

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2014-CA-000876-ME

X.J.

APPELLANT

v. APPEAL FROM KENTON CIRCUIT COURT  
HONORABLE LISA O. BUSHELMAN, JUDGE  
ACTION NO. 13-AD-00115

CABINET FOR HEALTH AND FAMILY SERVICES,  
COMMONWEALTH OF KENTUCKY, D.B.,  
AND X.B., AN INFANT

APPELLEES

OPINION & ORDER  
AFFIRMING

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BEFORE: CLAYTON, DIXON, AND KRAMER, JUDGES.

CLAYTON, JUDGE: The Appellant, X.J. (hereinafter “father”), appeals from the Kenton Family Court’s May 1, 2014 judgment that involuntarily terminated his parental rights to the child, X.B. After careful consideration, we affirm.

## BACKGROUND

X.B. (hereinafter “child”) was born on September 8, 2009 in Kenton County, Kentucky. At the time of his birth, he was committed to the custody of the Cabinet for Health and Family Services (hereinafter “the Cabinet”). D.B. is the natural mother of the child and X.J. is the natural father.

The child currently resides in foster care with his half brother. The child is thriving with his foster parents who are seeking to adopt him. The child has formed an attachment to his prospective adoptive family. The family court placed child into foster care due to D.B. (hereinafter “mother”) being in foster care and having mental health issues, plus mental deficiencies.

Mother personally appeared before the court with counsel and executed an Entry of Appearance and Waiver, and Consent to Adoption. Mother testified that she did so knowingly and willingly and believed termination of parental rights was in the child’s best interest. Mother stated that father never provided basic living essentials, parental care, or nurturance and that he suffered from substance abuse issues. Mother also provided that she believes that the child is in a good home and that she wishes for him to be adopted.

With regard to the father, not only has he been unresponsive to efforts to locate him (or his whereabouts have been unknown), he has had no contact with child while the child has been in foster care and has played no role in the child’s life. The Cabinet testified that father reported seeing child only a few times—July 7, 2012, January 8, 2012, and April 4, 2011. Father has also reported earning

approximately \$12,000 last year (at the time of the 2014 report) and has not paid child support.

To aid in the reunification of the family, the Cabinet has offered an extensive amount of resources to mother and father in their journey to become better parents. These services include: foster care, parenting training, All God's Children holistic services, drug treatment, psychological assessments and substance abuse assessments, anger management, UK TAP assessments, supervised visitations, drug screens, the H.A.N.D.S. program, GED classes, WIC support systems, absent parent searches, independent living skills and individual counseling.

In its testimony, Cabinet personnel explained that no additional services are likely to bring about the reunification of this family or improve parental behavior. Furthermore, despite this extensive list of rehabilitative services offered by the Cabinet to the parents, the parents have made no improvement that would allow the child to be returned to their care.

After all parties were properly brought before the court, a trial was held on November 25, 2013. Thereafter, the family court found by clear and convincing evidence that the child was a neglected child, father had been substantially incapable of providing essential parental care and protection for the child, and there is no reasonable expectation of improvement. Furthermore, father has abandoned the child, father has repeatedly failed to provide or is incapable of providing for the child, and that the termination of parental rights is in the best

interest of the child. Consequently, the family court entered a judgment terminating parental rights on December 4, 2013.

Subsequently, on December 16, 2013, father made a Motion to Alter, Amend, or Vacate the trial court's judgment. A hearing was held on March 27, 2014. On May 1, 2014, the family court entered supplemental findings of fact, reaffirmed prior conclusions of law, and entered a supplemental judgment, which again terminated parental rights of the father. Father now appeals from this decision.

Counsel for father filed an *Anders* brief as counsel was unable to find any meritorious issues on appeal. *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Additionally, father's counsel determined there were no errors of law or fact made by the trial court. Counsel also filed a motion to withdraw. As counsel for father, he sent a letter to father informing him that counsel has filed an *Anders* brief and a motion to withdraw. Further, counsel informed father of his right to file a *pro se* brief and sent him a certified copy of counsel's brief.

#### STANDARD OF REVIEW

The appropriate standard of review in a termination of parental rights case is the clearly erroneous standard. This standard, found in Kentucky Rules of Civil Procedure (CR) 52.01, provides that “[f]indings of fact, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.”

