural Parents were served with the petition, they failed to take part in the custody proceedings.

On October 10, 2013, the court conducted a final hearing. All parties were present at the hearing and represented by counsel. The witnesses included two social workers who had been involved with Natural Mother, Natural Father, and Adoptive Mother.

Chrystal Eversole is a social worker with the Cabinet for Health and Family Services. She testified that she began working with Natural Parents in April of 2013 after another child was born to them and who tested positive for methadone and morphine at birth and was observed to be having drug withdrawal symptoms. The Cabinet subsequently removed that child from Natural Parents. The Cabinet prepared a case plan for reunification and Natural Parents agreed to the plan. Ms. Eversole testified that the plan called for Natural Parents to remain drug free, participate in various parenting programs, obtain employment, and establish and maintain suitable housing. Despite the directives having been in place since May 15, 2013, there was no evidence that Natural Parents had completed any of their tasks. They had both begun parenting programs, but had yet to complete them. Ms. Eversole also testified that the Maternal Grandparent's home was not a suitable one for children, yet Natural Parents were still residing there at the time of the hearing.

Becky Lawson, another social worker, testified that she became involved with Natural Parents in 2011 after receiving a report suggesting Child may have been sexually abused while in the care of Natural Parents. She testified

that the allegations were ultimately found to be unsubstantiated and she closed the investigation on March 7, 2012.

Natural Parents each testified. Their testimony was similar. They desired to care for Child and believed themselves capable of doing so. They testified that while they had not meaningfully participated in Child's life since February 2012, they would have done so if Paternal Grandmother had provided them with timely information regarding Child. On cross-examination they admitted that with the exception of a few clothing items, they had not financially provided for Child since February 2012. They also admitted that they had not visited or called Child for an extended period and that they did not send her cards on her birthday or at Christmas.

Natural Mother testified that she did not have a driver's license or a car. She testified her parents, with whom Natural Parents were living with at the time, also did not have a car. She testified that she relied on friends and other family for transportation. Natural Mother testified that she was not currently employed and had never held a job.

Natural Father testified that he was previously employed, but suffered an injury. He testified that he has been determined to be totally disabled from working and that his sole source of income is from social security disability benefits. Natural Father also testified that he requires pain medication to treat his injuries.

Adoptive Mother testified that since at least February of 2012, she and Adoptive Father have provided Child with all her financial, emotional, and educational needs. She testified that she takes Child to all medical appointments, buys Child's clothing, arranges for Child to attend preschool and ballet lessons, and otherwise meets Child's daily living needs. She testified that Child is bonded to her and Adoptive Father. She believes that they are able to provide for all of Child's needs.

On November 8, 2013, the trial court entered an order terminating the rights of Natural Parents and granting the petition of adoption. In support of its order, the trial court stated that it found that "since at least the granting of temporary custody in February of 2012, [Adoptive Parents] have been the sole and exclusive providers and caretakers for the minor [Child], as the respondents, [Natural Parents], have failed to provide for the child's physical, financial and emotional needs since that time." Specifically, the trial court found that Natural Parents had abandoned Child for a period of not less than 90 days; continuously or repeatedly failed or refused to provide or have been substantially incapable of providing essential parental care and protection for Child and there is no reasonable expectation of improvement in parental care and protections considering the age of Child; engaged in a pattern that renders Natural Parents incapable of caring for the immediate and ongoing needs of Child; and have not provided Child with adequate care, supervision, food, clothing, shelter, and education or medical care necessary of Child's well-being.

The trial court further determined that adoption was in Child's best interests and that Adoptive Parents are able to meet all of Child's needs.

Thereafter, acting with counsel, Natural Parents requested the trial court to enter additional findings. Specifically, Natural Parents requested the trial court to make findings regarding how Child was a "neglected" child and why adoption was in Child's best interest. Natural Parents also moved the trial court to alter, vacate, or amend its November 2013 order. The trial court denied both motions.

Counsel then filed a notice of appeal on behalf of Natural Parents and submitted a brief in compliance with *Anders v. State of California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).³ In the *Anders* brief, counsel asserted that no meritorious issues exist on which to base this appeal. Counsel also filed a motion to withdraw, which was granted by this Court.

III. ANALYSIS

In accordance with *Anders*, as adopted by this Court in *A.C.*, we are obligated to independently review the record and ascertain whether the appeal is, in fact, void of nonfrivolous grounds for reversal.

Termination of a party's parental rights is proper upon satisfaction, by clear and convincing evidence, of a three-part test. 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

³ *Anders* was adopted by this Court in *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361, 364 (Ky. App. 2012).

625.090(1)(b). Third, the family court must find at least one ground of parental unfitness. KRS 625.090(2).

The family court's termination decision will only be reversed if it is clearly erroneous. *Cabinet for Health & Family Servs. v. T.N.H.*, 302 S.W.3d 658, 663 (Ky. 2010). Such a decision is clearly erroneous if there is no substantial, clear, and convincing evidence to support the decision. *Id.*

The record contains sufficient evidence to support the trial court's decision to terminate Natural Parents' parental rights. Natural Parents admitted that they had not provided for any of Child's essential needs (with the exception of *de minimis* clothing) since Child was under Adoptive Parents' care. Furthermore, Natural Parents admitted that they had not regularly visited Child and did not call her or send a card on her birthday or Christmas. Natural Parents' failure to provide for any of Child's needs was sufficient evidence to justify the trial court's finding that Child was abused or neglected.

Likewise, the evidence supported the trial court's finding that adoption was in Child's best interests. The evidence was clear that Natural Parents were unable or unwilling to secure suitable housing. Despite being required to do so as part of a reunification plan for another child, Natural Parents appeared to have no plan for obtaining suitable housing. Additionally, Natural Mother appeared to have no plan for obtaining employment, despite Natural Father's inability to work, and the family's meager income from his disability. Additionally, Natural Mother was using and abusing drugs until quite recently as she gave birth to another child

who tested positive for drugs. This evidence was sufficient to support the trial court's findings of parental unfitness.

Finally, the evidence showed that Adoptive Parents were providing Child with stable, suitable housing, providing for her medical and educational needs, and otherwise giving her a loving upbringing. The evidence supported the trial court's conclusion that adoption was in Child's best interest.

IV. CONCLUSION

For these reasons, we affirm the Madison Circuit Court, Family Division. This renders Appellees' pending motion to dismiss moot.

ALL CONCUR.

BRIEF FOR APPELLANT:

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