

RENDERED: AUGUST 28, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-001949-ME

L.N.W.

APPELLANT

v. APPEAL FROM ALLEN CIRCUIT COURT
HONORABLE G. SIDNOR BRODERSON, JUDGE
ACTION NO. 13-AD-00008

CABINET FOR HEALTH AND FAMILY
SERVICES; AND A.L.N., A MINOR CHILD

APPELLEES

AND

NO. 2014-CA-001950-ME

L.N.W.

APPELLANT

v. APPEAL FROM ALLEN CIRCUIT COURT
HONORABLE G. SIDNOR BRODERSON, JUDGE
ACTION NO. 13-AD-00005

CABINET FOR HEALTH AND FAMILY
SERVICES; AND A.C.W., A MINOR CHILD

APPELLEES

OPINION AND ORDER
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, NICKELL, AND THOMPSON, JUDGES.

NICKELL, JUDGE: This is an appeal from Allen Circuit Court orders entered on November 26, 2014, terminating the parental rights (TPR) of L.N.W.¹ (mother) to two minor children, A.C.W. and A.L.N. Deeming the appeals frivolous, and unable to find any meritorious claim to pursue, counsel for mother filed an *Anders*² brief and moved to withdraw from the cases. We address the motion to withdraw in the Order following this Opinion. Having independently reviewed the records of these two consolidated appeals, we affirm termination of mother's parental rights.

FACTS

A.L.N. is a female born September 28, 2003. In August 2007, she was removed from her mother's care and placed with her father.³ In May 2008, father brought A.L.N. back to the Cabinet for Health and Family Services (Cabinet). She was again returned to mother in June 2009, but placed in foster care in July 2010 because mother placed A.L.N. in the company of the child's step-grandfather with whom a no contact order was in force due to his alleged sexual abuse⁴ of A.L.N. as well as acts of domestic violence between mother and a

¹ To protect the identities of the children, all parties will be referenced by initials only.

² *Anders v. State of California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).

³ The parental rights of the fathers of both children were terminated in the same orders, but neither man is a party to either of these appeals.

⁴ A.L.N.'s step-grandfather denied the allegations, but according to A.L.N.'s therapist, the child described two specific instances of child sex abuse.

paramour. A.L.N. was returned to mother again on June 4, 2011, but only for five hours because the child and her step-grandfather attended the same funeral.

A.L.N. was committed to the Cabinet on June 17, 2011. On April 18, 2013, the Cabinet petitioned for termination of both maternal and paternal parental rights.

Following an evidentiary hearing, the trial court entered a TPR order supported by separate findings of fact and conclusions of law. The trial court wrote in part:

There is a no contact order in effect between mother and her mother and stepfather, yet she lives with them. [A.L.N.] states that her maternal step-grandfather sexually abused her, but mother does not believe [A.L.N.]. On occasion mother has said that she believed the child, but at the hearing mother testified that she does not believe the child. There was a period of at least eight (8) months where mother's whereabouts were unknown. The social worker just happened to see her in the Family Support Office after approximately eight (8) months. Mother's living and job situations have both been unstable.

The trial court found A.L.N. had been in foster care fifteen of the most recent twenty-two months where she had made substantial strides, the Cabinet had provided or attempted to provide all reasonable services to reunite the family, and stability was needed for the child. The trial court then concluded A.L.N. was an abused and neglected child under KRS⁵ 600.020(1); termination would be in her best interest; her father had abandoned her; both her mother and father—for reasons unrelated to poverty—had failed to, refused to or could not provide to her

⁵ Kentucky Revised Statutes.

essential care and protection—including food, shelter, clothing, medical care and education; and, there was no reasonable expectation of significant improvement in the parent’s conduct in the foreseeable future.

Born March 2, 2008, A.C.W. is A.L.N.’s younger brother. He was also placed in foster care on July 1, 2010, due to A.L.N. being around her step-grandfather, as well as the domestic violence between mother and her paramour. Repeating much of the language used in A.L.N.’s orders, the trial court also noted “Mother is not compliant with her case plan,” before concluding A.C.W. was also an abused and neglected child under KRS 600.020(1) and TPR would be in his best interest. It is against this backdrop that we evaluate the case presented to us.

ANALYSIS

TPR is governed by KRS 625.090(1). With the exception of a parent whose rights the Cabinet seeks to terminate who stands convicted of a criminal charge stemming from abuse or neglect of a child, TPR is prohibited unless the circuit court finds, based on clear and convincing proof, a court of competent jurisdiction has previously adjudged the child to be abused or neglected, or finds in a current proceeding that the child is abused or neglected. *Santosky v. Kramer*, 455 U.S. 745, 770, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982). As an appellate court, we accord the trial court much discretion in a TPR proceeding and apply the clearly erroneous standard of review set forth in CR⁶ 52.01. In addition to the threshold finding of abuse or neglect, the trial court must also determine termination would

⁶ Kentucky Rules of Civil Procedure.

be in the best interest of the child. *Cabinet for Health and Family Services v. A.G.G.*, 190 S.W.3d 338, 324 (Ky. 2006).

No claims having been raised on appeal, as directed by *A.C. v. Cabinet for Health and Family Services*, 362 S.W.3d 361 (Ky. App. 2012), we have independently reviewed the record in both cases. Our review has convinced us the two minor children are abused and neglected—as found to be the case by the trial court—and termination of L.N.W.’s parental rights was in the children’s best interest. Thus, there is no reason to set aside the trial court’s findings. *M.P.S. v. Cabinet for Human Resources*, 979 S.W.2d 114, 116 (Ky. App. 1998). As counsel for L.N.W. argued, no meritorious grounds exist upon which to grant relief. Therefore, the order terminating L.N.W.’s parental rights to both children is affirmed.

ORDER

WHEREFORE, counsel for L.N.W. having moved to withdraw from the above-styled appeals citing *Anders* and *A.C.*, after conscientiously reviewing the record and finding no meritorious issue to raise; said motion to withdraw along with a copy of the *Anders* brief having been mailed to L.N.W.'s last known address; L.N.W. having been advised she could file a *pro se* brief if desired but none being filed; said motion to withdraw having been passed to this merits panel for resolution by a motion panel of this Court; opposing counsel having agreed the appeal is frivolous; and L.N.W. having filed no response thereto, we hereby GRANT the motion.

ALL CONCUR.

ENTERED: August 28, 2015

/s/ C. Shea Nickell
Judge, Kentucky Court of Appeals

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