“A finding supported by substantial evidence is not clearly erroneous. Substantial evidence is ‘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.’ In assessing whether the findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the family court.” *Hunter v. Mena*, 302 S.W.3d 93, 97 (Ky. App. 2010) (citations omitted).

Furthermore, the standard of review that applies to our Court’s review of a lower court’s findings is an abuse of discretion standard. “Kentucky’s appellate courts review trial court rulings... under an abuse of discretion standard.” *Miller v. Eldridge*, 146 S.W.3d 909, 911 (Ky. 2004). An abuse of discretion standard allows this Court to engage in precise but reverential examination of the trial court’s record and the trial court’s findings of fact and order. However, this Court will reverse if the lower court’s decision is plain error. With these standards in mind, we turn to the case at bar.

#### ANALYSIS

As previously noted, counsel for father was unable to find error entitling father to relief on appeal. Therefore, after reviewing the record, father’s counsel discerned no meritorious assignment of error on the family court’s judgment.

We recognize that Kentucky Revised Statute (KRS) 625.090 permits a family court to involuntarily terminate a person’s parental rights if it finds by clear and convincing evidence that: (1)(a) the child has been adjudged to be an abused or

neglected child, as defined by KRS 600.020(1); (b) termination would be in the best interest of the child. Herein, the family court found that the Cabinet satisfied the evidentiary requirements of KRS 625.090.

It found that the child was a neglected or abused child as defined by KRS 600.020(1). KRS 600.020 provides a list of circumstances that state when children are in circumstances that render them abused or neglected. Consequently, the first prong of KRS 625.090 is satisfied, as the child falls within at least one of these circumstances.

Secondly, the trial court must find that the termination of parental rights is in the child's best interest. Throughout the record, the Cabinet provided it was in child's best interest to stay with his foster family, where his half brother also currently resides. Additionally, it was in the best interest of the child for father's rights to be terminated because of his criminal record, which included substance abuse and domestic violence. Even the child's mother believed that it was in the child's best interest to remain in foster care with his foster parents and to have all parental rights terminated.

Lastly, the third prong of KRS 625.090(1) is satisfied, as there is at least the existence of one or more of ten specific grounds for termination. The trial court made the following findings in accordance with KRS 625.090(2)(a), (e), (g), and (j) that:

father abandoned child for a period of not less than ninety (90) days;

father, for a period of not less than six (6) months, has continuously or repeatedly failed or refused to provide or has been substantially incapable of providing essential parental care and protection for the child, and there is no reasonable expectation of improvement in parental care and protection, considering the age of the child; father, for reasons other than poverty alone, has continuously or repeatedly failed to provide or is incapable of providing essential food, clothing, shelter, medical care, or education reasonably necessary and available for the child's well-being and that there is no reasonable expectation of significant improvement in parental conduct in the immediately foreseeable future, considering the age of the child; and that child has been in foster care under the responsibility of the Cabinet for fifteen (15) of the most recent twenty-two (22) months preceding the filing of the petition to terminate parental rights.

Similarly, our Court terminated appellant father's parental rights in the case of *B.T.R. v. J.W.*, 148 S.W.3d 294 (Ky. App. 2004) that has facts almost identical in nature to this case. In that case, the family court found that the father abandoned and neglected the child for at least 90 days. Additionally, after the father moved out of state, he had no contact or very limited contact with the child. Even more, this Court found that, while the father was able to support the child, he provided no financial support or gifts. *Id.* at 296. In *B.T.R.* and in the case at bar, there is clear and convincing evidence of abuse or neglect of the child.

Consequently, father is not entitled to any relief from this Court. The trial court did not abuse its discretion in the termination of father's parental rights. The family court properly found by clear and convincing evidence that child was a neglected child, that father had been substantially incapable of providing essential

parental care and protection for the child, that father abandoned child, that there is no reasonable expectation of improvement in parental care and protection, and that father has repeatedly failed to provide or is incapable of providing for the child. Finally, the family court determined that the termination of parental rights is in the best interest of the child.

### CONCLUSION

Consequently, we affirm the decision of the Kenton Family Court and we grant the motion of counsel for father to withdraw from this case.

ENTERED: July 10, 2015

Denise G. Clayton  
JUDGE, COURT OF APPEALS

ALL CONCUR.

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